

1 AN ACT relating to competency to stand trial.

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

3 ➔Section 1. KRS 504.110 is amended to read as follows:

4 (1) If the court finds the defendant incompetent to stand trial but there is a substantial
5 probability ***the defendant***~~[he]~~ will attain competency in the foreseeable future, it
6 shall commit the defendant to a treatment facility or a forensic psychiatric facility
7 and order ***the defendant***~~[him]~~ to submit to treatment for sixty (60) days or until the
8 psychologist or psychiatrist treating him ***or her*** finds ***the defendant***~~[him]~~ competent
9 ***to stand trial***, whichever occurs first, except that if the defendant is charged with a
10 felony, he ***or she*** shall be committed to a forensic psychiatric facility unless the
11 secretary of the Cabinet for Health and Family Services or the secretary's designee
12 determines that the defendant shall be treated in another Cabinet for Health and
13 Family Services facility. Within ten (10) days of that time, the court shall hold
14 another hearing to determine whether or not the defendant is competent to stand
15 trial.

16 (2) If the court finds the defendant incompetent to stand trial ~~***and***~~~~[but]~~ there is no
17 substantial probability he ***or she*** will attain competency in the foreseeable future,
18 ***the prosecutor's office pursuing the criminal prosecution shall immediately***
19 ***petition the court that found the defendant incompetent to stand trial to initiate:***

20 ***(a) An involuntary commitment proceeding under KRS Chapter 202C if the***
21 ***defendant is charged with, or has a past criminal conviction for, a capital***
22 ***offense, a Class A felony, a Class B felony resulting in death or serious***
23 ***physical injury, or a violation of KRS 510.040 or 510.070; or***

24 ***(b) [it shall conduct]An involuntary hospitalization proceeding under KRS***
25 ***Chapter 202A or 202B if charged with an offense not listed in paragraph (a)***
26 ***of this subsection.***

27 (3) If the court finds the defendant competent to stand trial, the court shall continue the

1 proceedings against the defendant.

2 ➔SECTION 2. KRS CHAPTER 202C IS ESTABLISHED AND A NEW
3 SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

4 *As used in this chapter, unless the context otherwise requires:*

5 *(1) "Cabinet" means the Cabinet for Health and Family Services;*

6 *(2) "Commitment hearing" means the initial hearing to determine if a respondent*
7 *meets the criteria for involuntary commitment under this chapter;*

8 *(3) "Danger" means substantial physical harm or threat of substantial physical*
9 *harm upon self or others;*

10 *(4) "Forensic psychiatric facility" means a mental institution or facility, or part*
11 *thereof, designated by the secretary for the purpose and function of providing*
12 *inpatient evaluation, care, and treatment for mentally ill persons or individuals*
13 *with an intellectual disability who have been charged with or convicted of a*
14 *felony;*

15 *(5) "Hospital" means:*

16 *(a) A state mental hospital or institution or other licensed public or private*
17 *hospital, institution, health-care facility, or part thereof, approved by the*
18 *Cabinet for Health and Family Services as equipped to provide full-time*
19 *residential care and treatment for mentally ill persons or individuals with*
20 *an intellectual disability; or*

21 *(b) A hospital, institution, or health-care facility of the government of the*
22 *United States equipped to provide residential care and treatment for*
23 *mentally ill persons or individuals with an intellectual disability;*

24 *(6) "Individual with an intellectual disability" means a person with significantly*
25 *subaverage general intellectual functioning existing concurrently with deficits in*
26 *adaptive behavior and manifested during the developmental period;*

27 *(7) "Judge" means the judge who found the respondent incompetent to stand trial in*

1 the criminal proceeding from which the petition for involuntary commitment
2 arose;

3 (8) "Less-restrictive alternative mode of treatment" means a treatment given outside
4 of a forensic psychiatric facility which would provide a respondent with
5 appropriate treatment or care consistent with accepted professional practice;

6 (9) "Mentally ill person" means a person with substantially impaired capacity to use
7 self-control, judgment, or discretion in the conduct of the person's affairs and
8 social relations, associated with maladaptive behavior or recognized emotional
9 symptoms where impaired capacity, maladaptive behavior, or emotional
10 symptoms can be related to physiological, psychological, or social factors;

11 (10) "Qualified mental health professional" means:

12 (a) A physician licensed under the laws of Kentucky to practice medicine or
13 osteopathy, or a medical officer of the government of the United States
14 while engaged in the performance of official duties;

15 (b) A psychologist with the health service provider designation, a psychological
16 practitioner, a certified psychologist, or a psychological associate, licensed
17 under the provisions of KRS Chapter 319;

