

1 AN ACT relating to court-ordered outpatient mental health treatment and making
2 an appropriation therefor.

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

4 ➔Section 1. KRS 202A.081 is amended to read as follows:

5 (1) Following the preliminary hearing but prior to the completion of the final hearing,
6 the court may order the person held in a hospital approved by the cabinet for such
7 purpose for the committing judicial district, or released, upon application and
8 agreement of the parties, for the purpose of community-based outpatient treatment
9 **through a patient agreed order. At the time an agreement of the parties for a**
10 **patient agreed order is reached, the attorney for the person shall be present, and**
11 **a peer support specialist or other person in a support relationship may be present.**

12 No person held under this section shall be held in jail unless criminal charges are
13 also pending.

14 (2) A hospital shall discharge a patient there held and notify the court and attorneys of
15 record if any authorized staff physician determines that the patient no longer meets
16 the criteria for involuntary hospitalization.

17 (3) If a patient is discharged by the hospital pursuant to subsection (2) of this section,
18 then the proceedings against the patient shall be dismissed.

19 (4) The release of the person pursuant to subsection (1) of this section for the purpose
20 of **a patient agreed order**~~[community-based outpatient treatment]~~ does not
21 terminate the proceedings against the person, and the court ordering such release
22 may order the immediate holding of the person at any time with or without notice if
23 the court believes from an affidavit filed with the court that it is to the best interest
24 of the person or others that the person be held pending the final hearing, which shall
25 be held within twenty-one (21) days of the person's further holding.

26 (5) If the person is released pursuant to subsection (1) of this section for the purpose of
27 **a patient agreed order**~~[community-based outpatient treatment]~~, the final hearing

1 may be continued for a period not to exceed sixty (60) days if a provider of
2 outpatient care accepts the respondent for specified outpatient treatment.†
3 ~~Community based outpatient treatment may be ordered for an additional period not~~
4 ~~to exceed sixty (60) days upon application and agreement of the parties.‡~~

5 **(6) Before a person is considered for a patient agreed order, the court shall appoint**
6 **an outpatient provider agency recognized by the cabinet, which shall assemble a**
7 **multi-disciplinary team. The multi-disciplinary team shall provide to the court**
8 **and the respondent a proposed written treatment plan, which shall have the goal**
9 **of recovery. In developing a treatment plan, the multi-disciplinary team shall:**

10 **(a) Provide reasonable opportunities for the person to actively participate in the**
11 **development of the treatment plan and any modification thereafter, and**
12 **involve any others the person requests to have participate;**

13 **(b) Follow any advanced directive for mental health treatment executed by the**
14 **person; and**

15 **(c) Include in the treatment plan:**

16 **1. A proactive crisis plan that includes access to emergency or crisis**
17 **services twenty-four (24) hours a day and the contact information to**
18 **access such crisis services; and**

19 **2. Evidence-based practices. As used in this subparagraph, "evidence-**
20 **based practices" means intervention programs, policies, procedures,**
21 **and practices that have been rigorously tested; are proven by scientific**
22 **research; have yielded consistent, replicable results; and have proven**
23 **safe, beneficial, and effective for most people diagnosed with mental**
24 **illness when implemented competently. Evidence-based practices may**
25 **include but are not limited to psychotropic medications, psychosocial**
26 **rehabilitation, recovery-oriented therapies, assertive community**
27 **treatment, supported employment, supported housing, and peer**

1 support services.

2 (7) If the court orders community-based outpatient treatment through a patient
3 agreed order:

4 (a) The order shall incorporate a treatment plan, which shall be limited in
5 scope to the recommendations included in the treatment plan provided
6 pursuant to subsection (6) of this section; and

7 (b) The court shall direct the outpatient provider agency appointed pursuant to
8 subsection (6) of this section to regularly monitor the person's adherence to
9 the conditions of the patient agreed order and regularly report this
10 information to the court that ordered the person's release. Reports may be
11 provided in written format, in person, or via electronic means, at the court's
12 discretion.

13 (8) (a) A person's substantial failure to comply with a patient agreed order may
14 result in the initiation of procedures under this chapter that may result in
15 involuntary hospitalization, provided the criteria set forth in KRS 202A.026
16 are met.

17 (b) Initiation of these procedures shall begin upon recommendation by the
18 multi-disciplinary team and by a sworn affidavit attesting that the person
19 did not comply with the patient agreed order.

20 (c) Any mental health examination required for these procedures may be
21 performed at a community mental health center, established pursuant to
22 KRS 210.370 to 210.460.

23 (9) (a) A patient agreed order may be ordered for up to two (2) additional periods,
24 each of which shall not exceed one hundred twenty (120) days.

