

CHAPTER 92**(SB 122)**

AN ACT relating to judicial proceedings.

WHEREAS, it is the intent of this Commonwealth to promote, strengthen, and encourage family life for the protection and care of children and to maintain the family unit with an emphasis on the parent-child relationship; and

WHEREAS, the Commonwealth recognizes that parental incarceration is classified as an adverse childhood experience. Multiple peer-reviewed studies demonstrate that adverse childhood experiences contribute to poor mental and physical health outcomes for children and increase the likelihood that a child will become involved with the criminal justice system; and

WHEREAS, to prevent unnecessary harm to children caused by the separation from a parent during incarceration, alternative sentences should be considered before a parent is sentenced to a term of imprisonment; and

WHEREAS, this Act shall be interpreted to promote the family unit with an emphasis on maintaining the parent-child relationship by providing mental health treatment, substance use disorder treatment, parenting classes, educational or vocational training, or other services, as appropriate, while ensuring public safety, reducing recidivism, and making any victim whole through restitution;

NOW, THEREFORE,

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

➔Section 1. KRS 533.010 is amended to read as follows:

- (1) Any person who has been convicted of a crime and who has not been sentenced to death may be sentenced to probation, probation with an alternative sentencing plan, or conditional discharge as provided in this chapter.
- (2) Before imposition of a sentence of imprisonment, the court shall consider probation, probation with an alternative sentencing plan, or conditional discharge. Unless the defendant is a violent felon as defined in KRS 439.3401 or a statute prohibits probation, shock probation, or conditional discharge, after due consideration of the defendant's risk and needs assessment, nature and circumstances of the crime, and the history, character, and condition of the defendant, *including whether the defendant is a caretaker*, probation or conditional discharge shall be granted, unless the court is of the opinion that imprisonment is necessary for protection of the public because:
 - (a) There is substantial risk that during a period of probation or conditional discharge the defendant will commit another crime;
 - (b) The defendant is in need of correctional treatment that can be provided most effectively by ~~his~~ commitment to a correctional institution; or
 - (c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.
- (3) In the event the court determines that probation is not appropriate after due consideration of the defendant's risk and needs assessment, nature and circumstances of the crime, and the history, character, and condition of the defendant, *including whether the defendant is a caretaker*, probation with an alternative sentencing plan shall be granted unless the court is of the opinion that imprisonment is necessary for the protection of the public because:
 - (a) There is a likelihood that during a period of probation with an alternative sentencing plan or conditional discharge the defendant will commit a Class D or Class C felony or a substantial risk that the defendant will commit a Class B or Class A felony;
 - (b) The defendant is in need of correctional treatment that can be provided most effectively by commitment to a correctional institution; or
 - (c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.
- (4) The court shall not determine that there is a likelihood that the defendant will commit a Class C or Class D felony based upon the defendant's risk and needs assessment and the fact that:
 - (a) The defendant has never been convicted of, pled guilty to, or entered an Alford plea to a felony offense;

- (b) If convicted of, having pled guilty to, or *having* entered an Alford plea to a felony offense, the defendant successfully completed probation more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period; or
 - (c) The defendant has been released from incarceration for the commission of a felony offense more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period.
- (5) In making a determination under subsection (4) of this section, the court may determine that the greater weight of the evidence indicates that there is a likelihood that the defendant will commit a Class C or Class D felony.
- (6) ***In determining whether a defendant is a caretaker as described in subsections (2) and (3) of this section, the court shall consider evidence presented to the court that the defendant:***
- (a) ***Has consistently assumed responsibility for the housing, health, education, safety, or support of a dependent child, family member, or any other person identified by the court as being reliant on the defendant for support; or***
 - (b) ***Is a woman who has given birth to a child while awaiting her sentencing hearing, or who remains pregnant while awaiting her sentencing hearing.***
- (7) Upon initial sentencing of a defendant or upon modification or revocation of probation, when the court deems it in the best interest of the public and the defendant, the court may order probation with the defendant to serve one (1) of the following alternative sentences:
- (a) To a halfway house for no more than twelve (12) months;
 - (b) To home incarceration with or without work release for no more than twelve (12) months;
 - (c) To jail for a period not to exceed twelve (12) months with or without work release, community service and other programs as required by the court;
 - (d) To a residential treatment program for the abuse of alcohol or controlled substances;
 - (e) To a reentry center for no more than twelve (12) months; or
 - (f) To any other specified counseling program, rehabilitation or treatment program, or facility, ***including but not limited to one (1) of more of the following:***
 1. ***Substance use disorder treatment and prevention services;***
 2. ***Domestic violence education and prevention services;***
 3. ***Child abuse treatment and prevention services;***
 4. ***Parenting classes;***
 5. ***Anger management;***
 6. ***Vocational and educational training;***
 7. ***Targeted case management services that assist with access to transportation and affordable and safe housing;***
 8. ***Literacy and financial literacy training;***
 9. ***Individual counseling and therapy;***
 10. ***Family counseling when there is no known history of family or intimate partner violence;***
 11. ***Referral to local domestic violence resources for voluntary participation; and***
 12. ***Restorative practices designed to make the participant accountable to the victim, when there is an identified victim and when it is safe to do so.***
- (8)~~(7)~~ If during the term of the alternative sentence the defendant fails to adhere to and complete the conditions of the alternative sentence, the court may modify the terms of the alternative sentence or may modify or revoke probation and alternative sentence and commit the defendant to an institution.

~~(9)~~~~(8)~~ In addition to those conditions that the court may impose, the conditions of alternative sentence shall include the following and, if the court determines that the defendant cannot comply with them, then they shall not be made available:

- (a) A defendant sentenced to a halfway house shall:
 - 1. Be working or pursuing his or her education or be enrolled in a full-time treatment program;
 - 2. Pay restitution during the term of probation; and
 - 3. Have no contact with the victim of the defendant's crime;
- (b) A defendant sentenced to home incarceration shall:
 - 1. Be employed by another person or self-employed at the time of sentencing to home incarceration and continue the employment throughout the period of home incarceration, unless the court determines that there is a compelling reason to allow home incarceration while the defendant is unemployed;
 - 2. Pay restitution during the term of home incarceration;
 - 3. Enter a treatment program, if appropriate;
 - 4. Pay all or some portion of the cost of home incarceration as determined by the court;
 - 5. Comply with other conditions as specified; and
 - 6. Have no contact with the victim of the defendant's crime;
- (c) A defendant sentenced to jail with community service shall:
 - 1. Pay restitution during all or some part of the defendant's term of probation; and
 - 2. Have no contact with the victim of the defendant's crime;
- (d) A defendant sentenced to a residential treatment program for drug and alcohol abuse shall:
 - 1. Undergo mandatory drug screening during term of probation;
 - 2. Be subject to active, supervised probation for a term of five (5) years;
 - 3. Undergo aftercare as required by the treatment program;
 - 4. Pay restitution during the term of probation; and
 - 5. Have no contact with the victim of the defendant's crime; or
- (e) A defendant sentenced to a reentry center shall:
 - 1. Be employed in the community or working in a vocational program at the reentry center;
 - 2. Be enrolled in a treatment program;
 - 3. Pay restitution, fees, and fines during the term of probation; and
 - 4. Comply with other conditions as specified.

~~(10)~~~~(9)~~ When the court deems it in the best interest of the defendant and the public, the court may order the ~~defendant~~~~person~~ to work at community service related projects under the terms and conditions specified in KRS 533.070. Work at community service related projects shall be considered as a form of conditional discharge.

~~(11)~~~~(10)~~ Probation with alternative sentence shall not be available as set out in KRS 532.045 and 533.060, except as provided in KRS 533.030(6).

~~(12)~~~~(11)~~ The court may utilize a community corrections program authorized or funded under KRS Chapter 196 to provide services to any person released under this section.

~~(13)~~~~(12)~~ When the court deems it in the best interest of the defendant and the public, the court may order the defendant to placement for probation monitoring by a private agency. The private agency shall report to the court on the defendant's compliance with his or her terms of probation or conditional discharge. The defendant shall be responsible for any reasonable charges which the private agency charges.

- (14)~~(13)~~ The jailer in each county incarcerating Class C or D felons may deny work release privileges to any defendant for violating standards of discipline or other jail regulations. The jailer shall report the action taken and the details of the violation on which the action was based to the court of jurisdiction within five (5) days of the violation.
- (15)~~(14)~~ The Department of Corrections shall, by administrative regulation, develop written criteria for work release privileges granted under this section.
- (16)~~(15)~~ Reimbursement of incarceration costs shall be paid directly to the jailer in the amount specified by written order of the court. Incarceration costs owed to the Department of Corrections shall be paid through the circuit clerk.
- (17)~~(16)~~ The court shall enter into the record written findings of fact and conclusions of law when considering implementation of any sentence under this section.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

In any proceeding for child custody under this chapter where the court has made a finding that a party has committed domestic violence and abuse as defined in KRS 403.720 against another party to the proceeding or a child of the parties:

- (1) *The court shall not remove custody from or reduce the parenting time of the nonoffending party to whom the child is bonded or attached if the court finds that the:*
 - (a) *Nonoffending party is competent and not abusive; and*
 - (b) *Removal would be solely for purposes of improving the relationship between the child and the offending party; and*
- (2) *Any order to remediate resistance of a child to contact with a violent or abusive parent shall primarily address the behavior of that parent.*

➔Section 3. KRS 403.270 is amended to read as follows:

- (1) (a) As used in this chapter and KRS 405.020, unless the context requires otherwise, "de facto custodian" means a person who has been shown by clear and convincing evidence to have been the primary caregiver for, and financial supporter of, a child who within the last two (2) years has resided with the person for an aggregate period of six (6) months or more if the child is under three (3) years of age and for an aggregate period of one (1) year or more if the child is three (3) years of age or older or has been placed by the Department for Community Based Services. Any period of time after a legal proceeding has been commenced by a parent seeking to regain custody of the child shall not be included in determining whether the child has resided with the person for the required minimum period.
 - (b) A person shall not be a de facto custodian until a court determines by clear and convincing evidence that the person meets the definition of de facto custodian established in paragraph (a) of this subsection. Once a court determines that a person meets the definition of de facto custodian, the court shall give the person the same standing in custody matters that is given to each parent under this section and KRS 403.280, 403.340, 403.350, 403.822, and 405.020.
 - (2) The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent and to any de facto custodian. Subject to KRS 403.315, there shall be a presumption, rebuttable by a preponderance of evidence, that joint custody and equally shared parenting time is in the best ~~interests~~~~interest~~ of the child. If a deviation from equal parenting time is warranted, the court shall construct a parenting time schedule which maximizes the time each parent or de facto custodian has with the child and is consistent with ensuring the child's welfare. ~~[The court shall consider all relevant factors including:]~~
 - (3) *In making a determination of custody, the court shall, prior to consideration of any other factors enumerated in subsection (4) of this section:*
 - (a) *Consider any allegations of:*
 1. *Domestic violence and abuse as defined in KRS 403.720; or*
 2. *An abused or neglected child as defined in KRS 600.020;*
- committed by one (1) party against another party or a child of the parties; and*

- (b) *Make written findings on the record as to the impact, if any, of the allegations described in paragraph (a) of this subsection on the child.*
- (4) *After making the consideration required in subsection (3) of this section, the court shall consider all other factors relevant to the determination of custody including:*
- (a) The wishes of the child's parent or parents, and any de facto custodian, as to his or her custody;
 - (b) The wishes of the child as to his or her custodian, with due consideration given to the influence a parent or de facto custodian may have over the child's wishes;
 - (c) The interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may significantly affect the child's best interests;
 - (d) The motivation of the adults participating in the custody proceeding;
 - (e) The child's adjustment and continuing proximity to his or her home, school, and community;
 - (f) The mental and physical health of all individuals involved;
 - (g) A finding by the court that domestic violence and abuse, as defined in KRS 403.720, has been committed by one (1) of the parties against a child of the parties or against another party. The court shall determine the extent to which the domestic violence and abuse has affected the child and the child's relationship to each party, with due consideration given to efforts made by a party toward the completion of any domestic violence treatment, counseling, or program;
 - (h) *A finding by the court that a party has maliciously made an intentionally false allegation of child abuse which has no basis in fact and which the party knew had no basis in fact against another party;*
 - (i)~~(h)~~ The extent to which the child has been cared for, nurtured, and supported by any de facto custodian;
 - (j)~~(i)~~ The intent of the parent or parents in placing the child with a de facto custodian;
 - (k)~~(j)~~ The circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence as defined in KRS 403.720 and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school; and
 - (l)~~(k)~~ The likelihood a party will allow the child frequent, meaningful, and continuing contact with the other parent or de facto custodian, except that the court shall not consider this likelihood if there is a finding that the other parent or de facto custodian engaged in domestic violence and abuse, as defined in KRS 403.720, against the party or a child and that a continuing relationship with the other parent will endanger the health or safety of either that party or the child.
- (5)~~(3)~~ The abandonment of the family residence by a custodial party shall not be considered where ~~that said~~ party was physically harmed or was seriously threatened with physical harm by his or her spouse, when ~~the such~~ harm or threat of harm was causally related to the abandonment.
- (6)~~(4)~~ If the court grants custody to a de facto custodian, the de facto custodian shall have legal custody under the laws of the Commonwealth.
- ➔ Section 4. KRS 403.290 is amended to read as follows:
- (1) The court may interview the child in chambers to ascertain the child's wishes as to his *or her* custodian and as to visitation. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be part of the record in the case.
 - (2) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel upon request. Counsel may examine as a witness any professional personnel consulted by the court.
 - (3) (a) *Paid visitation supervisors and parenting coordinators in a custody proceeding under this chapter, whether appointed by the court or engaged by one (1) or more parties, shall document participation training focused on the following:*