18 (c) A licensed registered nurse with a master's degree in psychiatric nursing
19 from an accredited institution and two (2) years of clinical experience with
20 mentally ill persons, or a licensed registered nurse, with a bachelor's degree
21 in nursing from an accredited institution, who is certified as a psychiatric
22 and mental health nurse by the American Nurses Association and who has
23 three (3) years of inpatient or outpatient clinical experience in psychiatric
24 nursing and is currently employed by a hospital or forensic psychiatric
25 facility licensed by the Commonwealth or a psychiatric unit of a general
26 hospital or a private agency or company engaged in the provision of mental
27 health services or a regional community program for mental health and

1 individuals with an intellectual disability;

2 (d) A licensed clinical social worker licensed under the provisions of KRS
3 335.100, or a certified social worker licensed under the provisions of KRS
4 335.080 with three (3) years of inpatient or outpatient clinical experience in
5 psychiatric social work and currently employed by a hospital or forensic
6 psychiatric facility licensed by the Commonwealth or a psychiatric unit of a
7 general hospital or a private agency or company engaged in the provision of
8 mental health services or a regional community program for mental health
9 and individuals with an intellectual disability;

10 (e) A marriage and family therapist licensed under the provisions of KRS
11 335.300 to 335.399 with three (3) years of inpatient or outpatient clinical
12 experience in psychiatric mental health practice and currently employed by
13 a hospital or forensic facility licensed by the Commonwealth, a psychiatric
14 unit of a general hospital, a private agency or company engaged in
15 providing mental health services, or a regional community program for
16 mental health and individuals with an intellectual disability;

17 (f) A professional counselor credentialed under the provisions of KRS 335.500
18 to 335.599 with three (3) years of inpatient or outpatient clinical experience
19 in psychiatric mental health practice and currently employed by a hospital
20 or forensic facility licensed by the Commonwealth, a psychiatric unit of a
21 general hospital, a private agency or company engaged in providing mental
22 health services, or a regional community program for mental health and
23 individuals with an intellectual disability; or

24 (g) A physician assistant licensed under KRS 311.840 to 311.862, who meets
25 one (1) of the following requirements:

26 1. Provides documentation that he or she has completed a psychiatric
27 residency program for physician assistants;

- 1 2. Has completed at least one thousand (1,000) hours of clinical
2 experience under a supervising physician, as defined in KRS 311.840,
3 who is a psychiatrist and is certified or eligible for certification by the
4 American Board of Psychiatry and Neurology, Inc.;
- 5 3. Holds a master's degree from a physician assistant program
6 accredited by the Accreditation Review Commission on Education for
7 the Physician Assistant or its predecessor or successor agencies, and is
8 practicing under a supervising physician as defined in KRS 311.840,
9 and:
- 10 a. Has two (2) years of clinical experience in the assessment,
11 evaluation, and treatment of mental disorders; or
- 12 b. Has been employed by a hospital or forensic psychiatric facility
13 licensed by the Commonwealth or a psychiatric unit of a general
14 hospital or a private agency or company engaged in the
15 provision of mental health services or a regional community
16 program for mental health and individuals with an intellectual
17 disability for at least two (2) years; or
- 18 4. Holds a bachelor's degree, possesses a current physician assistant
19 certificate issued by the board prior to July 15, 2002, is practicing
20 under a supervising physician as defined in KRS 311.840, and:
- 21 a. Has three (3) years of clinical experience in the assessment,
22 evaluation, and treatment of mental disorders; or
- 23 b. Has been employed by a hospital or forensic psychiatric facility
24 licensed by the Commonwealth or a psychiatric unit of a general
25 hospital or a private agency or company engaged in the
26 provision of mental health services or a regional community
27 program for mental health and individuals with an intellectual

1 disability for at least three (3) years;

2 (11) "Qualifying offense" means a capital offense, a Class A felony, a Class B felony
3 resulting in death or serious physical injury, or a violation of KRS 510.040 or
4 510.070;

5 (12) "Respondent" means a person who was a criminal defendant found incompetent
6 to stand trial who is the subject of a petition for involuntary commitment filed
7 under KRS Chapter 504;

8 (13) "Review hearing" means any hearing conducted to determine whether a
9 respondent continues to meet the criteria for involuntary commitment after the
10 initial order for involuntary commitment has been issued under this chapter; and

11 (14) "Secretary" means the secretary of the Cabinet for Health and Family Services.

12 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO
13 READ AS FOLLOWS:

14 (1) When a defendant charged with a qualifying offense has been found, after a
15 hearing under KRS Chapter 504, to be incompetent to stand trial with no
16 substantial probability that the defendant will attain competency within three
17 hundred sixty (360) days, the prosecutor's office pursuing the criminal
18 prosecution shall immediately petition the court that found the defendant
19 incompetent to stand trial for a commitment hearing under this chapter.

20 (2) Upon the filing of the petition, the court shall cause the respondent to be
21 examined without unnecessary delay by two (2) qualified mental health
22 professionals, at least one (1) of whom is a physician. The qualified mental
23 health professionals shall, within twenty-four (24) hours of the examination,
24 excluding weekends and holidays, certify to the court their findings and
25 professional opinions as to whether the respondent should be involuntarily
26 committed.