25 (b) Prior to the issuance of a patient agreed order for an additional period of
26 community-based outpatient treatment, the court shall hold a hearing at
27 which the attorney for the person shall be present, and a peer support

1 specialist or other person in a support relationship may be present. At the
 2 hearing, the court must find that:

3 1. The person has failed to adhere to one (1) or more of the conditions of
 4 the prior patient agreed order;

5 2. Continued outpatient treatment is appropriate and necessary, based on
 6 recommendations of the multi-disciplinary team; and

7 3. The parties continue to be in agreement with the patient agreed order.

8 (10) For persons who are Medicaid-eligible, services for a patient agreed order shall
 9 be authorized by the Department for Medicaid Services and its contractors as
 10 Medicaid-eligible services and shall be subject to the same medical necessity
 11 criteria and reimbursement methodology as for all other covered behavioral
 12 health services.

13 (11) A court shall report every patient agreed order for community-based outpatient
 14 treatment to the Kentucky Commission on Services and Supports for Individuals
 15 with Mental Illness, Alcohol and Other Drug Abuse Disorders, and Dual
 16 Diagnoses established pursuant to KRS 210.502.

17 ➔Section 2. KRS 202A.261 is amended to read as follows:

18 No public or private hospital, other than a state-operated or contracted mental hospital or
 19 institution, shall be required to provide services under KRS 202A.008, 202A.011,
 20 202A.028, 202A.041, 202A.051, 202A.071, Sections 4 to 14 of this Act, 202A.081,
 21 202A.101, 202A.141, 202A.241, 202A.251, 202A.261, 202A.271, 202B.170, 202B.200,
 22 387.540, 504.085, 600.020, 645.020, 645.120, and 645.280 unless the hospital agrees to
 23 provide the services. Any hospital shall make every reasonable attempt to cooperate with
 24 the implementation of KRS 202A.008, 202A.011, 202A.028, 202A.041, 202A.051,
 25 202A.071, 202A.081, 202A.101, 202A.141, 202A.241, 202A.251, 202A.261, 202A.271,
 26 202B.170, 202B.200, 387.540, 504.085, 600.020, 645.020, 645.120, and 645.280.

27 ➔Section 3. KRS 202A.271 is amended to read as follows:

1 Each public or private hospital, other than a state-operated or contracted mental hospital
2 or institution, which provides services under KRS 202A.008, 202A.011, 202A.028,
3 202A.041, 202A.051, 202A.071, Sections 4 to 14 of this Act, 202A.081, 202A.101,
4 202A.141, 202A.241, 202A.251, 202A.261, 202A.271, 202B.170, 202B.200, 387.540,
5 504.085, 600.020, 645.020, 645.120, and 645.280 shall be paid for the services at the
6 same rates the hospital negotiates with the Department for Behavioral Health,
7 Developmental and Intellectual Disabilities or the regional community program for
8 mental health and for individuals with an intellectual disability.

9 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO
10 READ AS FOLLOWS:

11 (1) Proceedings for court-ordered assisted outpatient treatment of a person shall be
12 initiated by the filing of a verified petition for that purpose in District Court.

13 (2) The petition and all subsequent court documents shall be entitled: "In the
14 interest of (name of respondent)."

15 (3) The petition shall be filed by a qualified mental health professional, peace
16 officer; county attorney; Commonwealth's attorney; spouse, relative, friend, or
17 guardian of the person concerning whom the petition is filed; or any other
18 interested person.

19 (4) The petition shall set forth:

20 (a) Petitioner's relationship to the respondent;

21 (b) Respondent's name, residence, and current location, if known;

22 (c) Petitioner's belief, including the factual basis therefor, that the respondent
23 meets the criteria for court-ordered assisted outpatient treatment as set forth
24 in Section 6 of this Act; and

25 (d) Whether, within five (5) days prior to the filing of the petition, the
26 respondent has been examined by a qualified mental health professional to
27 determine whether the respondent meets the criteria for court-ordered

1 assisted outpatient treatment pursuant to Section 6 of this Act.

2 (5) Upon receipt of the petition, the court shall examine the petitioner under oath as
3 to the contents of the petition. If the petitioner is a qualified mental health
4 professional, the court may dispense with the examination.

5 (6) If, after reviewing the allegations contained in the petition and examining the
6 petitioner under oath, it appears to the court that there is probable cause to
7 believe the respondent should be court-ordered to assisted outpatient treatment,
8 the court shall:

9 (a) Order the respondent to be examined without unnecessary delay by a
10 qualified mental health professional to determine whether the respondent
11 meets the criteria for court-ordered assisted outpatient treatment set forth in
12 Section 6 of this Act, unless the court has already received the certified
13 findings of such an examination conducted no earlier than five (5) days
14 prior to the filing of the petition. The qualified mental health professional
15 shall certify his or her findings within seventy-two (72) hours, excluding
16 weekends and holidays; and

17 (b) Set a date for a hearing within six (6) days from the date of the examination
18 under the provisions of this section, excluding weekends and holidays, to
19 determine if the respondent should be court-ordered to assisted outpatient
20 treatment.

