

1 AN ACT relating to competency hearings conducted in guardianship proceedings.

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

3 ➔Section 1. KRS 387.570 is amended to read as follows:

- 4 (1) At a hearing convened pursuant to KRS 387.500 to 387.770 for the purpose of  
5 determining the disability of a respondent, the respondent shall ~~have a jury trial and~~  
6 ~~shall~~ have the right to present evidence and to confront and cross-examine all  
7 witnesses.
- 8 (2) The hearing may be closed to the public on request of the respondent or his counsel.
- 9 (3) The respondent shall ***have the right to*** be present at the hearing, and his presence  
10 may be waived only ***by his failure to appear at the hearing or*** upon a  
11 determination of the court that his attendance would subject him to serious risk of  
12 harm. Such determination shall be evidence only of the respondent's inability to  
13 attend the hearing and shall not be considered in determining the need for  
14 guardianship or conservatorship.
- 15 (4) The court may remove itself to the place of residence of the respondent to conduct  
16 the hearing in the presence of the respondent.
- 17 (5) The burden of proof shall be on the Commonwealth to prove the disability or partial  
18 disability of the respondent by clear and convincing evidence.
- 19 (6) The respondent will not be determined partially disabled or disabled unless at least  
20 one (1) of the persons who participated in the interdisciplinary evaluation required  
21 by KRS 387.540 testifies in person at the hearing. This section shall not be  
22 interpreted to preclude the respondent from requiring the testimony of more than  
23 one (1) person participating in the preparation of the evaluation report.
- 24 ***(7) The hearing shall be a jury trial, unless:***
- 25 ***(a) The respondent if present, counsel for the respondent, and the attorney for***  
26 ***the Commonwealth agree to a bench trial;***
- 27 ***(b) No objection to a bench trial is made by an interested person or entity; and***

1        (c) The interdisciplinary evaluation report prepared for the proceeding reflects  
2        a unanimous consensus of the persons preparing it that the respondent is  
3        disabled or partially disabled, the court has reviewed the report, and the  
4        court finds no cause to require a jury trial.

5        ➔Section 2. KRS 387.580 is amended to read as follows:

- 6        (1) At a hearing convened under KRS 387.500 to 387.770 for a determination of partial  
7        disability or disability, the court, or the jury if one is impaneled,~~jury~~ shall:
- 8        (a) Inquire into the nature and extent of the general intellectual functioning of the  
9        respondent;
- 10        (b) Inquire into the respondent's capacity to make informed decisions concerning  
11        his personal affairs and financial resources;
- 12        (c) Determine whether the respondent is disabled, partially disabled, or has no  
13        disability in relation to the management of his financial resources; and
- 14        (d) Determine whether the respondent is disabled, partially disabled, or has no  
15        disability in relation to the management of his personal affairs.
- 16        (2) If the respondent is found not to be disabled or partially disabled, the petition shall  
17        be dismissed.
- 18        (3) If the respondent is found to be disabled or partially disabled, the court shall, at the  
19        same hearing, without a jury, determine:
- 20        (a) The type of guardian or conservator to be appointed;
- 21        (b) The specific legal disabilities to which the respondent is subject, if the  
22        respondent has been determined to be partially disabled;
- 23        (c) Whether the respondent retains the right to vote;
- 24        (d) The corresponding powers and duties of the limited guardian or limited  
25        conservator, if the respondent has been determined to be partially disabled;
- 26        (e) The individual or entity to be appointed by the court as limited guardian,  
27        guardian, limited conservator, or conservator;

- 1       (f) The individual or entity, if any, to be appointed as standby guardian or
- 2             conservator; and
- 3       (g) The duration of the term of guardianship or conservatorship.