27 (3) Upon the filing of the petition, the court shall assign a guardian ad litem to

1 represent the interests of the respondent. The duties of a guardian ad litem shall
2 include personally interviewing the respondent, advising the respondent with
3 respect to the provisions of this chapter, providing competent representation at all
4 legal proceedings, and such other duties as the court may order.

5 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO
6 READ AS FOLLOWS:

7 (1) A commitment hearing shall be held within twenty (20) days of the filing of a
8 petition pursuant to Section 3 of this Act.

9 (2) The commitment hearing may be conducted in an informal manner, consistent
10 with orderly procedures, and in a physical setting not likely to have a harmful
11 effect on the mental or physical health of the respondent. The hearing may be
12 held by the court in chambers, at a forensic psychiatric facility, or other suitable
13 place. The prosecutor's office pursuing the criminal prosecution which led to the
14 finding that the respondent was incompetent to stand trial shall present evidence
15 regarding whether the respondent meets the criteria for involuntary commitment
16 under Section 5 of this Act. The respondent and the respondent's guardian ad
17 litem shall be afforded an opportunity to testify, to present evidence, and to cross-
18 examine any witnesses. The manner of proceeding and the rules of evidence shall
19 be the same as those in any criminal proceeding, except that the standard of
20 proof shall be by clear and convincing evidence. Proceedings shall be heard by
21 the judge unless a party or the guardian ad litem requests a jury. Neither the
22 respondent nor the respondent's attorney may waive the respondent's right to this
23 hearing.

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

26 (1) No respondent shall be involuntarily committed under this chapter unless there is
27 a determination that:

- 1 (a) The person presents a danger to self or others;
 2 (b) The person needs care, training, or treatment in order to mitigate or prevent
 3 substantial physical harm to self or others; and
 4 (c) The person would not benefit from a less-restrictive alternative mode of
 5 treatment.

- 6 (2) When a person is involuntarily committed under this chapter, the cabinet shall
 7 place that person in a forensic psychiatric facility designated by the secretary.

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

- 10 (1) (a) A review hearing to determine whether a person involuntarily committed
 11 under this chapter should remain in a forensic psychiatric facility shall be
 12 conducted by the court that issued the initial order according to the
 13 schedule set out in subsection (2) of this section.

- 14 (b) If at any point during the person's placement at a forensic psychiatric
 15 facility it appears that the person no longer meets the criteria for
 16 involuntary commitment under Section 5 of this Act, the respondent or the
 17 respondent's guardian ad litem may request a review hearing pursuant to
 18 this section.

- 19 (2) The schedule for review hearings shall be as follows:

- 20 (a) During the first year of the person's commitment, a hearing shall be
 21 conducted every three (3) months;

- 22 (b) During the second year of the person's commitment, a hearing shall be
 23 conducted every six (6) months; and

- 24 (c) During the third and subsequent years, a hearing shall be conducted
 25 annually.

- 26 (3) Prior to the review hearing, the court shall cause the respondent to be examined
 27 without unnecessary delay by two (2) qualified mental health professionals, at

1 least one (1) of whom is a physician. The qualified mental health professionals
 2 shall, within twenty-four (24) hours of the examination, excluding weekends and
 3 holidays, certify to the court their findings and professional opinions as to
 4 whether the defendant shall remain involuntarily committed.

5 (4) The review hearing shall be conducted in the same manner as the commitment
 6 hearing held pursuant to subsection (2) of Section 4 of this Act.

7 (5) At the conclusion of the review hearing, the court shall make written findings of
 8 fact concerning whether the criteria for involuntary commitment under Section 5
 9 of this Act continue to be satisfied based upon clear and convincing evidence. If
 10 the court finds that the criteria continue to be satisfied, the court shall enter an
 11 order authorizing the continued care and treatment of the resident at the forensic
 12 psychiatric facility. Otherwise, the court shall enter an order requiring that the
 13 respondent be discharged.

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

16 (1) In proceedings under this chapter, there shall be no privilege as to any relevant
 17 communications between qualified mental health professionals. Qualified mental
 18 health professionals may disclose communications relating to diagnosis and
 19 treatment of the patient's mental condition.

20 (2) If the respondent is discharged after a review hearing held pursuant to Section 6
 21 of this Act, any communications between qualified mental health professionals
 22 which were disclosed as part of a court proceeding under this chapter shall be
 23 sealed.

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

26 At any time, and without notice, a respondent detained at a facility, or a relative,
 27 friend, guardian, representative, or attorney on behalf of such person, may petition for

1 *a writ of habeas corpus to question the cause and legality of the detention and request*
2 *that the court issue a writ for release.*

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

5 *The cabinet shall promulgate administrative regulations in accordance with Chapter*
6 *13A in order to carry out the provisions of this chapter.*