21 (7) If the court finds there is no probable cause to believe the respondent should be
22 court-ordered to assisted outpatient treatment, the proceedings against the
23 respondent shall be dismissed.

24 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO
25 READ AS FOLLOWS:

26 (1) The court may order that the sheriff of the county or a peace officer transport the
27 respondent to a hospital or site designated by the cabinet so that the respondent

1 shall be examined without unnecessary delay by a qualified mental health
 2 professional. The sheriff or peace officer may authorize, upon agreement of a
 3 person authorized by the peace officer, the cabinet, a private agency on contract
 4 with the cabinet, or an ambulance service designated by the cabinet to transport
 5 the person to a hospital or site designated by the cabinet.

6 (2) (a) When the court is authorized to issue an order that the respondent be
 7 transported to a hospital or site designated by the cabinet for examination,
 8 the court may issue a summons.

9 (b) A summons so issued shall be directed to the respondent and shall
 10 command the respondent to appear at a time and place specified in the
 11 summons, where the respondent shall be examined by a qualified mental
 12 health professional.

13 (c) If a respondent who has been summoned fails to appear for the
 14 examination, the court may order that the sheriff of the county or a peace
 15 officer transport the respondent to a hospital or site designated by the
 16 cabinet for the purpose of an examination.

17 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO
 18 READ AS FOLLOWS:

19 No person shall be court-ordered to assisted outpatient mental health treatment unless
 20 the person:

21 (1) Has been involuntarily hospitalized pursuant to KRS 202A.051(11) at least two

22 (2) times in the past twelve (12) months;

23 (2) Is diagnosed with a serious mental illness;

24 (3) Is unlikely to adequately adhere to outpatient treatment on a voluntary basis
 25 based on a qualified mental health professional's:

26 (a) Clinical observation;

27 (b) Review of treatment history, including the person's prior history of repeated

- 1 treatment nonadherence; and
 2 (c) Identification of specific characteristics of the person's clinical condition
 3 described as anosognosia, or failure to recognize his or her diagnosis of
 4 serious mental illness; and
 5 (4) Is in need of court-ordered assisted outpatient treatment as the least restrictive
 6 alternative mode of treatment presently available and appropriate.

7 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO
 8 READ AS FOLLOWS:

9 No later than the date of the hearing held pursuant to Section 4 of this Act, the
 10 qualified mental health professional who examined the respondent pursuant to Section
 11 4 of this Act shall provide to the court and the respondent a proposed written treatment
 12 plan for the respondent for court-ordered assisted outpatient treatment, which shall
 13 have the goal of recovery. In developing a treatment plan, a qualified mental health
 14 professional shall:

15 (1) Provide reasonable opportunities for the respondent to actively participate in the
 16 development of the treatment plan and any modifications thereafter, and involve
 17 any other persons whom the respondent requests to have participate;

18 (2) Follow any advanced directive for mental health treatment executed by the
 19 respondent; and

20 (3) Include in the treatment plan:

21 (a) A proactive crisis plan that includes access to emergency or crisis services
 22 twenty-four (24) hours a day and the contact information to access such
 23 crisis services; and

24 (b) Evidence-based practices. As used in this paragraph, "evidence-based
 25 practices" means intervention programs, policies, procedures, and practices
 26 that have been rigorously tested, have been proven by scientific research,
 27 have yielded consistent, replicable results, and have been proven safe,

1 beneficial, and effective for most people diagnosed with mental illness when
2 implemented competently. Evidence-based practices may include but are not
3 limited to psychotropic medications, psychosocial rehabilitation, recovery-
4 oriented therapies, assertive community treatment, supported employment,
5 supported housing, and peer support services.

6 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO
7 READ AS FOLLOWS:

8 (1) At a hearing and at all stages of a proceeding for court-ordered assisted
9 outpatient treatment, the respondent shall be:

10 (a) Represented by counsel;

11 (b) Accompanied by a peer support specialist or other person in a support
12 relationship, if requested by the respondent; and

13 (c) Afforded an opportunity to present evidence, call witnesses on his or her
14 behalf, and cross-examine adverse witnesses.

15 (2) If a respondent does not appear at the hearing, and appropriate attempts to elicit
16 the respondent's appearance have failed, the court may conduct the hearing in
17 the respondent's absence.

