

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 Commonwealth's attorney's office serving the county of criminal prosecution*
19 *shall immediately petition the Circuit Court that found the defendant*
20 *incompetent to stand trial or, if the finding was by a District Court, the Circuit*
21 *Court in the county of criminal prosecution, to initiate:*

22 *(a) An involuntary commitment proceeding under Sections 2 to 6 of this Act if*
23 *the defendant is charged with a capital offense, a Class A felony, a Class B*
24 *felony resulting in death or serious physical injury, or a violation of KRS*
25 *510.040 or 510.070; or*

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

1 of this subsection.

2 (3) A defendant who is the subject of an involuntary commitment proceeding under
3 Sections 2 to 6 of this Act shall be committed to a forensic psychiatric facility
4 unless the secretary of the Cabinet for Health and Family Services or the
5 secretary's designee determines that the defendant shall be treated in another
6 Cabinet for Health and Family Services facility, during the pendency of the
7 proceeding.

8 ~~(4)~~ (3) If the court finds the defendant competent to stand trial, the court shall
9 continue the proceedings against the defendant.

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

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

13 (1) "Cabinet" means the Kentucky Cabinet for Health and Family Services;

14 (2) "Commitment hearing" means the hearing under Section 5 of this Act to
15 determine if a respondent meets the criteria for involuntary commitment under
16 this chapter;

17 (3) "Danger" means substantial physical harm or threat of substantial physical
18 harm upon self or others;

19 (4) "Evidentiary hearing" means the hearing under Section 4 of this Act to
20 determine if the defendant committed the qualifying offense for which he or she
21 was charged by a preponderance of the evidence;

22 (5) "Forensic psychiatric facility" means a mental institution or facility, or part
23 thereof, designated by the secretary for the purpose and function of providing
24 inpatient evaluation, care, and treatment for mentally ill persons or individuals
25 with an intellectual disability who have been charged with or convicted of a
26 felony;

27 (6) "Hospital" means:

- 1 (a) A state mental hospital or institution or other licensed public or private
2 hospital, institution, health-care facility, or part thereof, approved by the
3 Kentucky Cabinet for Health and Family Services as equipped to provide
4 full-time residential care and treatment for mentally ill persons or
5 individuals with an intellectual disability; or
- 6 (b) A hospital, institution, or health-care facility of the government of the
7 United States equipped to provide residential care and treatment for
8 mentally ill persons or individuals with an intellectual disability;
- 9 (7) "Individual with an intellectual disability" means a person with significantly
10 subaverage general intellectual functioning existing concurrently with deficits in
11 adaptive behavior and manifested during the developmental period;
- 12 (8) "Judge" means the judge who found the respondent incompetent to stand trial in
13 the criminal proceeding from which the petition for involuntary commitment
14 arose;
- 15 (9) "Less restrictive alternative mode of treatment" means a treatment given outside
16 of a forensic psychiatric facility which would provide a respondent with
17 appropriate treatment or care consistent with accepted professional practice
18 standards and protect the respondent's safety and the safety of others;
- 19 (10) "Mentally ill person" means a person with substantially impaired capacity to use
20 self-control, judgment, or discretion in the conduct of the person's affairs and
21 social relations, associated with maladaptive behavior or recognized emotional
22 symptoms where impaired capacity, maladaptive behavior, or emotional
23 symptoms can be related to physiological, psychological, or social factors;
- 24 (11) "Qualified mental health professional" means:
- 25 (a) A physician licensed under the laws of Kentucky to practice medicine or
26 osteopathy, or a medical officer of the government of the United States
27 while engaged in the performance of official duties;

1 (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or
2 osteopathy, or a medical officer of the government of the United States
3 while engaged in the practice of official duties, who is certified or eligible to
4 apply for certification by the American Board of Psychiatry and Neurology,
5 Inc.;

6 (c) A psychologist with the health service provider designation, a psychological
7 practitioner, a certified psychologist, or a psychological associate, licensed
8 under the provisions of KRS Chapter 319;

9 (d) A licensed registered nurse with a master's degree in psychiatric nursing
10 from an accredited institution and two (2) years of clinical experience with
11 mentally ill persons, or a licensed registered nurse, with a bachelor's degree
12 in nursing from an accredited institution, who is certified as a psychiatric
13 and mental health nurse by the American Nurses Association and who has
14 three (3) years of inpatient or outpatient clinical experience in psychiatric
15 nursing and is currently employed by a hospital or forensic psychiatric
16 facility licensed by the Commonwealth or a psychiatric unit of a general
17 hospital or a private agency or company engaged in the provision of mental
18 health services or a regional community program for mental health and
19 individuals with an intellectual disability;