1. *Early childhood, child, and adolescent development;*
 2. *Dynamics of domestic violence;*
 3. *Effects of domestic violence on adult and child victims;*
 4. *Lethality and risk issues;*
 5. *Model protocols for addressing domestic violence;*
 6. *Available community resources and victim services; and*
 7. *For paid visitation supervisors, the role of the paid supervisor and ethical principles of supervising visitation.*
- (b) *The training described in paragraph (a) of this subsection shall consist of:*
1. *Sixteen (16) hours of initial training before the paid visitation supervisor or parenting coordinator is eligible to provide services to a party to a custody proceeding; and*
 2. *Eight (8) hours annually thereafter.*

➔Section 5. KRS 403.315 is amended to read as follows:

- (1) When determining or modifying a custody order pursuant to KRS 403.270, 403.280, 403.340, or 403.740, the court shall consider the safety and well-being of the parties and of the children. If a domestic violence order is being or has been entered against a party by another party or on behalf of a child at issue in the custody hearing, the presumption that joint custody and equally shared parenting time is in the best ~~interests~~^{interest} of the child shall not apply as to the party against whom the domestic violence order is being or has been entered. The court shall weigh all factors set out in *Section 3 of this Act* ~~[KRS 403.270(2)]~~ in determining the best ~~interests~~^{interest} of the child.
- (2) *There shall be a presumption, rebuttable by a preponderance of the evidence, that joint custody and equally shared parenting time is not in the best interests of the child if the court finds that a party has committed two (2) or more acts of domestic violence and abuse as defined in KRS 403.720 against another party.*
- (3) (a) *The court shall not make an award of custody or grant unsupervised visitation with the child to a party who is found to have committed two (2) or more acts of domestic violence or abuse as defined in KRS 403.720 against another party unless that party has:*
 1. *Completed:*
 - a. *A batterer's intervention program provided by a certified provider pursuant to 920 KAR 5:020;*
 - b. *Parenting classes; and*
 - c. *Substance use and mental health assessments and any recommended corresponding treatments; and*
 2. *Participated in supervised visitation.*
- (b) *Following a party's completion of the requirements in paragraph (a) of this subsection, the court shall conduct an evidentiary hearing before ordering unsupervised visitation to that party and a second or subsequent hearing before awarding custodial rights to that party.*

➔Section 6. KRS 403.727 is amended to read as follows:

- (1) Any petition filed under KRS 403.725 on behalf of a minor who is alleged to be a victim of domestic violence and abuse, or in which a minor is named as a respondent or petitioner, shall comply with the requirements in that section and shall:
 - (a) Proceed in accordance with the procedural safeguards under KRS 610.070; and
 - (b) Conform to the confidentiality provisions under KRS 610.340.
- (2) (a) If the court orders an evidentiary hearing under KRS 403.730(1)(a), a guardian ad litem shall be appointed for any unrepresented minor who is a respondent to the action or a petitioner who is an alleged victim of domestic violence and abuse.

- (b) The guardian ad litem shall be paid a fee fixed by the court not to exceed five hundred dollars (\$500), which shall be paid by the Finance and Administration Cabinet.
- (3) *A victim advocate as defined in KRS 421.570:*
- (a) *Shall be permitted to attend the evidentiary hearing to offer advocacy services pursuant to KRS 421.575 to the minor petitioner or the adult who has filed the petition on behalf of the minor; and*
- (b) *Shall not be excluded from the evidentiary hearing unless the:*
1. *Minor petitioner or adult who has filed the petition on behalf of the minor declines the services offered; or*
 2. *Court, upon motion and for good cause shown, determines that the exclusion is in the best interests of the minor petitioner.*
- ~~(4)(3)~~ Violation of the terms or conditions of an order of protection issued under KRS 403.740 after the person has been served or given notice of the order shall constitute contempt of court and may constitute a criminal offense pursuant to KRS 403.763 if the offender is an adult or a public offense under KRS 600.020~~(51)~~ if the offender is a juvenile. Once a juvenile action or contempt proceeding has been initiated, the other shall not be undertaken regardless of the outcome of the original proceeding.
- ~~(5)(4)~~ Nothing in subsection ~~(4)(3)~~ of this section shall preclude the Commonwealth from proceeding, or the petitioner from pursuing charges, against the minor respondent for offenses other than a violation of an order of protection. Proceedings against a minor respondent for offenses other than a violation of an order of protection shall proceed:
- (a) In the juvenile session of District Court; and
- (b) In accordance with the procedural and statutory provisions established for the juvenile session of District Court.
- ➔Section 7. KRS 456.035 is amended to read as follows:
- (1) Any petition filed under KRS 456.030 on behalf of a minor who is an alleged victim of dating violence and abuse, sexual assault, or stalking, or in which a minor is named as a respondent or petitioner, shall comply with the requirements in that section and shall:
- (a) Proceed in accordance with the procedural safeguards under KRS 610.070; and
- (b) Conform to the confidentiality provisions under KRS 610.340.
- (2) (a) If the court orders an evidentiary hearing under KRS 456.040(1)(a), a guardian ad litem shall be appointed for any unrepresented minor who is a respondent to the action or a petitioner who is an alleged victim of dating violence and abuse, sexual assault, or stalking.
- (b) The guardian ad litem shall be paid a fee fixed by the court not to exceed five hundred dollars (\$500), which shall be paid by the Finance and Administration Cabinet.
- (3) *A victim advocate as defined in KRS 421.570:*
- (a) *Shall be permitted to attend the evidentiary hearing to offer advocacy services pursuant to KRS 421.575 to the minor petitioner or the adult who has filed the petition on behalf of the minor; and*
- (b) *Shall not be excluded from the evidentiary hearing unless the:*
1. *Minor petitioner or adult who has filed the petition on behalf of the minor declines the services offered; or*
 2. *Court, upon motion and for good cause shown, determines that the exclusion is in the best interests of the minor petitioner.*
- ~~(4)(3)~~ Violation of the terms or conditions of an order of protection issued under KRS 456.060 after the person has been served or given notice of the order shall constitute contempt of court and may constitute a criminal offense pursuant to KRS 456.180 if the offender is an adult or a public offense under KRS 600.020~~(51)~~ if the offender is a juvenile. Once a juvenile action or contempt proceeding has been initiated, the other shall not be undertaken regardless of the outcome of the original proceeding.

(5)~~(4)~~ Nothing in subsection (4)~~(3)~~ of this section shall preclude the Commonwealth from proceeding, or the petitioner from pursuing charges, against the minor respondent for offenses other than a violation of an order of protection. Proceedings against a minor respondent for offenses other than a violation of an order of protection shall proceed:

- (a) In the juvenile session of District Court; and
- (b) In accordance with the procedural and statutory provisions established for the juvenile session of District Court.

➔Section 8. KRS 202A.011 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Authorized staff physician" means a physician who is a bona fide member of the hospital's medical staff;
- (2) **"Benefit from treatment" means the desired outcomes of treatment in a psychiatric hospital for an individual with a mental illness, including but not limited to:**
 - (a) **Symptom management and increased stability;**
 - (b) **A lessening of irrational thoughts and behaviors;**
 - (c) **Reduced risk of harm; or**
 - (d) **Acquisition of skills for self-care and for interacting and living in the community;**
- (3) "Cabinet" means the ~~Kentucky~~Cabinet for Health and Family Services;
- (4)~~(3)~~ "Contract mental health evaluator" means a qualified mental health professional who is employed by or under contract with a community mental health center, crisis stabilization unit, mental institution, or any other facility designated by the secretary to provide mental health evaluations to determine whether an individual meets the criteria for involuntary hospitalization;
- (5)~~(4)~~ "Danger" or "threat of danger to self, family, or others" means, **as a result of mental illness, a person:**
 - (a) **Presents a substantial risk of serious physical harm to**~~for threat of substantial physical harm upon~~ self, family, or others **as evidenced by recent behavior, threats, or conduct demonstrating such risk;**~~;~~
 - (b) **Has attempted or threatened suicide or has expressed suicidal ideations and there is a reasonable probability of serious self-harm unless prompt and adequate treatment is provided;**
 - (c) **Is unable without supervision or assistance to provide for**~~including actions which deprive self, family, or others of the~~ basic **personal needs,**~~means of survival~~ including provision for reasonable shelter, food, ~~for~~clothing, **or medical care, so that there exists a substantial likelihood of death, serious physical injury, or serious physical debilitation. For purposes of this paragraph, a person shall be deemed unable to provide for basic personal needs even if a guardian, family member, or friend is willing and able to provide assistance; or**
 - (d) **Is experiencing psychiatric deterioration, demonstrated by a substantial decline in functioning from the person's baseline, such that the person's judgment, insight, or ability to recognize the need for treatment is impaired, and without intervention, the person's condition will predictably result in:**
 - 1. **A substantial risk of serious physical harm to self, family, or others;**
 - 2. **Serious physical debilitation or self-neglect; or**
 - 3. **Further loss of ability to engage in safe or necessary self-care or to voluntarily seek needed treatment;**
- (6)~~(5)~~ "Forensic psychiatric facility" means a mental institution or facility, or part thereof, designated by the secretary for the purpose and function of providing inpatient evaluation, care, and treatment for ~~mentally ill persons or~~ individuals with an intellectual disability **or mental illness**, who have been charged with or convicted of a felony;
- (7)~~(6)~~ "Hospital" means:
 - (a) A state mental hospital or institution or other licensed public or private hospital, institution, health-care facility, or part thereof, approved by the ~~cabinet~~~~Kentucky Cabinet for Health and Family Services~~ as

- equipped to provide full-time residential care and treatment for ~~mentally ill persons or~~ individuals with an intellectual disability *or mental illness*; or
- (b) A hospital, institution, or health-care facility of the government of the United States equipped to provide residential care and treatment for ~~mentally ill persons or~~ individuals with an intellectual disability *or mental illness*;
- (8) **"Individual with a mental illness" means a person with substantially impaired capacity to use self-control, judgment, or discretion in the conduct of the person's affairs and social relations, associated with maladaptive behavior or recognized emotional symptoms where impaired capacity, maladaptive behavior, or emotional symptoms can be related to physiological, psychological, or social factors;**
- ~~(9)(7)~~ "Judge" means any judge or justice of the Court of Justice or a trial commissioner of the District Court acting under authority of SCR 5.030;
- ~~(10)(8)~~ "Least restrictive alternative mode of treatment" means that treatment which will give ~~an~~ ~~a mentally ill~~ individual **with a mental illness** a realistic opportunity to improve the individual's level of functioning, consistent with accepted professional practice in the least confining setting available;{
- ~~(9)~~ ~~"Mentally ill person" means a person with substantially impaired capacity to use self-control, judgment, or discretion in the conduct of the person's affairs and social relations, associated with maladaptive behavior or recognized emotional symptoms where impaired capacity, maladaptive behavior, or emotional symptoms can be related to physiological, psychological, or social factors;}~~
- ~~(11)(10)~~ "Patient" means a person under observation, care, or treatment in a hospital pursuant to the provisions of this chapter;
- ~~(12)(11)~~ "Petitioner" means a person who institutes a proceeding under this chapter;
- ~~(13)(12)~~ "Psychiatric facility" means a crisis stabilization unit or any facility licensed by the cabinet and which provides inpatient, outpatient, psychosocial rehabilitation, emergency, and consultation and education services for the diagnosis and treatment of persons who have a mental illness;
- ~~(14)(13)~~ "Qualified mental health professional" means:
- (a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;
 - (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;
 - (c) A psychologist with the health service provider designation, a psychological practitioner, a certified psychologist, or a psychological associate, licensed under the provisions of KRS Chapter 319;
 - (d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with **individuals with a mental illness**~~mentally ill persons~~, or a licensed registered nurse, with a bachelor's degree in nursing from an accredited institution, who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability;
 - (e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability;
 - (f) A marriage and family therapist licensed under the provisions of KRS 335.300 to 335.399 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic facility licensed by the Commonwealth, a psychiatric unit of a

general hospital, a private agency or company engaged in providing mental health services, or a regional community program for mental health and individuals with an intellectual disability;

- (g) A professional counselor credentialed under the provisions of KRS Chapter 335.500 to 335.599 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic facility licensed by the Commonwealth, a psychiatric unit of a general hospital, a private agency or company engaged in providing mental health services, or a regional community program for mental health and individuals with an intellectual disability; or
- (h) A physician assistant licensed under KRS 311.840 to 311.862, who meets one (1) of the following requirements:
1. Provides documentation that he or she has completed a psychiatric residency program for physician assistants;
 2. Has completed at least one thousand (1,000) hours of clinical experience under a supervising physician, as defined by KRS 311.840, who is a psychiatrist and is certified or eligible for certification by the American Board of Psychiatry and Neurology, Inc.;
 3. Holds a master's degree from a physician assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant or its predecessor or successor agencies, is practicing under a supervising physician as defined by KRS 311.840, and:
 - a. Has two (2) years of clinical experience in the assessment, evaluation, and treatment of mental disorders; or
 - b. Has been employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability for at least two (2) years; or
 4. Holds a bachelor's degree, possesses a current physician assistant certificate issued by the board prior to July 15, 2002, is practicing under a supervising physician as defined by KRS 311.840, and:
 - a. Has three (3) years of clinical experience in the assessment, evaluation, and treatment of mental disorders; or
 - b. Has been employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability for at least three (3) years;

~~(15)(14)~~ "Residence" means legal residence as determined by applicable principles governing conflicts of law;

~~(16)(15)~~ "Respondent" means a person alleged in a hearing under this chapter to be ~~[(a mentally ill person or)]~~ an individual with an intellectual disability *or mental illness*; ~~and~~

~~(17)(16)~~ "Secretary" means the secretary of the Cabinet for Health and Family Services ~~[-]; and~~

(18) "*Serious mental illness*":

