

CHAPTER 109

(HB 269)

AN ACT relating to mental illness.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 532.130 is amended to read as follows:

- (1) An adult, or a minor under eighteen (18) years of age who may be tried as an adult, convicted of a crime and subject to sentencing, is referred to in *this section and* KRS 532.135 and 532.140 as a defendant.
- (2) A defendant with significant subaverage intellectual functioning existing concurrently with substantial deficits in adaptive behavior and manifested during the developmental period is referred to in KRS 532.135 and 532.140 as a defendant with a serious intellectual disability. "Significantly subaverage general intellectual functioning" is defined as an intelligence quotient (I.Q.) of seventy (70) or below.
- (3) *A defendant is referred to in Sections 2 and 3 of this Act as a defendant with serious mental illness if:*
 - (a) *At the time of the offense, he or she has active symptoms and a documented history, including a diagnosis, of one (1) or more of the following mental disorders using the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association:*
 1. *Schizophrenia;*
 2. *Schizoaffective disorder;*
 3. *Bipolar disorder; or*
 4. *Delusional disorder; and*
 - (b) *The disorder is not manifested primarily by repeated criminal conduct or attributable solely to the acute effects of the voluntary use of alcohol or other drugs.*

As used in this subsection, a documented history and diagnosis shall be from a mental health professional as defined in KRS 645.020(7)(a) to (d).

➔Section 2. KRS 532.135 is amended to read as follows:

- (1) At least *one hundred twenty (120)*~~thirty (30)~~ days before trial, the defendant shall file a motion with the trial court wherein the defendant may allege that he *or she* is a defendant with a serious intellectual disability *or a defendant with serious mental illness* and present evidence with regard thereto. The Commonwealth may offer evidence in rebuttal.
- (2) At least *ninety (90)*~~ten (10)~~ days before the beginning of the trial, the court shall determine whether or not the defendant is a defendant with a serious intellectual disability *or a defendant with serious mental illness*, in accordance with the *criteria set forth*~~definition~~ in KRS 532.130.
- (3) The decision of the court shall be placed in the record.
- (4) The pretrial determination of the trial court shall not preclude the defendant from raising any legal defense during the trial. If it is determined the defendant is *a defendant*~~an offender~~ with a serious intellectual disability *or a defendant with serious mental illness*, he *or she* shall be sentenced as provided in KRS 532.140.

➔Section 3. KRS 532.140 is amended to read as follows:

- (1) KRS 532.010, 532.025, and 532.030 to the contrary notwithstanding, *a defendant*~~no offender~~ who has been determined to be *a defendant*~~an offender~~ with a serious intellectual disability *or a defendant with serious mental illness* under~~the provisions of~~ KRS 532.135 ~~shall~~ *not* be subject to execution. The same procedure as required in KRS 532.025 and 532.030 shall be utilized in determining the sentence of the *defendant*~~offender~~ with a serious intellectual disability *or serious mental illness* under *this section and*~~the provisions of~~ KRS 532.135 ~~and 532.140~~.

- (2) ***This section and***~~The provisions of~~ KRS 532.135 ~~and 532.140~~ do not preclude the sentencing of ***a defendant***~~an offender~~ with a serious intellectual disability ***or serious mental illness*** to any other sentence authorized by KRS 532.010, 532.025, or 532.030 for a crime which is a capital offense.
- (3) (a) ***For a defendant with a serious intellectual disability, this section and***~~the provisions of~~ KRS 532.135 ~~and 532.140~~ shall apply only to trials commenced after July 13, 1990.
- (b) ***For a defendant with serious mental illness, this section and Section 2 of this Act shall apply only to trials commenced after the effective date of this Act.***

Signed by Governor April 8, 2022.