20 (e) A licensed clinical social worker licensed under the provisions of KRS
21 335.100, or a certified social worker licensed under the provisions of KRS
22 335.080 with three (3) years of inpatient or outpatient clinical experience in
23 psychiatric social work and currently employed by a hospital or forensic
24 psychiatric facility licensed by the Commonwealth or a psychiatric unit of a
25 general hospital or a private agency or company engaged in the provision of
26 mental health services or a regional community program for mental health
27 and individuals with an intellectual disability;

1 (f) A marriage and family therapist licensed under the provisions of KRS
2 335.300 to 335.399 with three (3) years of inpatient or outpatient clinical
3 experience in psychiatric mental health practice and currently employed by
4 a hospital or forensic facility licensed by the Commonwealth, a psychiatric
5 unit of a general hospital, a private agency or company engaged in
6 providing mental health services, or a regional community program for
7 mental health and individuals with an intellectual disability;

8 (g) A professional counselor credentialed under the provisions of KRS Chapter
9 335.500 to 335.599 with three (3) years of inpatient or outpatient clinical
10 experience in psychiatric mental health practice and currently employed by
11 a hospital or forensic facility licensed by the Commonwealth, a psychiatric
12 unit of a general hospital, a private agency or company engaged in
13 providing mental health services, or a regional community program for
14 mental health and individuals with an intellectual disability; or

15 (h) A physician assistant licensed under KRS 311.840 to 311.862, who meets
16 one (1) of the following requirements:

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

19 2. Has completed at least one thousand (1,000) hours of clinical
20 experience under a supervising physician, as defined by KRS 311.840,
21 who is a psychiatrist and is certified or eligible for certification by the
22 American Board of Psychiatry and Neurology, Inc.;

23 3. Holds a master's degree from a physician assistant program
24 accredited by the Accreditation Review Commission on Education for
25 the Physician Assistant or its predecessor or successor agencies, is
26 practicing under a supervising physician as defined by KRS 311.840,
27 and;

1 a. Has two (2) years of clinical experience in the assessment,
2 evaluation, and treatment of mental disorders; or

3 b. Has been employed by a hospital or forensic psychiatric facility
4 licensed by the Commonwealth or a psychiatric unit of a general
5 hospital or a private agency or company engaged in the
6 provision of mental health services or a regional community
7 program for mental health and individuals with an intellectual
8 disability for at least two (2) years; or

9 4. Holds a bachelor's degree, possesses a current physician assistant
10 certificate issued by the board prior to July 15, 2002, is practicing
11 under a supervising physician as defined by KRS 311.840, and:

12 a. Has three (3) years of clinical experience in the assessment,
13 evaluation, and treatment of mental disorders; or

14 b. Has been employed by a hospital or forensic psychiatric facility
15 licensed by the Commonwealth or a psychiatric unit of a general
16 hospital or a private agency or company engaged in the
17 provision of mental health services or a regional community
18 program for mental health and individuals with an intellectual
19 disability for at least three (3) years;

20 (12) "Qualifying offense" means a capital offense, a Class A felony, a Class B felony
21 resulting in death or serious physical injury, or a violation of KRS 510.040 or
22 510.070;

23 (13) "Respondent" means a person who was a criminal defendant found incompetent
24 to stand trial who is or was the subject of a petition for involuntary commitment
25 filed under KRS Chapter 504;

26 (14) "Review hearing" means any hearing conducted to determine if a respondent
27 continues to meet the criteria for involuntary commitment after the initial order

1 for involuntary commitment has been issued under this chapter; and

2 (15) "Secretary" means the secretary of the Cabinet for Health and Family Services.

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

5 (1) When a defendant who is charged with a qualifying offense has been found, after
6 a hearing under KRS Chapter 504, to be incompetent to stand trial with no
7 substantial probability that the defendant will attain competency within three
8 hundred sixty (360) days, the Commonwealth's attorney's office serving the
9 county of criminal prosecution shall immediately petition the Circuit Court that
10 found the defendant incompetent to stand trial or, if the finding was by a District
11 Court, the Circuit Court in the county of the criminal prosecution, for an
12 involuntary commitment proceeding, to include an evidentiary hearing and a
13 commitment hearing, if applicable, under this chapter.