- (a) *Means a diagnosable mental, behavioral, or emotional disorder that causes significant functional impairment that substantially interferes with or limits major life activities, including but not limited to:*
1. *Severe cognitive difficulties, including disorganized thinking, delusions, hallucinations, or memory impairment; or*
 2. *Extreme mood fluctuations, apathy, or lack of motivation; and*
- (b) *Includes but is not limited to the following disorders:*
1. *Schizophrenia spectrum and other psychotic disorders;*
 2. *Bipolar and related disorders; and*
 3. *Major depressive disorders that require treatment.*

➔Section 9. KRS 202A.028 is amended to read as follows:

- (1) *Prior to completion of an examination by a qualified mental health professional under this section, the professional shall make a good-faith attempt to contact the petitioner to obtain any additional relevant information necessary to the petition.*
- (2) (a) *Prior to the release of a person subject to an examination under this section, the county attorney may make an ex parte motion for a certification review hearing. The court shall review the ex parte motion upon its receipt.*
- (b) *If the review indicates that the person presents an imminent threat of danger to self, family, or others, the court shall order the qualified mental health professional to immediately notify the court if the professional has certified that the person:*
1. *Is an individual with a mental illness;*
 2. *Presents a danger or threat of danger to self, family, or others as a result of the mental illness; and*
 3. *Does not meet all the criteria for involuntary hospitalization under Section 34 of this Act.*
- (c) *The court shall review the certification under paragraph (b) of this subsection and consider if the person has been the subject of proceedings under this chapter, prior to the current proceeding, and is exhibiting an escalation of dangerous behavior. After review, the court may:*
1. *Order the person to be hospitalized in a place designated by the cabinet until the certification review hearing is held within forty-eight (48) hours, excluding weekends and holidays;*
 2. *Release the person, subject to reasonable conditions, and set the certification review hearing to be held within forty-eight (48) hours, excluding weekends and holidays; or*
 3. *Deny the county attorney's motion for a certification review and authorize the release of the person.*
- (d) 1. *At the certification review hearing, the person shall be appointed counsel who may present evidence and cross examine witnesses on the person's behalf.*
2. *The qualified mental health professional that performed the examination shall testify about the certification under paragraph (b) of this subsection. This testimony may be given remotely.*
3. *Notwithstanding subparagraph 2. of this paragraph, the court may accept the certification under paragraph (b) of this subsection in lieu of testimony upon agreement of all parties and stipulation of the person that he or she meets the criteria for involuntary hospitalization under Section 34 of this Act, provided that outpatient treatment is determined to be the least restrictive mode of treatment.*
- (e) *Upon conclusion of the certification review hearing, if the court finds by clear and convincing evidence that the person is an individual with a mental illness who presents a danger or threat of danger to self, family, or others as a result of the mental illness, who may reasonably benefit from court-ordered outpatient treatment or release with other reasonable conditions, and for whom court-ordered outpatient treatment or release with other reasonable conditions is the least restrictive alternative mode of treatment available, the court may order the person to:*
1. *Receive community-based outpatient treatment that shall not exceed three hundred sixty (360) days and comply with any other reasonable conditions necessary to ensure compliance; or*
 2. *Be released with any reasonable conditions necessary to ensure the safety of self, family, or others and avoid readmittance to a hospital setting.*
- (3) (a) *Failure to comply with an order for community-based outpatient treatment or release with conditions under subsection (2)(e) of this section shall not be grounds to find the person in contempt of court but shall be prima facie evidence that:*
1. *The person can benefit from inpatient hospitalization; and*
 2. *Inpatient hospitalization is the least restrictive mode of treatment.*

- (b) *If the review indicates that the respondent presents an imminent threat of danger to self, family, or others, the court shall order the qualified mental health professional to immediately notify the court if the professional has certified that the respondent:*
1. *Is an individual with a mental illness;*
 2. *Presents a danger or threat of danger to self, family, or others as a result of the mental illness; and*
 3. *Does not meet all the criteria for involuntary hospitalization under Section 34 of this Act.*
- (c) *The court shall review the certification under paragraph (b) of this subsection and consider if the respondent has been the subject of proceedings under this chapter, prior to the current proceeding, and is exhibiting an escalation of dangerous behavior. After review, the court may:*
1. *Order the respondent to be hospitalized in a place designated by the cabinet until the certification review hearing is held within forty-eight (48) hours, excluding weekends and holidays;*
 2. *Release the respondent, subject to reasonable conditions, and set the certification review hearing to be held within forty-eight (48) hours; or*
 3. *Deny the county attorney's motion for a certification review and authorize the release of the person.*
- (d) *1. At the certification review hearing, the respondent shall be appointed counsel who may present evidence and cross examine witnesses on the respondent's behalf.*
- 2. The qualified mental health professional that performed the examination shall testify about the certification under paragraph (b) of this subsection. This testimony may be given remotely.*
- 3. Notwithstanding subparagraph 2. of this paragraph, the court may accept the certification under paragraph (b) of this subsection in lieu of testimony upon agreement of all parties and stipulation of the respondent that he or she meets the criteria for involuntary hospitalization under Section 34 of this Act, provided that outpatient treatment is determined to be the least restrictive mode of treatment.*
- (e) *Upon conclusion of the certification review hearing, if the court finds by clear and convincing evidence that the respondent is an individual with a mental illness who presents a danger or threat of danger to self, family, or others as a result of the mental illness, who may reasonably benefit from court-ordered outpatient treatment or release with reasonable conditions, and for whom court-ordered outpatient treatment or release with reasonable conditions is the least restrictive alternative mode of treatment available, the court may order the respondent to:*
1. *Receive community-based outpatient treatment that shall not exceed three hundred sixty (360) days and comply with any other reasonable conditions necessary to ensure compliance; or*
 2. *Be released with any reasonable conditions necessary to ensure the safety of self, family, or others and avoid readmittance to a hospital setting.*
- (2) (a) *Failure to comply with an order for community-based outpatient treatment or release with conditions under subsection (1)(e) of this section shall not be grounds to find the respondent in contempt of court but shall be prima facie evidence that:*
1. *The respondent can benefit from inpatient hospitalization; and*
 2. *Inpatient hospitalization is the least restrictive mode of treatment.*
- (b) *If a new petition for involuntary hospitalization is filed within twelve (12) months of an order for community-based outpatient treatment or release with conditions under subsection (1)(e) of this section, the clerk of the court shall provide the prior order to:*
1. *The court with the petition for involuntary hospitalization; and*
 2. *The qualified mental health professional along with the court's order for examination.*
- (c) *The qualified mental health professional who conducts the examination as described under paragraph (b)2. of this subsection shall independently evaluate the respondent, considering the*

respondent's prior order for community-based outpatient treatment or release with conditions, and certify whether he or she meets the criteria for involuntary hospitalization under Section 34 of this Act.

- (d) *A respondent shall not be involuntarily hospitalized based solely on his or her failure to comply with a prior order for community-based outpatient treatment or release with conditions.*

➔Section 11. KRS 202A.051 is amended to read as follows:

- (1) Proceedings for *up to* sixty (60) days or *up to* three hundred sixty (360) days of involuntary hospitalization of an individual shall be initiated by the filing of a verified petition in District Court.
- (2) The petition and all subsequent court documents shall be entitled: "In the interest of (name of respondent)."
- (3) The petition shall be filed by a qualified mental health professional, peace officer, county attorney, Commonwealth's attorney, spouse, relative, friend, or guardian of the individual concerning whom the petition is filed, or any *responsible adult*~~{other interested person}~~.
- (4) The petition shall set forth:
 - (a) Petitioner's relationship to the respondent;
 - (b) Respondent's name, residence, and current location, if known;
 - (c) The name and residence of respondent's parents, if living and if known, or respondent's legal guardian, if any and if known;
 - (d) The name and residence of respondent's husband or wife, if any and if known;
 - (e) The name and residence of the person having custody of the respondent, if any, or if no such person is known, the name and residence of a near relative or that the person is unknown;
 - (f) Petitioner's belief, including the factual basis therefor, that the respondent is *an individual with a mental illness*~~{mentally ill}~~ and presents a danger or threat of danger to self, family or others if not restrained;~~{and}~~
 - (g) If the petition seeks a three hundred sixty (360) day involuntary hospitalization of the respondent, the petition shall further set forth that the respondent has been hospitalized in a hospital or a forensic psychiatric facility for a period of thirty (30) days under the provisions of this chapter or KRS Chapter 504 within the preceding six (6) months; *and*
 - (h) *Upon request of the county attorney, that the county attorney receives notice of any discharge by a hospital prior to the preliminary hearing under subsection (10) of this section.*
- (5) *If the petition seeks a sixty (60) day involuntary hospitalization of the respondent, the county attorney may motion the court to amend the petition to seek up to a three hundred sixty (360) day involuntary hospitalization of the individual if the respondent has been hospitalized in a hospital or a forensic psychiatric facility for a period of thirty (30) days under the provisions of this chapter or KRS Chapter 504 within the preceding six (6) months.*
- (6) Upon receipt of the petition, the court shall examine the petitioner under oath as to the contents of the petition. If the petitioner is a qualified mental health professional, the court may dispense with the examination.
- (7)~~{(6)}~~ If after reviewing the allegations contained in the petition and examining the petitioner under oath, it appears to the court that there is probable cause to believe the respondent should be involuntarily hospitalized, the court shall, unless either the court or one (1) of the parties objects, implement the procedures provided in KRS 202A.028 and order the individual to be examined without unnecessary delay by a qualified mental health professional. If the person is not being *hospitalized*~~{held}~~ under the provisions of this chapter, the court may order that the sheriff of the county or other peace officer transport the person to a hospital or psychiatric facility designated by the cabinet for the purpose of the evaluation. The sheriff or other peace officer may, upon agreement of a person authorized by the peace officer, authorize the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the person to a hospital or psychiatric facility. Following that, the procedures as set forth in KRS 202A.028 shall be carried out. Otherwise, the court shall:
 - (a) Set a date for a preliminary hearing within six (6) days from the date of *hospitalization of*~~{holding}~~ the person under the provisions of this *section*, ~~{section (} excluding holidays and weekends, *)} to determine if there is probable cause to believe the person should be involuntarily hospitalized;*~~

- (b) Notify the respondent, the legal guardian, if any, and if known, and the spouse, parents, or nearest relative or friend of the respondent concerning the allegations and contents of the petition and the date and purpose of the preliminary hearing; and the name, address, and telephone number of the attorney appointed to represent the respondent; and
- (c) Cause the respondent to be examined without unnecessary delay by two (2) qualified mental health professionals, at least one (1) of whom is a physician. The qualified mental health professionals shall certify within twenty-four (24) hours, ~~{(excluding weekends and holidays,)} their findings.~~
- ~~(8)(7)~~ (a) If the respondent is being presently ***hospitalized***~~{held}~~ under the provisions of this chapter, the court may order further ***hospitalization***~~{holding}~~ of the respondent to accomplish the examination ordered by the court.
- (b) If the respondent is not being presently ***hospitalized***~~{held}~~ under the provisions of this chapter, the court may order that the sheriff of the county or a peace officer transport the respondent to a hospital or a psychiatric facility designated by the cabinet so that the respondent shall be examined without unnecessary delay by two (2) qualified mental health professionals, at least one (1) of whom is a physician. The sheriff or other peace officer may authorize, upon agreement of a person authorized by the peace officer, the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the person to a hospital or psychiatric facility.
- ~~(9)(8)~~ (a) When the court is authorized to issue an order that the respondent be transported to a hospital or psychiatric facility, the court may, in its discretion, issue a summons. A summons so issued shall be directed to the respondent, shall command the respondent to appear at a time and place ~~{therein}~~ specified ***in the summons*** where the respondent shall be ~~{there}~~ examined by two (2) qualified mental health professionals, at least one (1) of whom is a physician, and shall command the respondent's appearance at the preliminary hearing.
- (b) If a respondent who has been summoned fails to appear for such examination or at the preliminary hearing, the court may order that the sheriff of the county or a peace officer transport the respondent to a hospital or psychiatric facility designated by the cabinet for the purpose of an evaluation.
- ~~(10)(9)~~ If upon completion of the preliminary hearing, the court finds:
- (a) There is probable cause to believe the respondent should be involuntarily hospitalized:~~{}~~
1. The court shall order a final hearing within twenty-one (21) days from the date of ***hospitalization***~~{of holding}~~ the respondent under ~~{the provisions of}~~ this section to determine if the respondent should ***continue to*** be involuntarily hospitalized; ~~and~~~~{}~~
 2.
 - a. ***The county attorney may motion the court at the conclusion of the preliminary hearing to require the hospital to provide a copy of the respondent's discharge plan to the county attorney prior to discharge. If the hospital plans to discharge the respondent prior to the final hearing under subsection (11) of this section, the court shall require the hospital to provide a copy of the respondent's discharge plan no later than seventy-two (72) hours prior to the respondent's discharge.***
 - b. ***If the county attorney believes that the discharge plan does not give the respondent a realistic opportunity to avoid imminent readmittance into an inpatient psychiatric hospital for treatment and is insufficient without court-ordered outpatient treatment or reasonable conditions, the county attorney shall make an ex parte motion for a discharge review hearing. The court shall conduct the discharge review hearing at the earliest practicable time, consistent with due process and the availability of counsel, and in no event later than seven (7) days after the motion is made, except with the respondent's consent or upon the court's finding that extraordinary circumstances exist and that delay is indispensable to protect the respondent and the community.***
 - c. ***Upon completion of the discharge review hearing described under subdivision b. of this subparagraph, if the court finds that the respondent is an individual with a mental illness who presents a danger or threat of danger to self, family, or others as a result of the mental illness, who may reasonably benefit from court-ordered outpatient treatment or release with other reasonable conditions, and for whom court-ordered outpatient***

treatment or release with other reasonable conditions is the least restrictive alternative mode of treatment available, the court shall order:

