

A CONCURRENT RESOLUTION relating to the study of guardianship, custodianship, civil commitment, and mental competency and related policies, programs, and statutes.

WHEREAS, Kentucky prisons and jails are experiencing increasing problems associated with the in-and-out rotation of prisoners who have a mental illness; and

WHEREAS, as a diversion or upon release from prison or jail, offenders who are mentally ill may be appointed a state guardian or custodian; and

WHEREAS, the number of active wards in state guardianship alone has reached almost 4,000 people - more than twice the number of wards as in 2006; and

WHEREAS, many of the statutes related to guardianship, custodianship, civil commitment, and mental competency were enacted more than 20 years ago; and

WHEREAS, while significant amendments and repeals have been made to some of the relevant statutes, there is little integration of the statutes addressing guardianship, custodianship, civil commitment, and mental competency; and

WHEREAS, practitioners and participants in the criminal justice system, judicial system, behavioral health system, and public guardianship program realize that the current state policies, programs, and statutes impacting the adjudication, commitment, incarceration, and guardianship of vulnerable persons who are sometimes a danger to themselves and others may be inconsistent, ineffective, and underfunded; and

WHEREAS, individuals with behavioral health, developmental, and intellectual disabilities as well as fragile and elderly individuals deserve to be treated with dignity and respect; and

WHEREAS, it is recognized that individuals with behavioral health, developmental, or intellectual disabilities should be afforded the opportunity to live in the least restrictive and the most community-based settings possible to meet their individual needs and keep them and the community safe; and

WHEREAS, the General Assembly believes that the guardianship, custodianship,

civil commitment, and mental competency and related policies, programs, and statutes are in urgent need of review to remove ambiguities and inconsistencies in order to provide the Commonwealth's citizens with the care and treatment needed;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

➔Section 1. The Guardianship, Custodianship, Civil Commitment, and Mental Competency Task Force of the Legislative Research Commission is hereby created.

➔Section 2. The Guardianship, Custodianship, Civil Commitment, and Mental Competency Task Force shall consist of:

(1) The chair of the Senate Health and Welfare Committee, who shall be co-chair of the task force; however, if he or she declines to serve, the President of the Senate shall designate a member of the Senate to serve as co-chair of the task force;

(2) The chair of the House of Representatives Health and Welfare Committee, who shall be co-chair of the task force; however, if he or she declines to serve, the Speaker of the House of Representatives shall designate a member of the House of Representatives to serve as co-chair of the task force;

(3) The chair of the Senate Judiciary Committee; however, if he or she declines to serve, the President of the Senate shall designate a member of the Senate to serve on the task force;

(4) The chair of the House of Representatives Judiciary Committee; however, if he or she declines to serve, the Speaker of the House of Representatives shall designate a member of the House of Representatives to serve on the task force;

(5) A District Court judge who shall be recommended by the Chief Justice of the Supreme Court;

(6) A Family Court judge who shall be recommended by the Chief Justice of the Supreme Court;

(7) A Circuit Court judge who presides over a criminal docket who shall be recommended by the Chief Justice of the Supreme Court;

(8) The director of the Administrative Office of the Courts;

(9) A current or former county attorney or assistant county attorney with guardianship experience who shall be recommended by the co-chairs of the task force;

(10) A member of the Kentucky Bar Association who regularly acts as a guardian ad litem or counsel in adult guardianship cases who shall be recommended by the co-chairs of the task force;

(11) The commissioner of the Department for Behavioral Health, Developmental and Intellectual Disabilities;

(12) The facility or medical director of one (1) of the state psychiatric hospitals or his or her designee who shall be recommended by the secretary of the Cabinet for Health and Family Services;

(13) The medical director of the Kentucky Correctional Psychiatric Center;

(14) The commissioner of the Department for Aging and Independent Living;

(15) The commissioner of the Department of Corrections;

(16) The commissioner of the Department for Community Based Services;

(17) A current or former attorney from the Department for Public Advocacy with guardianship and commitment practice experience who shall be recommended by the public advocate;

(18) A current county judge/executive who shall be recommended by the co-chairs of the task force; and

(19) A provider of mental health services who shall be recommended by the co-chairs of the task force.

➔Section 3. (1) The Guardianship, Custodianship, Civil Commitment, and Mental Competency Task Force shall review state guardianship, custodianship, civil commitment, and mental competency and related policies, programs, and statutes to make

recommendations for the modernization and improvement in the adjudication, commitment, incarceration, and guardianship of vulnerable persons. The task force shall consider expert testimony, model programs, research, and any prior recommendations.

(2) The task force may provide draft changes to state guardianship, custodianship, civil commitment, and mental competency and related policies, programs, and statutes. The draft may, insofar as possible, provide for the:

- (a) Use of evidence-based practices;
- (b) Development of programs and services as alternatives to state guardianship;
- (c) Appropriate placement of violent offenders who are found incompetent to stand trial;
- (d) Use of court-ordered mental health treatment;
- (e) Establishment of means for the protection and treatment of offenders; and
- (f) Feasibility of establishing criminal responsibility.

➔Section 4. The Guardianship, Custodianship, Civil Commitment, and Mental Competency Task Force shall submit a report to the Interim Joint Committee on Health and Welfare, the Interim Joint Committee on Judiciary, and the Legislative Research Commission upon the approval of the task force co-chairs no later than January 5, 2016. The report shall include a summary of the major issues confronting the state guardianship, custodianship, civil commitment, and mental competency and related policies, programs, and statutes that impact the adjudication, commitment, incarceration, and guardianship of vulnerable persons, along with any recommendations for modernization and improvement, and may include a draft of proposed changes.

➔Section 5. Final membership of the Guardianship, Custodianship, Civil Commitment, and Mental Competency Task Force shall be subject to the consideration and approval of the Legislative Research Commission.

➔Section 6. Provisions of Sections 1 to 5 of this Act to the contrary notwithstanding, the Legislative Research Commission shall have the authority to

alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.