14 (2) Upon the filing of the petition, the court shall assign a guardian ad litem to
15 represent the needs and best interest of the respondent. The guardian ad litem
16 shall be a full and active participant in all proceedings other than the evidentiary
17 hearing under Section 4 of this Act and shall independently investigate, assess,
18 and advocate for the defendant's best interest. The guardian ad litem is not a
19 replacement for the defense attorney. If the defendant has retained or been
20 appointed a defense attorney in the criminal case, that attorney may continue to
21 represent the defendant in proceedings under this chapter. If, at any time during
22 the pendency of proceedings under this chapter, the defendant is not represented
23 by an attorney, the court shall appoint counsel for the defendant, without a
24 showing of indigency, to be provided by the Department of Public Advocacy or its
25 designee.

26 (3) The Circuit Court shall have exclusive jurisdiction over all proceedings under
27 this chapter.

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

3 (1) An adversarial evidentiary hearing on the record shall be held within twenty (20)
4 days, excluding weekends and holidays, of the filing of a petition pursuant to
5 Section 3 of this Act. Appropriate notice shall be served on all parties. The court
6 shall order the Commonwealth to provide all available discovery to the
7 respondent no later than seven (7) days, excluding weekends and holidays, before
8 the hearing. No evidence may be presented at the hearing that has not been
9 disclosed through discovery.

10 (2) The respondent may stipulate to potential guilt and waive the hearing. A
11 stipulation of potential guilt cannot be used against the respondent in any future
12 criminal prosecution or civil litigation.

13 (3) The purpose of the evidentiary hearing shall be to determine whether sufficient
14 evidence exists to support a finding that the respondent is guilty of the charged
15 crime against him or her. The Commonwealth's attorney's office serving the
16 county of criminal prosecution shall have the burden of proving the sufficiency
17 of the evidence by a preponderance of the evidence.

18 (4) The evidentiary hearing shall be held before a judge without a jury. The rules of
19 evidence shall apply. The respondent shall be permitted to present evidence and
20 cross examine witnesses. The respondent may present evidence of affirmative
21 defenses that could be raised at a criminal trial on the charged crime. The
22 Commonwealth shall not have the burden of disproving an affirmative defense.
23 The respondent must prove an affirmative defense by a preponderance of the
24 evidence.

25 (5) (a) If the court determines that sufficient evidence has been presented to
26 support a finding that the respondent is guilty of the charged crime against
27 him or her, the court shall immediately schedule a commitment hearing

1 under this chapter within twenty (20) days, excluding weekends and
2 holidays.

3 (b) The court shall cause the respondent to be examined without unnecessary
4 delay by two (2) qualified mental health professionals, at least one (1) of
5 whom is a physician. The qualified mental health professionals shall,
6 within seven (7) days, excluding weekends and holidays, prior to the
7 hearing, certify to the court their findings as to whether the respondent
8 meets the criteria for involuntarily commitment under Section 6 of this Act.

9 (6) If the court determines that insufficient evidence has been presented to support a
10 finding that the respondent is guilty of the charged crime against him or her, the
11 court shall order the immediate release of the respondent.

12 (7) No evidence or statement submitted by the respondent at the evidentiary hearing
13 shall be admissible in any criminal prosecution or civil litigation.

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

16 (1) A commitment hearing shall be held within twenty (20) days, excluding weekends
17 and holidays, after the court finds that the evidence presented in an evidentiary
18 hearing pursuant to Section 4 of this Act supports a finding that the respondent is
19 guilty of the charged crime against him or her by a preponderance of the
20 evidence.

21 (2) The commitment hearing may be conducted in an informal manner, consistent
22 with orderly procedures, and in a physical setting not likely to have a harmful
23 effect on the mental or physical health of the respondent. The hearing may be
24 held by the court in chambers, at a forensic psychiatric facility, or other suitable
25 place.

26 (3) The Commonwealth's attorney's office serving the county of criminal prosecution
27 which led to the finding that the respondent was incompetent to stand trial shall

1 present evidence regarding whether the respondent meets the criteria for
 2 involuntary commitment under Section 6 of this Act. The respondent and the
 3 respondent's guardian ad litem shall be afforded an opportunity to testify, to
 4 present evidence, and to cross-examine any witnesses.