- i. *For a respondent who meets the criteria for court-ordered assisted outpatient treatment set forth in Section 20 of this Act, that a treatment plan be developed in accordance with KRS 202A.0817 within forty-eight (48) hours and the respondent to receive court-ordered assisted outpatient treatment under KRS 202A.0811 to 202A.0831;*
 - ii. *For any other respondent who may benefit from outpatient treatment, a qualified mental health professional to develop a treatment plan within forty-eight (48) hours, the respondent to receive community-based outpatient treatment that shall not exceed three hundred sixty (360) days, and the respondent to comply with any other reasonable conditions necessary to ensure compliance; or*
 - iii. *The respondent to be released with any reasonable conditions necessary to ensure the safety of self, family, or others and avoid readmittance into a hospital setting;*
- (b) *There is no probable cause to believe the respondent should be involuntarily hospitalized but that the respondent is an individual with a mental illness who presents a danger or threat of danger to self, family, or others as a result of the mental illness, who may reasonably benefit from court-ordered outpatient treatment or release with other reasonable conditions, and for whom court-ordered outpatient treatment or release with other reasonable conditions is the least restrictive alternative mode of treatment available, the court shall order:*
1. *For a respondent who meets the criteria for court-ordered assisted outpatient treatment set forth in Section 20 of this Act:*
 - a. *That a treatment plan be developed in accordance with KRS 202A.0817 within forty-eight (48) hours; and*
 - b. *The respondent to receive court-ordered assisted outpatient treatment under KRS 202A.0811 to 202A.0831;*
 2. *For any other respondent who may benefit from outpatient treatment:*
 - a. *A qualified mental health professional to develop a treatment plan within forty-eight (48) hours;*
 - b. *The respondent to receive community-based outpatient treatment that shall not exceed three hundred sixty (360) days; and*
 - c. *The respondent to comply with any other reasonable conditions necessary to ensure compliance; or*
 3. *The respondent to be released with any reasonable conditions necessary to ensure the safety of self, family, or others and avoid readmittance into a hospital setting; or*
- (c) ~~(10)~~ ~~[If the court finds]~~ *There is no probable cause to believe the respondent:*
1. *Should be involuntarily hospitalized; or*
 2. *Is an individual with a mental illness:*
 - a. *Who presents a danger or threat of danger to self, family, or others as a result of the mental illness;*
 - b. *Who may reasonably benefit from court-ordered outpatient treatment or release with reasonable conditions; and*
 - c. *For whom court-ordered outpatient treatment or release with reasonable conditions is the least restrictive alternative mode of treatment available;*~~;~~

the proceedings against the respondent shall be dismissed, and the respondent shall be released from any *hospitalization*~~holding~~.

- (11) If upon completion of the final hearing, the court finds:

- (a) The respondent should be involuntarily hospitalized:~~{}~~
1. The court shall order the respondent *to*:
 - a. *Be* hospitalized in a hospital for a period not to exceed sixty (60) consecutive days from the date of the court order or a period not to exceed three hundred sixty (360) consecutive days from the date of the court order, whatever was the period of time that was requested in the petition; *and*
 - b. *Comply with all conditions of the hospital's discharge plan; and*
 2.
 - a. *The county attorney may motion the court at the conclusion of the final hearing to require the hospital to provide a copy of the respondent's discharge plan to the county attorney prior to discharge. If the hospital plans to discharge the respondent prior to the expiration of an order under this subsection, the court shall require the hospital to provide a copy of the respondent's discharge plan no later than seventy-two (72) hours prior to the respondent's discharge.*
 - b. *If the county attorney believes that the discharge plan does not give the respondent a realistic opportunity to avoid imminent readmittance into an inpatient psychiatric hospital for treatment and is insufficient without court-ordered outpatient treatment or reasonable conditions, the county attorney shall:*
 - i. *Make an ex parte motion for a discharge review hearing. The court shall conduct the discharge review hearing at the earliest practicable time, consistent with due process and the availability of counsel, and in no event later than seven (7) days after the motion is made, except with the respondent's consent or upon the court's finding that extraordinary circumstances exist and that delay is indispensable to protect the respondent and the community; or*
 - ii. *If the respondent within the past twelve (12) months has been found incompetent to stand trial in a criminal proceeding and has not been committed under KRS Chapter 202C, the county attorney may make a motion to proceed under Section 16 of this Act.*
 - c. *Upon completion of the discharge review hearing described in subdivision b.i. of this subparagraph, if the court finds that the respondent is an individual with a mental illness, who presents a danger or threat of danger to self, family, or others as a result of the mental illness, who may reasonably benefit from court-ordered outpatient treatment or release with other reasonable conditions, and for whom court-ordered outpatient treatment or release with other reasonable conditions is the least restrictive alternative mode of treatment available, the court shall order:*
 - i. *For a respondent who meets the criteria for court-ordered assisted outpatient treatment set forth in Section 20 of this Act, that a treatment plan be developed in accordance with KRS 202A.0817 within forty-eight (48) hours and the respondent to receive court-ordered assisted outpatient treatment under KRS 202A.0811 to 202A.0831;*
 - ii. *For any other respondent who may benefit from outpatient treatment, a qualified mental health professional to develop a treatment plan within forty-eight (48) hours, the respondent to receive community-based outpatient treatment that shall not exceed three hundred sixty (360) days, and the respondent to comply with any other reasonable conditions necessary to ensure compliance; or*
 - iii. *The respondent to be released with any reasonable conditions necessary to ensure the safety of self, family, or others and avoid readmittance into a hospital setting;*
- (b) *The respondent should not be involuntarily hospitalized but that the respondent is an individual with a mental illness who presents a danger or threat of danger to self, family, or others as a result of the mental illness, who may reasonably benefit from court-ordered outpatient treatment or release with other reasonable conditions, and for whom court-ordered outpatient treatment or release with other*

reasonable conditions is the least restrictive alternative mode of treatment available, the court shall order:

1. *For a respondent who meets the criteria for court-ordered assisted outpatient treatment set forth in Section 20 of this Act:*
 - a. *That a treatment plan be developed in accordance with KRS 202A.0817 within forty-eight (48) hours; and*
 - b. *The respondent to receive court-ordered assisted outpatient treatment under KRS 202A.0811 to 202A.0831;*
 2. *For any other respondent who may benefit from outpatient treatment:*
 - a. *A qualified mental health professional to develop a treatment plan within forty-eight (48) hours;*
 - b. *The respondent to receive community-based outpatient treatment that shall not exceed three hundred sixty (360) days; and*
 - c. *The respondent to comply with any other reasonable conditions necessary to ensure compliance; or*
 3. *The respondent to be released with any reasonable conditions necessary to ensure the safety of self, family, or others and avoid readmittance into a hospital setting; or*
- (c) *The respondent:*
1. *Should not be involuntary hospitalized; or*
 2. *Is not an individual with a mental illness:*
 - a. *Who presents a danger or threat of danger to self, family, or others as a result of the mental illness;*
 - b. *Who may reasonably benefit from court-ordered outpatient treatment or release with reasonable conditions; and*
 - c. *For whom court-ordered outpatient treatment or release with reasonable conditions is the least restrictive mode of treatment available;*

the proceedings against the respondent shall be dismissed, and the respondent shall be released from any hospitalization.

- (12) (a) *Failure to comply with an order for outpatient treatment or release with conditions under subsection (10) or (11) of this section shall not be grounds to find the respondent in contempt of court but shall be prima facie evidence that:*
1. *The respondent can benefit from inpatient hospitalization; and*
 2. *Inpatient hospitalization is the least restrictive mode of treatment.*
- (b) *If a new petition for involuntary hospitalization is filed within twelve (12) months of an order for outpatient treatment or release with conditions under subsection (10) or (11) of this section, the clerk of the court shall provide the prior order to:*
1. *The court with the petition for involuntary hospitalization; and*
 2. *The qualified mental health professional along with the court's order for examination.*
- (c) *The qualified mental health professional who conducts the examination as described under paragraph (b)2. of this subsection shall independently evaluate the respondent, considering the respondent's prior order for outpatient treatment or release with conditions, and certify whether he or she meets the criteria for involuntary hospitalization under Section 34 of this Act.*
- (d) *A respondent shall not be involuntarily hospitalized based solely on his or her failure to comply with a prior order for outpatient treatment or release with conditions.*
- (13) *Any petition under this section shall expire after thirty (30) days if not served upon the respondent.*

➔Section 12. KRS 202A.053 is amended to read as follows:

- (1) (a) *Except as provided in paragraph (b) of this subsection, a respondent who has been ordered involuntarily hospitalized following the preliminary hearing shall have venue for all subsequent proceedings, including the final hearing, transferred to the court of the county where the respondent is hospitalized.*
- (b) *A court may order venue be transferred back to the county where the respondent resides if the court has ordered the respondent to receive outpatient treatment under Section 11 or 16 of this Act. The receiving county shall then assume venue and responsibility for the respondent's treatment plan and supervision, and shall make orders as the court sees fit.*
- (2) The court of the county where the preliminary hearing was held may, upon its own motion, or shall, upon motion of one (1) of the parties, retain venue over proceedings subsequent to the preliminary hearing.
- (3) *The court of the county where the county attorney has filed a motion for a certification review hearing under Section 9, 10, or 13 of this Act shall retain venue over the proceedings.*

➔Section 13. KRS 202A.061 is amended to read as follows:

- (1) *Prior to completion of an examination by a qualified mental health professional under this section, the professional shall make a good-faith attempt to contact the petitioner to obtain any additional relevant information necessary to the petition.*
- (2) (a) *Prior to the release of a person subject to an examination under this section, the county attorney may make an ex parte motion for a certification review hearing. The court shall review the ex parte motion upon its receipt.*
- (b) *If the review indicates that the person presents an imminent threat of danger to self, family, or others, the court shall order the qualified mental health professionals to immediately notify the court if either of the professionals have certified that the person:*
1. *Is an individual with mental illness;*
 2. *Presents a danger or threat of danger to self, family, or others as a result of the mental illness; and*
 3. *Does not meet all the criteria for involuntary hospitalization under Section 34 of this Act.*
- (c) *The court shall review the certification under paragraph (b) of this subsection and consider if the person has been the subject of proceedings under this chapter, prior to the current proceeding, and is exhibiting an escalation of dangerous behavior. After review, the court may:*
1. *Order the person to be hospitalized in a place designated by the cabinet until the certification review hearing is held within forty-eight (48) hours, excluding weekends and holidays;*
 2. *Release the person, subject to reasonable conditions, and set the certification review hearing to be held within forty-eight (48) hours; or*
 3. *Deny the county attorney's motion for a certification review and authorize the release of the person.*
- (d) *1. At the certification review hearing, the person shall be appointed counsel who may present evidence and cross examine witnesses on the person's behalf.*
- 2. The qualified mental health professional that performed the examination shall testify about the certification under paragraph (b) of this subsection. This testimony may be given remotely.*
- 3. Notwithstanding subparagraph 2. of this paragraph, the court may accept the certification under paragraph (b) of this subsection in lieu of testimony upon agreement of all parties and stipulation of the person that he or she meets the criteria for involuntary hospitalization under Section 34 of this Act, provided that outpatient treatment is determined to be the least restrictive mode of treatment.*
- (e) *Upon conclusion of the certification review hearing, if the court finds by clear and convincing evidence that the person is an individual with a mental illness, who presents a danger or threat of danger to self, family, or others as a result of the mental illness, who may reasonably benefit from court-ordered outpatient treatment or release with reasonable conditions, and for whom court-*

ordered outpatient treatment or release with reasonable conditions is the least restrictive alternative mode of treatment available, the court may order the person to:

1. *Receive community-based outpatient treatment that shall not exceed three hundred sixty (360) days and comply with any other reasonable conditions necessary to ensure compliance; or*
 2. *Be released with any reasonable conditions necessary to ensure the safety of self, family, or others.*
- (3) (a) *Failure to comply with an order for community-based outpatient treatment or release with conditions under subsection (2)(e) of this section shall not be grounds to find the person in contempt of court but shall be prima facie evidence that:*
1. *The person can benefit from inpatient hospitalization; and*
 2. *Inpatient hospitalization is the least restrictive mode of treatment.*
- (b) *If a new petition for involuntary hospitalization is filed within twelve (12) months of an order for community-based outpatient treatment or release with conditions under subsection (2)(e) of this section, the clerk of the court shall provide the prior order to:*
1. *The court with the petition for involuntary hospitalization; and*
 2. *The qualified mental health professional along with the court's order for examination.*
- (c) *The qualified mental health professional who conducts the examination as described under paragraph (b)2. of this subsection shall independently evaluate the person, considering the person's prior order for community-based outpatient treatment or release with conditions, and certify whether he or she meets the criteria for involuntary hospitalization under Section 34 of this Act.*
- (d) *A person shall not be involuntarily hospitalized based solely on his or her failure to comply with a prior order for community-based outpatient treatment or release with conditions.*
- (4) (a) *In any proceeding for involuntary hospitalization under the applicable provisions of this chapter, if the criteria for involuntary hospitalization are not certified by at least two (2) examining qualified mental health professionals, the court shall, without taking any further action, terminate the proceedings and order the release of the person.*
- (b) *The qualified mental health professionals shall certify to the court within twenty-four (24) hours, ~~excluding weekends and holidays,~~ of the examination, their findings and opinions as to whether the person shall be involuntarily hospitalized.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

- (1) *If the court orders community-based outpatient mental health treatment under this chapter, the court shall:*
- (a) *Appoint an outpatient provider agency recognized by the cabinet which shall assemble a multidisciplinary team; and*
 - (b) *Report every order for community-based outpatient treatment issued under this section to the Department for Behavioral Health, Developmental and Intellectual Disabilities.*
- (2) (a) *The multidisciplinary team shall:*
1. *Regularly monitor the person's adherence to the conditions of the order and regularly report this information to the court, the county attorney, respondent's counsel, and any other party the court deems necessary; and*
 2. *Consist of three (3) mental health professionals, including any of the following:*
 - a. *The respondent's doctor;*
 - b. *A nurse practitioner;*
 - c. *A prescriber;*
 - d. *A therapist;*
 - e. *A case manager;*
 - f. *A peer support specialist; or*

