

202C.060 Involuntary commitment review hearing -- Conduct of hearing -- Schedule for review hearings -- Participation by qualified mental health professionals, Commonwealth's attorney, respondent, and guardian ad litem -- Waiver of right to commitment hearing prohibited.

- (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 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 not sooner than ninety (90) days and not later than one hundred twenty (120) days;
 - (b) 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) 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, 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.
- (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 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) 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. The respondent and the respondent's guardian ad litem shall be afforded an opportunity to present evidence, and to cross-examine any witnesses.

- (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.

Effective: April 1, 2021

History: Created 2021 Ky. Acts ch. 175, sec. 11, effective April 1, 2021.