5 (4) The manner of proceeding and the rules of evidence shall be the same as those in
 6 any criminal proceeding. The standard of proof shall be proof beyond a
 7 reasonable doubt. Proceedings shall be heard by the judge unless a party or the
 8 guardian ad litem requests a jury.

9 (5) The respondent's right to the commitment hearing shall not be waived.

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

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

14 (a) The respondent presents a danger to self or others as a result of his or her
 15 mental condition;

16 (b) The respondent needs care, training, or treatment in order to mitigate or
 17 prevent substantial physical harm to self or others;

18 (c) The respondent has a demonstrated history of criminal behavior that has
 19 endangered or caused injury to others or has a substantial history of
 20 involuntary hospitalizations under KRS Chapters 202A or 202B prior to the
 21 commission of the charged crime; and

22 (d) A less restrictive alternative mode of treatment would endanger the safety of
 23 the respondent or others.

24 (2) When a respondent is involuntarily committed under this chapter, the cabinet
 25 shall place that respondent in a forensic psychiatric facility designated by the
 26 secretary.

27 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO

1 READ AS FOLLOWS:

- 2 (1) (a) A review hearing to determine if a respondent involuntarily committed
3 under this chapter should remain in a forensic psychiatric facility shall be
4 conducted by the court that issued the initial order according to the
5 provisions of subsection (2) of this section; and
- 6 (b) If at any point during the respondent's placement at a forensic psychiatric
7 facility it appears that the respondent no longer meets the criteria for
8 involuntary commitment under Section 6 of this Act because there has been
9 a material change in circumstances or there is new evidence to present, the
10 respondent or the respondent's guardian ad litem may request a review
11 hearing pursuant to this section.
- 12 (2) The schedule for review hearings shall be as follows:
- 13 (a) From the initial order of commitment, a standard review hearing shall be
14 conducted not sooner than ninety (90) days and not later than one hundred
15 twenty (120) days;
- 16 (b) For the first two (2) years after the initial order of commitment, standard
17 review hearings shall be conducted not less than one hundred eighty (180)
18 days and not more than two hundred ten (210) days from the most recent
19 review;
- 20 (c) Beginning two (2) years after the initial order of commitment, a standard
21 review hearing shall be conducted not more than three hundred sixty-five
22 (365) days from the most recent review hearing; and
- 23 (d) A heightened review hearing shall be conducted not more than five (5)
24 years from the initial order of commitment and, thereafter, not more than
25 five (5) years from the most recent heightened review hearing.
- 26 (3) Prior to each standard review hearing, the court shall cause the respondent to be
27 examined without unnecessary delay by two (2) qualified mental health

1 professionals, at least one (1) of whom is a physician. The qualified mental
2 health professionals shall, within seven (7) days prior to the hearing, excluding
3 weekends and holidays, certify to the court their findings as to whether the
4 respondent meets the criteria for involuntarily commitment under Section 6 of
5 this Act.

6 (4) A standard review hearing may be conducted in an informal manner, consistent
7 with orderly procedures, and in a physical setting not likely to have a harmful
8 effect on the mental or physical health of the respondent. The hearing may be
9 held by the court in chambers, or remotely from a forensic psychiatric facility, or
10 other suitable place. The respondent shall be present in person or remotely for all
11 review hearings, unless presence is waived by the respondent through counsel.

12 (5) The Commonwealth's attorney's office serving the county of criminal prosecution
13 which led to finding that the respondent was incompetent to stand trial shall
14 present evidence regarding whether the respondent remains incompetent to stand
15 trial and continues to meet the criteria for involuntary commitment under
16 Section 6 of this Act. The respondent and the respondent's guardian ad litem
17 shall be afforded an opportunity to present evidence, and to cross-examine any
18 witnesses.

19 (6) The manner of proceeding and the rules of evidence shall be the same as those in
20 any criminal proceeding. The standard of proof shall be proof beyond a
21 reasonable doubt. Proceedings shall be heard by a judge without a jury, except
22 that a respondent shall be entitled to a jury upon request if the respondent has
23 not had a review hearing with a jury during the preceding twelve (12) months.

24 (7) The respondent's right to this hearing shall not be waived.