- g. *Any other person deemed qualified by the court.*
- (b) *Any responsible adult may report nonadherence to the conditions of the order to the court, the county attorney, respondent's counsel, and any other party the court deems necessary.*
- (3) *Reports may be provided in written format, in person, or via electronic means, at the court's discretion.*
- (4) *The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A necessary to implement this section.*

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

- (1) *A person's substantial failure to comply with a court order for community-based outpatient treatment may constitute presumptive grounds for the court or an authorized staff physician to order a seventy-two (72) hour emergency admission to allow for reexamination of the person to determine whether he or she meets the criteria for involuntary hospitalization under Section 34 of this Act.*
- (2) (a) *Failure to comply with an order for community-based outpatient treatment shall not be grounds to find the person in contempt of court but shall be prima facie evidence that:*
 - 1. *The person can benefit from inpatient hospitalization; and*
 - 2. *Inpatient hospitalization is the least restrictive mode of treatment.*
- (b) *If a new petition for involuntary hospitalization is filed within twelve (12) months of an order for community-based outpatient treatment, the clerk of the court shall provide the prior order to:*
 - 1. *The court with the petition for involuntary hospitalization; and*
 - 2. *The qualified mental health professional along with the court's order for examination.*
- (c) *The qualified mental health professional who conducts the examination as described under paragraph (b)2. of this subsection shall independently evaluate the person, considering the person's prior order for community-based outpatient treatment, and certify whether he or she meets the criteria for involuntary hospitalization under Section 34 of this Act.*
- (d) *A person shall not be involuntarily hospitalized based solely on his or her failure to comply with a prior order for community-based outpatient treatment.*
- (3) (a) *Any person admitted to a hospital under subsection (1) of this section or transferred to a hospital while ordered hospitalized under subsection (1) of this section shall be transported from the person's home county by the sheriff of that county or other peace officer as ordered by the court.*
- (b) *The sheriff or other peace officer may, upon agreement of a person authorized by the peace officer, authorize the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the person to the hospital.*
- (c) *The transportation costs of the sheriff, other peace officer, ambulance service, or other private agency on contract with the cabinet shall be paid by the cabinet in accordance with an administrative regulation promulgated by the cabinet in accordance with KRS Chapter 13A.*
- (4) (a) *Any person released from the hospital under subsection (1) of this section shall be transported to the person's county of discharge by a sheriff or other peace officer, by an ambulance service designated by the cabinet, or by other appropriate means of transportation which is consistent with the treatment plan of that person.*
- (b) *The transportation cost of transporting the patient to the patient's county of discharge when performed by a peace officer, ambulance service, or other private agency on contract with the cabinet shall be paid by the cabinet in accordance with an administrative regulation promulgated by the cabinet in accordance with KRS Chapter 13A.*

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Upon motion of the county attorney under subsection (11)(a)2.b.ii. of Section 11 of this Act, the hospital shall provide a copy of the discharge plan as soon as practicable to the court and the respondent's counsel of record. The court, upon motion of the county attorney or the court's own motion, shall conduct a review hearing:*

1. *To determine if the discharge plan gives the respondent a realistic opportunity to avoid imminent readmittance into an inpatient psychiatric hospital for treatment; and*
 2. *At the earliest practicable time, consistent with due process and the availability of counsel, and in no event later than seven (7) days after the motion is made, except with the respondent's consent or upon the court's finding that extraordinary circumstances exist and that delay is indispensable to protect the respondent and the community.*
- (b) *This hearing shall only be conducted for a respondent who within the past twelve (12) months has been found incompetent to stand trial in a criminal proceeding and has not been committed under KRS Chapter 202C.*
- (2) *The court shall verify that discharge planning procedures were completed to give the respondent a realistic opportunity to avoid recurrence of substantial symptom burden that would necessitate psychiatric hospitalization. Those procedures shall include but not be limited to any of the following:*
- (a) *Documenting the housing status of the respondent or that housing services were offered and the respondent declined;*
 - (b) *Scheduling an outpatient treatment appointment for no later than seven (7) days after discharge;*
 - (c) *Providing or prescribing a thirty (30) day supply of medication;*
 - (d) *Documenting a transportation plan that may include securing a bus pass, taxi voucher, or an acknowledgment that the respondent will walk or the respondent's family will provide transportation;*
 - (e) *Developing and documenting a crisis plan with contact information for services that are available twenty-four (24) hours a day;*
 - (f) *Developing a transfer of care plan or attempting to develop a transfer of care plan with the respondent if the respondent has met with an outpatient provider or an appointment with the outpatient provider has been scheduled; or*
 - (g) *Contacting the respondent's family or other support systems, if the respondent consents.*
- (3) *For respondents with decision-making capacity who refuse housing or other services under subsection (2) of this section, the discharge plan shall document:*
- (a) *That housing and other services were offered and explained;*
 - (b) *The respondent's reasons for refusal;*
 - (c) *That the respondent understands the potential consequences of his or her choices;*
 - (d) *That risk reduction strategies were offered, including access to crisis contacts, mobile crisis services, drop-in services, and other safety-oriented resources; and*
 - (e) *That there is a plan for periodic outreach to offer services.*
- (4) *If the court finds by clear and convincing evidence that the discharge plan does not give the respondent a realistic opportunity to avoid imminent readmittance into an inpatient psychiatric hospital for treatment, then the respondent shall not be discharged and the court shall order the hospital to submit within seventy-two (72) hours a revised discharge plan that gives the respondent a realistic opportunity to avoid imminent readmittance into an inpatient psychiatric hospital for treatment.*
- (5) (a) *If a respondent is not discharged under subsection (4) of this section, a review hearing shall be conducted by the court within seven (7) days of the hospital's submission of a revised discharge plan.*
- (b) *A review hearing may be conducted in an informal manner, consistent with orderly procedures, and in a physical setting not likely to have a harmful effect on the mental or physical health of the respondent. The hearing may be held by the court in chambers, remotely from a hospital, or in another suitable place. The respondent shall be present in person or remotely for all review hearings, unless presence is waived by the respondent through counsel.*
- (c) 1. *The Commonwealth shall present evidence regarding whether:*
- a. *The respondent continues to meet the criteria for involuntary commitment under Section 34 of this Act; and*

- (7) (a) *Any respondent being hospitalized under this section shall be transferred to an inpatient psychiatric hospital owned by the Commonwealth upon request of the hospital or psychiatric facility where the respondent is being held.*
- (b) *An inpatient psychiatric hospital contracted with the cabinet shall not request transfer under paragraph (a) of this subsection.*

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

- (1) *By October 1 of each year beginning in 2027, the cabinet in coordination with the Administrative Office of the Courts shall submit to the Legislative Research Commission for referral to the Interim Joint Committee on Health Services and the Interim Joint Committee on Judiciary a report that includes:*

(a) *The number of:*

1. *Petitions filed under Section 11 of this Act;*
2. *Petitions filed under Section 19 of this Act;*
3. *Court orders for seventy-two (72) hour hospital admission;*
4. *Petitions dismissed prior to a final order under Section 11 of this Act or KRS 202A.0819;*
5. *Petitions that result in an order for involuntary hospitalization under Section 11 of this Act and if the orders were for sixty (60) days or three hundred sixty (360) days of involuntary hospitalization;*
6. *Petitions that result in an order for outpatient treatment or any other reasonable conditions;*
7. *Petitions filed following a respondent's violation of court-ordered outpatient treatment or other reasonable conditions;*
8. *Precertification review hearings conducted under this chapter;*
9. *Discharge hearings conducted under Section 11 of this Act; and*
10. *Review hearings conducted under Section 16 of this Act;*

(b) *The stage of a proceeding under this chapter where a:*

1. *Petition is dismissed; and*
2. *Court has ordered a respondent to court-ordered outpatient or any other reasonable conditions;*

(c) *The length of time a respondent receives treatment under this chapter prior to discharge by a hospital or termination of an order to receive outpatient treatment; and*

(d) *A summary of the services provided to a respondent who is ordered to involuntary hospitalization or to receive outpatient treatment.*

- (2) *Any hospital, qualified mental health professional, and any other mental health agency who evaluates or treats a respondent under this chapter shall be required to report data to the cabinet as required under this section. The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section.*

- (3) *The cabinet and the Administrative Office of the Courts shall enter into an agreement to share data necessary to prepare the report required under this section.*

- (4) *The report prepared under this section shall not identify specific individuals.*

➔SECTION 18. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

- (1) *In any proceeding under this chapter, if the respondent agrees:*

(a) *To comply with a treatment plan; and*

(b) *That he or she meets the criteria for involuntary hospitalization under Section 34 of this Act, provided that outpatient treatment is determined to be the least restrictive mode of treatment; and*

upon agreement of the court, county attorney, respondent, respondent's counsel, and qualified mental health professional, the court may enter a consent order for the respondent to receive court-ordered assisted outpatient treatment or community-based outpatient treatment and order other reasonable conditions.

- (2) *An order entered under subsection (1) of this section shall:*
- (a) *Be filed with the court and made a part of the record in the proceeding;*
 - (b) *Specify the terms and conditions of treatment to which the respondent has agreed to;*
 - (c) *Specify that the respondent is subject to same monitoring, reporting, and review requirements as any contested order to receive court-ordered assisted outpatient treatment or community-based outpatient treatment; and*
 - (d) *Remain in effect for a period not to exceed three hundred sixty (360) days, subject to early termination or modification by the court.*
- (3) *The failure of a respondent to comply with a consent order entered under this section shall be treated in the same manner as noncompliance with a contested order under this chapter.*

➔Section 19. KRS 202A.0811 is amended to read as follows:

- (1) Proceedings for court-ordered assisted outpatient treatment of a person shall be initiated by the filing of a verified petition for that purpose in District Court.
- (2) The petition and all subsequent court documents shall be entitled: "In the interest of (name of respondent)."
- (3) The petition shall be filed by a qualified mental health professional; peace officer; county attorney; Commonwealth's attorney; spouse, relative, friend, or guardian of the person concerning whom the petition is filed; or any **responsible adult**~~other interested person~~.
- (4) The petition shall set forth:
 - (a) Petitioner's relationship to the respondent;
 - (b) Respondent's name, residence, and current location, if known;
 - (c) Petitioner's belief, including the factual basis therefor, that the respondent meets the criteria for court-ordered assisted outpatient treatment as set forth in KRS 202A.0817; and
 - (d) Whether, within five (5) days prior to the filing of the petition, the respondent has been evaluated by a qualified mental health professional to determine whether the respondent meets the criteria for court-ordered assisted outpatient treatment pursuant to KRS 202A.0815.
- (5) Upon receipt of the petition, the court shall examine the petitioner under oath as to the contents of the petition. If the petitioner is a qualified mental health professional, the court may dispense with the examination.
- (6) If, after reviewing the allegations contained in the petition and examining the petitioner under oath, it appears to the court that there is probable cause to believe the respondent should be court-ordered to assisted outpatient treatment, the court shall:
 - (a) Order the respondent to be evaluated without unnecessary delay by a qualified mental health professional to determine whether the respondent meets the criteria for court-ordered assisted outpatient treatment set forth in KRS 202A.0815, unless the court has already received the certified findings of such an evaluation conducted no earlier than five (5) days prior to the filing of the petition. The qualified mental health professional shall certify his or her findings to the court within seventy-two (72) hours from receipt of the order, excluding weekends and holidays; and
 - (b) Set a date for a hearing within six (6) days from the date of the filing of the petition under the provisions of this section, excluding weekends and holidays, to determine if the respondent should be court-ordered to assisted outpatient treatment.
- (7) If the court finds there is no probable cause to believe the respondent should be court-ordered to assisted outpatient treatment, the proceedings against the respondent shall be dismissed.

➔Section 20. KRS 202A.0815 is amended to read as follows:

~~A No~~ person shall **not** be court-ordered to assisted outpatient mental health treatment unless the person:

- (1) Is diagnosed with a serious mental illness;
- (2) Has a history of repeated nonadherence with mental health treatment, which has:
 - (a) At least twice within the last forty-eight (48) months, been a significant factor in necessitating hospitalization or arrest of the person; or
 - (b) Within the last twenty-four (24) months, resulted in an act, threat, or attempt at serious physical injury to self or others;
- (3) Is unlikely to adequately adhere to outpatient treatment on a voluntary basis based on a qualified mental health professional's ~~†~~
 - ~~(a) — clinical observation†; and~~
 - ~~(b) — Identification of specific characteristics of the person's clinical condition that significantly impair the person's ability to make and maintain a rational and informed decision as to whether to engage in outpatient treatment voluntarily†; and~~
- (4) Is in need of court-ordered assisted outpatient treatment as the least restrictive alternative mode of treatment presently available and appropriate.

➔Section 21. KRS 202A.0819 is amended to read as follows:

- (1) At a hearing and at all stages of a proceeding for court-ordered assisted outpatient treatment, the respondent shall be:
 - (a) Represented by counsel;
 - (b) Accompanied by a peer support specialist or other person in a support relationship, if requested by the respondent; and
 - (c) Afforded an opportunity to present evidence, call witnesses on his or her behalf, and cross-examine adverse witnesses.
- (2) If a respondent does not appear at the hearing, and appropriate attempts to elicit the respondent's appearance have failed, the court may conduct the hearing in the respondent's absence.
- (3) A qualified mental health professional who recommends court-ordered assisted outpatient treatment for the respondent shall:
 - (a) Testify at the hearing, in person or via electronic means;
 - (b) State the facts and clinical determinations which support the allegation that the respondent meets the criteria stated in KRS 202A.0815; and
 - (c) Testify in support of the treatment plan provided pursuant to KRS 202A.0817, and for each category of proposed evidence-based treatment, he or she shall state the specific recommendation and the clinical basis for his or her belief that such treatment is essential to the maintenance of the respondent's health or safety.
- (4) If after hearing all relevant evidence, the court does not find by clear and convincing evidence that the respondent meets the criteria stated in KRS 202A.0815, the court shall deny the petition and the proceedings against the respondent shall be dismissed.
- (5) If after hearing all relevant evidence, the court finds by clear and convincing evidence that the respondent meets the criteria stated in KRS 202A.0815, the court may order the respondent to receive assisted outpatient treatment for a period of time not to exceed three hundred sixty (360) days ***and to comply with any other reasonable conditions necessary to ensure compliance***. The court's order shall incorporate a treatment plan, which shall be limited in scope to the recommendations included in the treatment plan provided by the qualified mental health professional pursuant to KRS 202A.0817.
- (6) The court shall report every order for assisted outpatient treatment issued under this section to the Department for Behavioral Health, Developmental and Intellectual Disabilities.

