

387.570 Hearing -- Burden of proof -- Jury trial unless conditions for bench trial are met.

- (1) At a hearing convened pursuant to KRS 387.500 to 387.770 for the purpose of determining the disability of a respondent, the respondent shall have the right to present evidence and to confront and cross-examine all witnesses.
- (2) The hearing may be closed to the public on request of the respondent or his counsel.
- (3) The respondent shall have the right to be present at the hearing, and his presence may be waived only by his failure to appear at the hearing or upon a determination of the court that his attendance would subject him to serious risk of harm. Such determination shall be evidence only of the respondent's inability to attend the hearing and shall not be considered in determining the need for guardianship or conservatorship.
- (4) The court may remove itself to the place of residence of the respondent to conduct the hearing in the presence of the respondent.
- (5) The burden of proof shall be on the Commonwealth to prove the disability or partial disability of the respondent by clear and convincing evidence.
- (6) The respondent will not be determined partially disabled or disabled unless at least one (1) of the persons who participated in the interdisciplinary evaluation required by KRS 387.540 testifies in person at the hearing. This section shall not be interpreted to preclude the respondent from requiring the testimony of more than one (1) person participating in the preparation of the evaluation report.
- (7) The hearing shall be a jury trial, unless:
 - (a) The respondent if present, counsel for the respondent, and the attorney for the Commonwealth agree to a bench trial;
 - (b) No objection to a bench trial is made by an interested person or entity; and
 - (c) The interdisciplinary evaluation report prepared for the proceeding reflects a unanimous consensus of the persons preparing it that the respondent is disabled or partially disabled, the court has reviewed the report, and the court finds no cause to require a jury trial.

Effective: July 14, 2018

History: Amended 2018 Ky. Acts ch. 13, sec. 4, effective July 14, 2018. -- Amended 1984 Ky. Acts ch. 395, sec. 2, effective July 13, 1984. -- Created 1982 Ky. Acts ch. 141, sec. 8, effective July 1, 1982.