18 (3) A qualified mental health professional who recommends court-ordered assisted
19 outpatient treatment for the respondent shall:

20 (a) Testify at the hearing, in person or via electronic means;

21 (b) State the facts and clinical determinations which support the allegation that
22 the respondent meets the criteria stated in Section 6 of this Act; and

23 (c) Testify in support of the treatment plan provided pursuant to Section 7 of
24 this Act, and for each category of proposed evidence-based treatment, he or
25 she shall state the specific recommendation and the clinical basis for his or
26 her belief that such treatment is essential to the maintenance of the
27 respondent's health or safety.

1 (4) If after hearing all relevant evidence, the court does not find by clear and
2 convincing evidence that the respondent meets the criteria stated in Section 6 of
3 this Act, the court shall deny the petition and the proceedings against the
4 respondent shall be dismissed.

5 (5) If after hearing all relevant evidence, the court finds by clear and convincing
6 evidence that the respondent meets the criteria stated in Section 6 of this Act, the
7 court may order the respondent to receive assisted outpatient treatment for a
8 period of time not to exceed three hundred sixty (360) days. The court's order
9 shall incorporate a treatment plan, which shall be limited in scope to the
10 recommendations included in the treatment plan provided by the qualified mental
11 health professional pursuant to Section 7 of this Act.

12 (6) The court shall report every order for assisted outpatient treatment issued under
13 this section to the Kentucky Commission on Services and Supports for
14 Individuals with Mental Illness, Alcohol and Other Drug Abuse Disorders, and
15 Dual Diagnoses established pursuant to KRS 210.502.

16 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO
17 READ AS FOLLOWS:

18 If the court orders assisted outpatient mental health treatment pursuant to Section 8 of
19 this Act, the court shall appoint an outpatient provider agency recognized by the
20 cabinet which shall assemble a multi-disciplinary team. The multi-disciplinary team
21 shall regularly monitor the person's adherence to the conditions of the order and
22 regularly report this information to the court that ordered the person's release. Reports
23 may be provided in written format, in person, or via electronic means, at the court's
24 discretion.

25 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 202A IS CREATED
26 TO READ AS FOLLOWS:

27 A person's substantial failure to comply with a court order for assisted outpatient

1 treatment may constitute presumptive grounds for an authorized staff physician to
2 order a seventy-two (72) hour emergency admission pursuant to KRS 202A.031.
3 Failure to comply with an order for assisted outpatient treatment shall not be grounds
4 to find the person in contempt of court.

5 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 202A IS CREATED
6 TO READ AS FOLLOWS:

7 (1) At any time during the period of an order for court-ordered assisted outpatient
8 treatment, the person subject to the order may move the court to stay, vacate, or
9 modify the order.

10 (2) (a) As used in this subsection, "material change" means an addition or
11 deletion of a category of services to or from a treatment plan.

12 (b) If a treating qualified mental health professional proposes a material
13 change to the court-ordered treatment plan, he or she shall apply to the
14 court for approval of the proposed change. Not later than five (5) days after
15 receiving the application, excluding weekends and holidays, the court shall
16 hold a hearing. If the person under order informs the court that he or she
17 agrees to the proposed material change, the court may approve such change
18 without a hearing.

19 (3) Within thirty (30) days of the expiration of an order for assisted outpatient
20 treatment, the original petitioner may petition the court for an additional period
21 of court-ordered assisted outpatient treatment. The procedures for the
22 consideration of the petition shall be identical to the procedures provided in
23 Sections 4 to 14 of this Act, except that the parties may mutually agree to waive
24 the requirement of a new hearing. The person under order shall be represented
25 by an attorney in responding to the petition for an additional period of court-
26 ordered assisted outpatient treatment.

27 ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 202A IS CREATED

1 TO READ AS FOLLOWS:

2 *For persons who are Medicaid-eligible, assisted outpatient mental health treatment*
3 *services identified under Sections 4 to 14 of this Act shall be authorized by the*
4 *Department for Medicaid Services and its contractors as Medicaid-eligible services and*
5 *shall be subject to the same medical necessity criteria and reimbursement methodology*
6 *as for all other covered behavioral health services.*

7 →SECTION 13. A NEW SECTION OF KRS CHAPTER 202A IS CREATED
8 TO READ AS FOLLOWS:

9 *Implementation of Sections 4 to 14 of this Act is contingent upon adequate funding by*
10 *any unit of state or local government or divisions thereof, special purpose*
11 *governmental entity, or any other entity able to utilize funds for the purposes set forth*
12 *in Sections 4 to 14 of this Act. Funding may be provided through the appropriation of*
13 *federal, state, or local resources or from donations, grants, gifts, or pledges from*
14 *private resources.*

15 →SECTION 14. A NEW SECTION OF KRS CHAPTER 202A IS CREATED
16 TO READ AS FOLLOWS:

17 *Sections 4 to 14 of this Act may be cited as Tim's Law.*