

**202C.030 Evidentiary hearing, purposes and conduct of -- When subsequent commitment hearing is required -- Evidence submitted by respondent inadmissible in other criminal or civil cases.**

- (1) An adversarial evidentiary hearing on the record shall be held within twenty (20) days, excluding weekends and holidays, of the filing of a petition pursuant to KRS 202C.020. 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. No evidence may be presented at the hearing that has not been disclosed through discovery.
- (2) The respondent may stipulate to potential guilt and waive the hearing. A stipulation of potential guilt cannot be used against the respondent in any future criminal prosecution or civil litigation.
- (3) The purpose of the evidentiary hearing shall be to determine whether sufficient evidence exists to support a finding that the respondent is guilty of the charged crime against him or her. 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. 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 guilty of the charged crime against him or her, the court shall immediately schedule a commitment hearing under this chapter within twenty (20) days, excluding weekends and holidays.
  - (b) 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, 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.
- (6) If the court determines that insufficient evidence has been presented to support a finding that the respondent is guilty of the charged crime against him or her, the court shall order the immediate release of the respondent.
- (7) No evidence or statement submitted by the respondent at the evidentiary hearing shall be admissible in any criminal prosecution or civil litigation.

**Effective:** April 1, 2021

**History:** Created 2021 Ky. Acts ch. 175, sec. 8, effective April 1, 2021.