➔Section 22. KRS 202A.0823 is amended to read as follows:

- (1) A person's substantial failure to comply with a court order for assisted outpatient treatment may constitute presumptive grounds for ***the court or*** an authorized staff physician to order a seventy-two (72) hour

emergency admission *to allow for reexamination of the person to determine whether he or she meets the criteria for involuntary hospitalization under Section 34 of this Act* ~~[pursuant to KRS 202A.031]~~.

- (2) (a) *Upon the refusal of a person subject to a court order for assisted outpatient treatment to participate in any or all aspects of his or her treatment plan, the person's outpatient provider may establish a review committee that is made up of three (3) qualified mental health professionals to examine the appropriateness of the person's treatment plan. The review committee shall include at least one (1) qualified mental health professional who is directly involved with the person's treatment, if available. Within three (3) days of the refusal, the review committee shall meet the person and his or her counsel or other representative to discuss its recommendations.*
- (b) *If the person still refuses to participate in any or all aspects of his or her treatment plan, the person's outpatient provider may petition the District Court for a de novo determination of the appropriateness of the proposed treatment.*
- (c) *Within seven (7) days, the court shall conduct a hearing, consistent with the person's rights to due process of law, and shall utilize the following factors in reaching its determination:*
1. *Whether the treatment is necessary to protect the person or others from harm;*
 2. *Whether the person is incapable of giving informed consent to the proposed treatment;*
 3. *Whether any less restrictive alternative treatment exists; and*
 4. *Whether the proposed treatment carries any risk of permanent side effects.*
- (d) *1. Upon completion of the hearing, the court shall enter an appropriate judgment.*
- 2. An order entered under this paragraph shall not allow for a person to be physically restrained in order to administer any medication in any outpatient treatment setting.*
- (e) *A judgment entered under paragraph (d) of this subsection may extend to treatment provided during a seventy-two (72) hour emergency admission.*
- (3) (a) *Failure to comply with an order for assisted outpatient treatment shall not be grounds to find the person in contempt of court but shall be prima facie evidence that:*
1. *The person can benefit from inpatient hospitalization; and*
 2. *Inpatient hospitalization is the least restrictive mode of treatment.*
- (b) *If a new petition for involuntary hospitalization is filed within twelve (12) months of an order for assisted outpatient treatment, the clerk of the court shall provide the prior order to:*
1. *The court with the petition for involuntary hospitalization; and*
 2. *The qualified mental health professional along with the court's order for examination.*
- (c) *The qualified mental health professional who conducts the examination as described under paragraph (b)2. of this subsection shall independently evaluate the person, considering the person's prior order for assisted outpatient treatment, and certify whether he or she meets the criteria for involuntary hospitalization under Section 34 of this Act.*
- (d) *A person shall not be involuntarily hospitalized based solely on his or her failure to comply with a prior order for assisted outpatient treatment.*
- (4) (a) *Any person admitted to a hospital under subsection (1) of this section or transferred to a hospital while ordered hospitalized under subsection (1) of this section shall be transported from the person's home county by the sheriff of that county or other peace officer as ordered by the court.*
- (b) *The sheriff or other peace officer may, upon agreement of a person authorized by the peace officer, authorize the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the person to the hospital.*
- (c) *The transportation costs of the sheriff, other peace officer, ambulance service, or other private agency on contract with the cabinet shall be paid by the cabinet in accordance with an administrative regulation promulgated by the cabinet in accordance with KRS Chapter 13A.*

- (5) (a) *Any person released from the hospital under subsection (1) of this section shall be transported to the person's county of discharge by a sheriff or other peace officer, by an ambulance service designated by the cabinet, or by other appropriate means of transportation which is consistent with the treatment plan of that person.*
- (b) *The transportation cost of transporting the patient to the patient's county of discharge when performed by a peace officer, ambulance service, or other private agency on contract with the cabinet shall be paid by the cabinet in accordance with an administrative regulation promulgated by the cabinet in accordance with KRS Chapter 13A.*

➔Section 23. KRS 202A.091 is amended to read as follows:

- (1) The court records of a respondent made in all proceedings pursuant to ~~this~~~~KRS~~ chapter ~~{202A}~~ are hereby declared to be confidential and shall not be open to the general public for inspection except when such disclosure is provided in KRS 202A.016.
- (2) *Twelve (12) months after*~~following~~ the discharge of a respondent from a treatment facility or the issuance of a court order denying a petition for a commitment, a respondent may ~~at any time~~ move to have all court records pertaining to the proceedings expunged from the files of the court. The county attorney shall be given notice of ~~the~~~~any such~~ motion and shall have five (5) days in which to respond to ~~the motion~~~~same~~ or request a hearing ~~on the motion~~~~thereon~~.
- (3) (a) *Any petitioner under Section 11 of this Act who qualifies as a responsible party under KRS 311.631 may motion the court to participate in court proceedings and be informed by a hospital of the discharge plan prior to a respondent's release under this chapter, except for any confidential therapeutic communication or any other medical records.*
- (b) *The court may enter a written order allowing the petitioner to participate as described in paragraph (a) of this subsection, unless the court finds the petitioner's participation is not in the best interests of the respondent.*
- (4) Any person seeking information contained in the court files or the court records of proceedings involving persons under this chapter may file a written motion in the cause setting out why the information is needed. A District Judge may issue an order to disclose the information sought if he *or she* finds ~~the~~~~such~~ order is appropriate under the circumstances and if he *or she* finds it is in the best interest of the person or of the public to have ~~the~~~~such~~ information disclosed.

➔Section 24. KRS 202A.101 is amended to read as follows:

- (1) The court which orders any person to the receiving hospital or psychiatric facility, under the provisions of this chapter~~{}~~ shall ~~immediately~~~~at once~~ notify the receiving hospital or psychiatric facility that ~~the~~~~such~~ order has been made, advising of the sex and condition of the person.
- (2) After the facility has been ~~so~~ notified, the court shall order the sheriff of the county or other peace officer to transport the patient within forty-eight (48) hours, ~~{excluding weekends and holidays,}~~ from the county in which the person is located to the hospital or psychiatric facility designated by the cabinet. The sheriff or other peace officer may, upon agreement of a person authorized by the peace officer, authorize the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the person to the hospital.
- (3) The transportation costs of transporting a person to a hospital or psychiatric facility, when performed by a peace officer, an ambulance service, or other private agency on contract with the cabinet shall be paid by the cabinet in accordance with administrative regulation promulgated by the cabinet under the provisions of KRS Chapter 13A.
- (4) In returning any patient to the county from which the patient is sent, the transportation cost of the sheriff or other peace officer, the ambulance service, or the other agency on contract with the cabinet transporting the patient shall be paid as provided in KRS 202A.028(5)~~{(4)}~~, when necessary.
- (5) Whenever an individual is involuntarily hospitalized by a court order the patient shall be transported to the hospital designated by the cabinet and accompanied by the following documents:
- (a) A copy of the petition for involuntary hospitalization, unless hospitalization takes place pursuant to KRS 202A.041 *or Section 15 or 22 of this Act*;
- (b) The certificate of qualified mental health professionals, *if any*; and

(c) The order of involuntary hospitalization.

- (6) The hospital may refuse to receive any person who has been ordered to be involuntarily hospitalized by a court order if the papers presented with ~~the~~~~[such]~~ person at the hospital do not comply with the provisions of this chapter or if it does not receive notification of the order of involuntary hospitalization as required by this chapter.

➔Section 25. KRS 202A.171 is amended to read as follows:

Except as provided otherwise in this chapter, an authorized staff physician of a hospital shall discharge an involuntary patient when he no longer meets the criteria for involuntary hospitalization.

➔Section 26. KRS 202C.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Cabinet" means the ~~[Kentucky]~~Cabinet for Health and Family Services;
- (2) "Commitment hearing" means the hearing under KRS 202C.040 to determine if a respondent meets the criteria for involuntary commitment under this chapter;
- (3) "Danger" means substantial physical harm or threat of substantial physical harm upon self or others;
- (4) "Evidentiary hearing" means the hearing under KRS 202C.030 to determine if the ***respondent is responsible for***~~[defendant committed]~~ the qualifying offense for which he or she was charged by a preponderance of the evidence;
- (5) "Forensic psychiatric facility" means a mental institution or facility, or part thereof, designated by the secretary for the purpose and function of providing inpatient evaluation, care, and treatment for ~~[mentally ill persons or]~~ individuals with an intellectual disability ***or mental illness*** who have been charged with or convicted of a felony;
- (6) "Hospital" means:
 - (a) A state mental hospital or institution or other licensed public or private hospital, institution, health-care facility, or part thereof, approved by the ***cabinet***~~[Kentucky Cabinet for Health and Family Services]~~ as equipped to provide full-time residential care and treatment for ~~[mentally ill persons or]~~ individuals with an intellectual disability ***or mental illness***; or
 - (b) A hospital, institution, or health-care facility of the government of the United States equipped to provide residential care and treatment for ~~[mentally ill persons or]~~ individuals with an intellectual disability ***or mental illness***;
- (7) ***"Individual with a mental illness" means a person with substantially impaired capacity to use self-control, judgment, or discretion in the conduct of the person's affairs and social relations, associated with maladaptive behavior or recognized emotional symptoms where impaired capacity, maladaptive behavior, or emotional symptoms can be related to physiological, psychological, or social factors;***
- (8) "Individual with an intellectual disability" means a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period;
- ~~(9)~~~~(8)~~ "Judge" means the judge who found the respondent incompetent to stand trial in the criminal proceeding from which the petition for involuntary commitment arose;
- ~~(10)~~~~(9)~~ "Less restrictive alternative mode of treatment" means a treatment given outside of a forensic psychiatric facility which would provide a respondent with appropriate treatment or care consistent with accepted professional practice standards and protect the respondent's safety and the safety of others;{
- ~~(10)~~ ~~"Mentally ill person" means a person with substantially impaired capacity to use self control, judgment, or discretion in the conduct of the person's affairs and social relations, associated with maladaptive behavior or recognized emotional symptoms where impaired capacity, maladaptive behavior, or emotional symptoms can be related to physiological, psychological, or social factors;}~~
- (11) "Qualified mental health professional" means:
 - (a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

- (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;
- (c) A psychologist with the health service provider designation, a psychological practitioner, a certified psychologist, or a psychological associate, licensed under the provisions of KRS Chapter 319;
- (d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with *individuals with a mental illness*~~[mentally ill persons]~~, or a licensed registered nurse, with a bachelor's degree in nursing from an accredited institution, who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability;
- (e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability;
- (f) A marriage and family therapist licensed under the provisions of KRS 335.300 to 335.399 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic facility licensed by the Commonwealth, a psychiatric unit of a general hospital, a private agency or company engaged in providing mental health services, or a regional community program for mental health and individuals with an intellectual disability;
- (g) A professional counselor credentialed under the provisions of KRS Chapter 335.500 to 335.599 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic facility licensed by the Commonwealth, a psychiatric unit of a general hospital, a private agency or company engaged in providing mental health services, or a regional community program for mental health and individuals with an intellectual disability; or
- (h) A physician assistant licensed under KRS 311.840 to 311.862, who meets one (1) of the following requirements:
 1. Provides documentation that he or she has completed a psychiatric residency program for physician assistants;
 2. Has completed at least one thousand (1,000) hours of clinical experience under a supervising physician, as defined by KRS 311.840, who is a psychiatrist and is certified or eligible for certification by the American Board of Psychiatry and Neurology, Inc.;
 3. Holds a master's degree from a physician assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant or its predecessor or successor agencies, is practicing under a supervising physician as defined by KRS 311.840, and:
 - a. Has two (2) years of clinical experience in the assessment, evaluation, and treatment of mental disorders; or
 - b. Has been employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability for at least two (2) years; or
 4. Holds a bachelor's degree, possesses a current physician assistant certificate issued by the board prior to July 15, 2002, is practicing under a supervising physician as defined by KRS 311.840, and:
 - a. Has three (3) years of clinical experience in the assessment, evaluation, and treatment of mental disorders; or

- b. Has been employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability for at least three (3) years;
- (12) "Qualifying offense" means a capital offense, a Class A felony, a Class B felony resulting in death or serious physical injury, or a violation of KRS 510.040 or 510.070;
- (13) "Respondent" means a person who was a criminal defendant found incompetent to stand trial who is or was the subject of a petition for involuntary commitment filed under KRS Chapter 504;
- (14) "Review hearing" means any hearing conducted to determine if a respondent continues to meet the criteria for involuntary commitment after the initial order for involuntary commitment has been issued under this chapter; and
- (15) "Secretary" means the secretary of the Cabinet for Health and Family Services.

➔Section 27. KRS 202C.020 is amended to read as follows:

- (1) When a defendant who is charged with a qualifying offense has been found, after a hearing under KRS Chapter 504, to be incompetent to stand trial with no substantial probability that the defendant will attain competency within three hundred sixty (360) days, the Commonwealth's attorney's office serving the county of criminal prosecution shall immediately petition the Circuit Court that found the defendant incompetent to stand trial or, if the finding was by a District Court, the Circuit Court in the county of the criminal prosecution, for an involuntary commitment proceeding, to include an evidentiary hearing and a commitment hearing, if applicable, under this chapter.
- (2) (a) Upon the filing of the petition, the court shall assign a guardian ad litem to represent the ~~needs and~~ best interest of the respondent, *independent of the respondent's defense attorney.*
- (b) The guardian ad litem shall:
 - 1. Be a full and active participant in all proceedings other than the evidentiary hearing under KRS 202C.030. *At the evidentiary hearing, the guardian ad litem's role shall be limited to assisting the respondent with decision-making related to the hearing, including but not limited to whether to waive the hearing, whether to stipulate to the allegations, and whether to testify. The guardian ad litem shall not act as an attorney advocate at the evidentiary hearing;* ~~and shall~~
 - 2. Independently investigate, assess, and advocate for the *respondent's*~~defendant's~~ best interest;~~The guardian ad litem is~~
 - 3. Not *be* a replacement for the *respondent's* defense attorney; *and*
 - 4. *Be paid an hourly rate not to exceed the maximum hourly rate provided in the Legal Services Duties and Maximum Rate Schedule promulgated by the Government Contract Review Committee established pursuant to KRS 45A.705, to be paid by the Finance and Administration Cabinet.*
- (c) If the *respondent*~~defendant~~ has retained or been appointed a defense attorney in the criminal case, that attorney may continue to represent the *respondent*~~defendant~~ in proceedings under this chapter. If, at any time during the pendency of proceedings under this chapter, the *respondent*~~defendant~~ is not represented by an attorney, the court shall appoint counsel for the *respondent*~~defendant~~, without a showing of indigency, to be provided by the Department of Public Advocacy or its designee.
- (3) The Circuit Court shall have exclusive jurisdiction over all proceedings under this chapter.
- (4) *The Circuit Court in the county of the criminal prosecution shall retain jurisdiction over all proceedings under this chapter until the respondent is discharged.*

➔Section 28. KRS 202C.030 is amended to read as follows:

- (1) An adversarial evidentiary hearing on the record shall be held within *forty-five (45)*~~twenty (20)~~ days, excluding weekends and holidays, of the filing of a petition pursuant to KRS 202C.020, *unless the court orders a later hearing for good cause shown.* Appropriate notice shall be served on all parties. The court shall order the Commonwealth to provide all available discovery to the respondent no later than seven (7) days,

excluding weekends and holidays, before the hearing, **unless the court orders a later date for good cause shown.** ~~No~~ Evidence **that has not been disclosed through discovery shall not** ~~may~~ be presented at the hearing ~~that has not been disclosed through discovery~~.

- (2) The respondent may stipulate to potential **responsibility** ~~[guilt]~~ and waive the hearing. A stipulation of potential **responsibility shall not** ~~[guilt cannot]~~ be used against the respondent in any future criminal prosecution or civil litigation.
- (3) (a) The purpose of the evidentiary hearing shall be to determine whether sufficient evidence exists to support a finding that the respondent is **responsible for** ~~[guilty of]~~ the charged crime against him or her.
 (b) The Commonwealth's attorney's office serving the county of criminal prosecution shall have the burden of proving the sufficiency of the evidence by a preponderance of the evidence.
- (4) The evidentiary hearing shall be held before a judge without a jury. The rules of evidence shall apply. The respondent shall be permitted to present evidence and cross examine witnesses. The respondent may present evidence of affirmative defenses that could be raised at a criminal trial on the charged crime, **except for the defense of insanity.** The Commonwealth shall not have the burden of disproving an affirmative defense. The respondent must prove an affirmative defense by a preponderance of the evidence.
- (5) (a) If the court determines that sufficient evidence has been presented to support a finding that the respondent is **responsible for** ~~[guilty of]~~ the charged crime against him or her, the court shall immediately schedule a commitment hearing under this chapter **to be held** within **forty-five (45)** ~~[twenty (20)]~~ days, **unless the court orders a later hearing for good cause shown**, excluding weekends and holidays.
 (b) 1. The court shall cause the respondent to be examined without unnecessary delay by two (2) qualified mental health professionals, at least one (1) of whom is a physician. The qualified mental health professionals shall, **no fewer than** ~~[within]~~ seven (7) days, excluding weekends and holidays, prior to the hearing, certify to the court their findings as to whether the respondent meets the criteria for involuntarily commitment under KRS 202C.050.
 2. **A copy of the findings submitted under subparagraph 1. of this paragraph shall be sent to the Commonwealth, the respondent's attorney of record, the respondent's guardian ad litem, and all other parties of record.**
- (6) If the court determines that insufficient evidence has been presented to support a finding that the respondent is **responsible for** ~~[guilty of]~~ the charged crime against him or her, the court shall order the immediate release of the respondent.
- (7) ~~Any~~ ~~No~~ evidence or statement submitted by the respondent at the evidentiary hearing shall **not** be admissible in any criminal prosecution or civil litigation.

➔Section 29. KRS 202C.040 is amended to read as follows:

- (1) A commitment hearing shall be held within **forty-five (45)** ~~[twenty (20)]~~ days, **unless the court orders a later hearing for good cause shown**, excluding weekends and holidays, after the court finds that the evidence presented in an evidentiary hearing pursuant to KRS 202C.030 supports a finding that the respondent is **responsible for** ~~[guilty of]~~ the charged crime against him or her by a preponderance of the evidence.
- (2) The commitment hearing may be conducted in an informal manner, consistent with orderly procedures, and in a physical setting not likely to have a harmful effect on the mental or physical health of the respondent. The hearing may be held by the court in chambers, at a forensic psychiatric facility, or other suitable place.
- (3) (a) The Commonwealth's attorney's office serving the county of criminal prosecution which led to the finding that the respondent was incompetent to stand trial shall present evidence regarding whether the respondent meets the criteria for involuntary commitment under KRS 202C.050.
 (b) The respondent ~~and the respondent's guardian ad litem~~ shall be afforded an opportunity to testify, **and the respondent's counsel shall conduct the hearing on the respondent's behalf** to present evidence ~~;~~ and to cross-examine any witnesses.
 (c) **The respondent's guardian ad litem shall participate in the proceeding in a best-interest, friend-of-the-court capacity and may submit independent recommendations to the court or jury, if a jury has been requested, regarding the respondent's best interest.**

- (4) The manner of proceeding and the rules of evidence shall be the same as those in any criminal proceeding. The standard of proof shall be proof beyond a reasonable doubt. Proceedings shall be heard by the judge unless a party or the guardian ad litem requests a jury.
- (5) The respondent's right to the commitment hearing shall not be waived.

➔Section 30. KRS 202C.050 is amended to read as follows:

- (1) ~~A~~~~No~~ respondent shall **not** be involuntarily committed under this chapter unless there is a determination that:
- (a) The respondent presents, **or would present if released**, a danger to self or others as a result of his or her mental condition; **and**
 - (b) ~~{The respondent needs care, training, or treatment in order to mitigate or prevent substantial physical harm to self or others;~~
 - (c) ~~The respondent has a demonstrated history or recent manifestation of criminal behavior that has endangered or caused injury to others or has a substantial history of involuntary hospitalizations under KRS Chapter 202A or 202B prior to the commission of the charged crime; or~~
 - (d) ~~{A presently available less restrictive alternative mode of treatment would endanger the safety of the respondent or others.~~
- (2) When a respondent is involuntarily committed under this chapter, the cabinet shall place that respondent in a forensic psychiatric facility designated by the secretary.

➔Section 31. KRS 202C.060 is amended to read as follows:

- (1)
 - (a) A review hearing to determine if a respondent involuntarily committed under this chapter should remain in a forensic psychiatric facility shall be conducted by the court that issued the initial order **in accordance with**~~{according to the provisions of}~~ subsection (2) of this section; and
 - (b) If at any point during the respondent's placement at a forensic psychiatric facility it appears that the respondent no longer meets the criteria for involuntary commitment under KRS 202C.050 because there has been a material change in circumstances or there is new evidence to present, the respondent or the respondent's guardian ad litem may request a review hearing pursuant to this section.
- (2) The schedule for review hearings shall be as follows:
 - (a) From the initial order of commitment, a ~~{standard}~~ review hearing shall be conducted **no earlier**~~{not sooner}~~ than ninety (90) days and **no**~~{not}~~ later than one hundred twenty (120) days; **and**
 - (b) **After the review hearing under paragraph (a) of this subsection, review hearings shall be conducted not less than once every two (2) years unless a review hearing has been requested under subsection (1)(b) of this section**~~{For the first two (2) years after the initial order of commitment, standard review hearings shall be conducted not less than one hundred eighty (180) days and not more than two hundred ten (210) days from the most recent review;~~
 - (c) ~~Beginning two (2) years after the initial order of commitment, a standard review hearing shall be conducted not more than three hundred sixty five (365) days from the most recent review hearing; and~~
 - (d) ~~A heightened review hearing shall be conducted not more than five (5) years from the initial order of commitment and, thereafter, not more than five (5) years from the most recent heightened review hearing.~~
- (3)
 - (a) Prior to each ~~{standard}~~ review hearing, the court shall cause the respondent to be examined without unnecessary delay by two (2) qualified mental health professionals, at least one (1) of whom is a physician. The qualified mental health professionals shall, **no fewer than**~~{within}~~ seven (7) days prior to the hearing, excluding weekends and holidays, certify to the court their findings as to whether the respondent meets the criteria for involuntary commitment under KRS 202C.050.
 - (b)
 1. **In addition to the examinations required under paragraph (a) of this subsection, the respondent shall undergo evaluations of competency at least once every two (2) years to be conducted at a forensic psychiatric facility.**
 2. **Upon a finding by the forensic psychiatric facility that the respondent's competency has been restored, the forensic psychiatric facility shall provide written notice of restoration to the**

court, the Commonwealth, the respondent's attorney of record, the respondent's guardian ad litem, and all other parties of record within ten (10) days of the determination of restoration.

3. *Upon receipt of the notice of restoration of the respondent's competency, a status conference shall be held within thirty (30) days, unless the court orders a later hearing for good cause shown.*
- (4) A ~~standard~~ review hearing may be conducted in an informal manner, consistent with orderly procedures, and in a physical setting not likely to have a harmful effect on the mental or physical health of the respondent. The hearing may be held by the court in chambers, ~~or~~ remotely from a forensic psychiatric facility, or *in another*~~other~~ suitable place. The respondent shall be present in person or remotely for all review hearings, unless presence is waived by the respondent through counsel.
- (5) (a) The Commonwealth's attorney's office serving the county of criminal prosecution which led to finding that the respondent was incompetent to stand trial shall present evidence regarding whether the respondent~~remains incompetent to stand trial and~~ continues to meet the criteria for involuntary commitment under KRS 202C.050.
 - (b) The respondent, *through counsel*, ~~and the respondent's guardian ad litem~~ shall be afforded an opportunity to present evidence, and to cross-examine any witnesses.
 - (c) *The respondent's guardian ad litem shall be permitted to participate in the review hearing in a best-interest, friend-of-the-court capacity and may submit independent recommendations to the court regarding the respondent's best interest.*
- (6) The manner of proceeding and the rules of evidence shall be the same as those in any criminal proceeding. The standard of proof shall be proof beyond a reasonable doubt. Proceedings shall be heard by a judge without a jury~~, except that a respondent shall be entitled to a jury upon request if the respondent has not had a review hearing with a jury during the preceding twelve (12) months.~~
- (7) The respondent's right to this hearing shall not be waived.
- (8) At the conclusion of a ~~standard~~ review hearing, the court shall make written findings of fact concerning whether the criteria for involuntary commitment under KRS 202C.050 continue to be satisfied based upon proof beyond a reasonable doubt. If the court finds that the criteria continue to be satisfied, the court shall enter an order authorizing the continued care and treatment of the respondent at the forensic psychiatric facility. Otherwise, the court shall enter an order requiring the respondent to be discharged. ~~}~~
- ~~(9) During a heightened review hearing, the procedures of a standard review hearing shall apply. Additionally, the qualified mental health professionals who evaluated the respondent in preparation for the hearing shall be required to give live testimony and answer questions before the court. The respondent shall be physically present in the courtroom for the hearing. If the respondent is unable to attend for any reason, the hearing shall be rescheduled to a time, place, and manner in which the respondent is able to attend.~~

➔Section 32. KRS 202C.130 is amended to read as follows:

- (1) Forensic psychiatric facilities ordered to receive an involuntarily committed respondent shall have standing to petition the Circuit Court for any necessary clarification or modification of orders or judgments entered in proceedings under this chapter and to appeal from final judgments or orders entered in proceedings which have not complied with the provisions of this chapter.
- (2) A copy *of any motions filed under subsection (1) of this section* shall be sent to the involuntarily committed respondent, the respondent's guardian ad litem, ~~and~~ the respondent's attorney of record, *the Commonwealth, and all other parties of record*~~of whatever pleadings are filed by the hospital~~.

➔Section 33. KRS 202A.014 is amended to read as follows:

All proceedings for the involuntary hospitalization of *individuals with a mental illness*~~mentally ill persons~~ shall be initiated in the District Court of the county where the person to be hospitalized resides or in which he may be at the time of the filing of a petition.

➔Section 34. KRS 202A.026 is amended to read as follows:

A~~No~~ person shall *not* be involuntarily hospitalized unless *the*~~such~~ person is *an individual with a mental illness*~~a mentally ill person~~:

- (1) Who presents a danger or threat of danger to self, family or others as a result of the mental illness;

- (2) Who can reasonably benefit from treatment; and
- (3) For whom hospitalization is the least restrictive alternative mode of treatment presently available.

➔Section 35. KRS 202A.231 is amended to read as follows:

- (1) Upon receipt of a certificate of the United States Public Health Service or ~~such~~ other agency of the United States government that facilities are available for the care or treatment of any person ~~heretofore~~ hospitalized in any mental hospital or other institution in this state for the care of **individuals with a mental illness**~~mentally ill persons~~ and that such person is eligible for such care or treatment, the secretary, upon recommendation by any such hospital or institution in this state, is ~~hereby~~ authorized to cause the transfer of any such person to the United States Public Health Service or other agency of the United States government for care or treatment. Upon effecting any such transfer, the hospitalizing court shall be notified ~~thereof~~ by the secretary.
- (2) Any person transferred as provided in this section shall be deemed to be placed in the custody of the United States Public Health Service or other agency of the United States government pursuant to the original hospitalization the same as if he **or she** had been originally so hospitalized.
- (3) ~~A~~**No** person shall **not** be transferred to any agency of the United States if he **or she** be confined pursuant to conviction of any felony or misdemeanor or if he **or she** has been acquitted of the charge solely on the ground of mental illness unless prior to transfer the court issuing the confining order shall enter an order to transfer after the motion and hearing. Any person transferred as provided in this section to any agency of the United States shall be hospitalized by such agency pursuant to the original order of hospitalization.

➔Section 36. KRS 202A.261 is amended to read as follows:

No public or private hospital, other than a state-operated or contracted mental hospital or institution, shall be required to provide services under KRS 202A.008, 202A.011, 202A.028, 202A.041, 202A.051, 202A.071, ~~202A.081,~~ ~~202A.0811 to 202A.0831,~~ 202A.101, 202A.141, 202A.241, 202A.251, 202A.261, 202A.271, 202B.170, 202B.200, 387.540, 504.085, 600.020, 645.020, 645.120, and 645.280 unless the hospital agrees to provide the services. Any hospital shall make every reasonable attempt to cooperate with the implementation of KRS 202A.008, 202A.011, 202A.028, 202A.041, 202A.051, 202A.071, ~~202A.081,~~ 202A.101, 202A.141, 202A.241, 202A.251, 202A.261, 202A.271, 202B.170, 202B.200, 387.540, 504.085, 600.020, 645.020, 645.120, and 645.280.

➔Section 37. KRS 202A.271 is amended to read as follows:

Each public or private hospital, other than a state-operated or contracted mental hospital or institution, which provides services under KRS 202A.008, 202A.011, 202A.028, 202A.041, 202A.051, 202A.071, ~~202A.081,~~ ~~202A.0811 to 202A.0831,~~ 202A.101, 202A.141, 202A.241, 202A.251, 202A.261, 202A.271, 202B.170, 202B.200, 387.540, 504.085, 600.020, 645.020, 645.120, and 645.280 shall be paid for the services at the same rates the hospital negotiates with the Department for Behavioral Health, Developmental and Intellectual Disabilities or the regional community program for mental health and for individuals with an intellectual disability.

➔Section 38. KRS 387.540 is amended to read as follows:

- (1) (a) Prior to a hearing on a petition for a determination of partial disability or disability and the appointment of a limited guardian, guardian, limited conservator, or conservator, an interdisciplinary evaluation report shall be filed with the court. The report may be filed as a single and joint report of the interdisciplinary evaluation team, or it may otherwise be constituted by the separate reports filed by each individual of the team.
- (b) If the court and all parties to the proceeding and their attorneys agree to the admissibility of the report or reports, the report or reports shall be admitted into evidence and shall be considered by the court or the jury if one is impaneled.
- (c) The report shall be compiled by at least three (3) individuals, including:
 1. A physician, an advanced practice registered nurse, or a physician assistant;
 2. A psychologist licensed or certified under the provisions of KRS Chapter 319; and
 3. A person licensed or certified as a social worker or an employee of the Cabinet for Health and Family Services who has at least one (1) year of investigative experience and has completed training in conducting decisional capacity assessments. The social worker shall, when possible, be chosen from among employees of the Cabinet for Health and Family Services residing or

working in the area, and there shall be no additional compensation for their service on the interdisciplinary evaluation team.

- (2) At least one (1) person participating in the compilation of the report shall have knowledge of the particular disability which the respondent is alleged to have or knowledge of the skills required of the respondent to care for himself and his estate.
- (3) If the respondent is alleged to be partially disabled or disabled due to mental illness, at least one (1) person participating in the compilation of the interdisciplinary evaluation report shall be a qualified mental health professional as defined in KRS 202A.011~~143~~. If the respondent is alleged to be partially disabled or disabled due to an intellectual disability, at least one (1) person participating in the compilation of the evaluation report shall be a qualified professional in the area of intellectual disabilities as defined in KRS 202B.010(12).
- (4) The interdisciplinary evaluation report shall contain:
 - (a) A description of the nature and extent of the respondent's disabilities, if any;
 - (b) Current evaluations of the respondent's social, intellectual, physical, and educational condition, adaptive behavior, and social skills. Such evaluations may be based on prior evaluations not more than three (3) months old, except that evaluations of the respondent's intellectual condition may be based on individual intelligence test scores not more than one (1) year old;
 - (c) An opinion as to whether guardianship or conservatorship is needed, the type of guardianship or conservatorship needed, if any, and the reasons therefor;
 - (d) An opinion as to the length of time guardianship or conservatorship will be needed by the respondent, if at all, and the reasons therefor;
 - (e) If limited guardianship or conservatorship is recommended, a further recommendation as to the scope of the guardianship or conservatorship, specifying particularly the rights to be limited and the corresponding powers and duties of the limited guardian or limited conservator;
 - (f) A description of the social, educational, medical, and rehabilitative services currently being utilized by the respondent, if any;
 - (g) A determination whether alternatives to guardianship or conservatorship are available;
 - (h) A recommendation as to the most appropriate treatment or rehabilitation plan and living arrangement for the respondent and the reasons therefor;
 - (i) A listing of all medications the respondent is receiving, the dosage, and a description of the impact of the medication upon the respondent's mental and physical condition and behavior;
 - (j) An opinion whether attending a hearing on a petition filed under KRS 387.530 would subject the respondent to serious risk of harm;
 - (k) The names and addresses of all individuals who examined or interviewed the respondent or otherwise participated in the evaluation; and
 - (l) Any dissenting opinions or other comments by the evaluators.
- (5) The evaluation report may be compiled by a community center for mental health or individuals with an intellectual disability, a licensed facility for mentally ill or developmentally disabled persons, if the respondent is a resident of such facility, or a similar agency.
- (6) In all cases where the respondent is a resident of a licensed facility for mentally ill or developmentally disabled persons and the petition is filed by an employee of that facility, the petition shall be accompanied by an interdisciplinary evaluation report prepared by the facility.
- (7) Except as provided in subsection (6) of this section, the court shall order appropriate evaluations to be performed by qualified persons or a qualified agency. The report shall be prepared and filed with the court and copies mailed to the attorneys for both parties at least ten (10) days prior to the hearing. All items specified in subsection (4) of this section shall be included in the report.
- (8) If the person evaluated is a poor person as defined in KRS 453.190, the examiners shall be paid by the county in which the petition is filed upon an order of allowance entered by the court. Payment shall be in an amount which is reasonable as determined by the court, except no payment shall be required of the county for an evaluation performed by a salaried employee of a state agency for an evaluation performed within the course

of his employment. Additionally, no payment shall be required of the county for an evaluation performed by a salaried employee of a community center for mental health or individuals with an intellectual disability or private facility or agency where the costs incurred by the center, facility, or agency are reimbursable through third-party payors. Affidavits or other competent evidence shall be admissible to prove the services rendered but not to prove their value.

- (9) The respondent may file a response to the evaluation report no later than five (5) days prior to the hearing.
- (10) The respondent may secure an independent evaluation. If the respondent is unable to pay for the evaluation, compensation for the independent evaluation may be paid by the county in an amount which is reasonable as determined by the court.

➔Section 39. KRS 625.090 is amended to read as follows:

- (1) The Circuit Court may involuntarily terminate all parental rights of a parent of a named child, if the Circuit Court finds from the record by clear and convincing evidence that:
 - (a)
 - 1. The child has been adjudged to be an abused or neglected child, as defined in KRS 600.020~~{(4)}~~, by a court of competent jurisdiction;
 - 2. The child is found to be an abused or neglected child, as defined in KRS 600.020~~{(4)}~~, by the Circuit Court in this proceeding;
 - 3. The child is found to have been diagnosed with neonatal abstinence syndrome at the time of birth, unless his or her birth mother:
 - a. Was prescribed and properly using medication for a legitimate medical condition as directed by a health care practitioner that may have led to the neonatal abstinence syndrome;
 - b. Is currently, or within ninety (90) days after the birth, enrolled in and maintaining substantial compliance with both a substance abuse treatment or recovery program and a regimen of prenatal care or postnatal care as recommended by her health care practitioner throughout the remaining term of her pregnancy or the appropriate time after her pregnancy; or
 - c. In the absence of a prescription for the treatment of a legitimate medical condition, agrees, prior to discharge from the hospital, to participate in a court-ordered assessment by a drug treatment provider and the assigning of a certified peer support specialist for referral to appropriate treatment, and agrees to participate in treatment which shall commence within ninety (90) days after the birth; or
 - 4. The parent has been convicted of a criminal charge relating to the physical or sexual abuse or neglect of any child and that physical or sexual abuse, neglect, or emotional injury to the child named in the present termination action is likely to occur if the parental rights are not terminated;
 - (b)
 - 1. The Cabinet for Health and Family Services has filed a petition with the court pursuant to KRS 620.180 or 625.050; or
 - 2. A child-placing agency licensed by the cabinet, any county or Commonwealth's attorney, or a parent has filed a petition with the court under KRS 625.050; and
 - (c) Termination would be in the best interest of the child.
- (2) ~~A~~~~No~~ termination of parental rights shall **not** be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds:
 - (a) That the parent has abandoned the child for a period of not less than ninety (90) days;
 - (b) That the parent has inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;
 - (c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;
 - (d) That the parent has been convicted of a felony that involved the infliction of serious physical injury to any child;

- (e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;
 - (f) That the parent has caused or allowed the child to be sexually abused or exploited;
 - (g) That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child;
 - (h) That:
 1. The parent's parental rights to another child have been involuntarily terminated;
 2. The child named in the present termination action was born subsequent to or during the pendency of the previous termination; and
 3. The conditions or factors which were the basis for the previous termination finding have not been corrected;
 - (i) That the parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical or sexual abuse or neglect;
 - (j) That the child has been in foster care under the responsibility of the cabinet for fifteen (15) cumulative months out of forty-eight (48) months preceding the filing of the petition to terminate parental rights; or
 - (k) That the child has been removed from the biological or legal parents more than two (2) times in a twenty-four (24) month period by the cabinet or a court.
- (3) In determining the best interest of the child and the existence of a ground for termination, the Circuit Court shall consider the following factors:
- (a) Mental illness as defined by KRS 202A.011~~{(9)}~~, or an intellectual disability as defined by KRS 202B.010(9) of the parent as certified by a qualified mental health professional, or a disability as defined in KRS 199.011, if the mental illness, intellectual disability, or disability renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;
 - (b) Acts of abuse or neglect as defined in KRS 600.020~~{(1)}~~ toward any child in the family;
 - (c) If the child has been placed with the cabinet, whether the cabinet has, prior to the filing of the petition:
 1. Made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents unless one or more of the circumstances enumerated in KRS 610.127 for not requiring reasonable efforts have been substantiated in a written finding by the District Court; or
 2. Provided a parent with a disability as defined in KRS 199.011 with targeted adaptive and supportive services based on an individual assessment of the parent, or has received a written acknowledgement from the parent knowingly and affirmatively rejecting the offered services;
 - (d) The efforts and adjustments the parent has made in his or her circumstances, conduct, or conditions to make it in the child's best interest to return the child to his or her home within a reasonable period of time, considering the age of the child;
 - (e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered; and
 - (f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.
- (4) If the child has been placed with the cabinet, the parent may present testimony concerning the reunification, adaptive or supportive services offered by the cabinet, and whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent.
- (5) If the parent proves by a preponderance of the evidence that the child will not continue to be an abused or neglected child as defined in KRS 600.020~~{(1)}~~ if returned to the parent, or if the parent proves by a

preponderance of the evidence that appropriate and specifically targeted adaptive or supportive services based upon an individual assessment of the parent have not been offered or provided to the parent, the court in its discretion may determine not to terminate parental rights.

- (6) Upon the conclusion of proof and argument of counsel, the Circuit Court shall enter findings of fact, conclusions of law, and a decision as to each parent-respondent within thirty (30) days either:
- (a) Terminating the right of the parent; or
 - (b) Dismissing the petition and stating whether the child shall be returned to the parent or shall remain in the custody of the state.

➔Section 40. KRS 202A.006 is amended to read as follows:

This chapter may be cited as the [“]Kentucky Mental Health *Treatment*[Hospitalization] Act.[“]

➔Section 41. The following KRS section is repealed:

202A.081 Court-ordered community-based outpatient treatment.

➔Section 42. By November 1, 2026, the Cabinet for Health and Family Services shall provide a report to the Legislative Research Commission for referral to the Interim Joint Committee on Health Services and the Interim Joint Committee on Judiciary describing the existing services, treatments, and supports for mental illness and serious mental illness available to persons who are subject to proceedings under KRS Chapters 202A and 202C and making recommendations for ways to strengthen, increase, and broaden these services, treatments, and supports as appropriate. The descriptions shall include type of providers, eligibility criteria, accessibility, and geographical locations of the services, treatments, and supports.

➔Section 43. The Cabinet for Health and Family Services and Department for Behavioral Health, Developmental and Intellectual Disabilities shall engage the services of the Treatment Advocacy Center to develop and implement a statewide training program to facilitate implementation of Sections 8 to 41 of this Act and ensure consistent application of Sections 8 to 41 of this Act across state and local agencies.

➔Section 44. Section 1 of this Act may be cited as the Family Preservation and Accountability Act.

➔Section 45. Section 4 of this Act takes effect January 1, 2027.

➔Section 46. Sections 8 to 41 and 43 of this Act take effect October 1, 2026.

Signed by Governor April 10, 2026.