25 (8) At the conclusion of a standard review hearing, the court shall make written
26 findings of fact concerning whether the criteria for involuntary commitment
27 under Section 6 of this Act continue to be satisfied based upon proof beyond a

1 reasonable doubt. If the court finds that the criteria continue to be satisfied, the
2 court shall enter an order authorizing the continued care and treatment of the
3 respondent at the forensic psychiatric facility. Otherwise, the court shall enter an
4 order requiring the respondent to be discharged.

5 (9) During a heightened review hearing, the procedures of a standard review hearing
6 shall apply. Additionally, the qualified mental health professionals who evaluated
7 the respondent in preparation for the hearing shall be required to give live
8 testimony and answer questions before the court. The respondent shall be
9 physically present in the courtroom for the hearing. If the respondent is unable to
10 attend for any reason, the hearing shall be rescheduled to a time, place, and
11 manner in which the respondent is able to attend.

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

14 In a hearing under Sections 4, 5, and 7 of this Act, the court may exclude all persons
15 not necessary for the conduct of the hearing.

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

18 A qualified mental health professional retained by the respondent shall be permitted to
19 witness and participate in any examination of the respondent under this chapter.

20 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 202C IS CREATED
21 TO READ AS FOLLOWS:

22 In proceedings under this chapter, there shall be no privilege as to any relevant
23 communications between qualified mental health professionals. Qualified mental
24 health professionals may disclose communications relating to diagnosis and treatment
25 of the patient's mental condition.

26 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 202C IS CREATED
27 TO READ AS FOLLOWS:

1 (1) The court records of a respondent made in all proceedings under this chapter are
2 hereby declared to be confidential and shall not be open to the general public for
3 inspection.

4 (2) Any person seeking information contained in the court files or the court records
5 of proceedings involving respondents under this chapter may file a written
6 motion in the case setting out why the information is needed. A Circuit Judge
7 may issue an order to disclose the information sought if he or she finds that the
8 order is appropriate under the circumstances and if he or she finds it is in the
9 best interest of the respondent or of the public to have such information
10 disclosed.

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

13 At any time, and without notice, a respondent detained at a forensic psychiatric facility,
14 or a relative, friend, guardian, representative, or attorney on behalf of such person,
15 may petition for a writ of habeas corpus to question the cause and legality of the
16 detention and request that the court issue a writ for release.

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

19 (1) The court which orders any respondent transferred to a forensic psychiatric
20 facility under subsection (3) of Section 1 or Section 6 of this Act, shall at once
21 notify the receiving hospital or psychiatric facility that such order has been made,
22 advising of the sex and condition of the respondent and any other pertinent
23 information.

24 (2) After the forensic psychiatric facility has been so notified, the court shall order
25 the sheriff of the county or other peace officer to transport the respondent within
26 forty-eight (48) hours, excluding weekends and holidays, from the county in
27 which the respondent is located to the forensic psychiatric facility designated by

1 the cabinet. The sheriff or other peace officer may, upon agreement of a person
 2 authorized by the peace officer, authorize the cabinet, a private agency on
 3 contract with the cabinet, or an ambulance service designated by the cabinet to
 4 transport the respondent to the forensic psychiatric facility.

5 (3) Any respondent released from a forensic psychiatric facility under Sections 4 or 7
 6 of this Act shall be transported to the respondent's county of discharge by a
 7 sheriff or other peace officer, by an ambulance service designated by the cabinet,
 8 or by other appropriate means of transportation which is consistent with the
 9 treatment plan of that respondent. The cost of transporting the respondent to the
 10 respondent's county of discharge when performed by a peace officer, ambulance
 11 service, or other private agency on contract with the cabinet shall be paid by the
 12 cabinet in accordance with an administrative regulation issued by the cabinet
 13 pursuant to KRS Chapter 13A.

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

16 Forensic psychiatric facilities ordered to receive an involuntarily committed respondent
 17 shall have standing to petition the Circuit Court for any necessary clarification or
 18 modification of orders or judgments entered in proceedings under this chapter and to
 19 appeal from final judgments or orders entered in proceedings which have not complied
 20 with the provisions of this chapter. A copy shall be sent to the involuntarily committed
 21 respondent, the respondent's guardian ad litem, and the respondent's attorney of
 22 record, of whatever pleadings are filed by the hospital.

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

25 A respondent involuntarily committed under this chapter shall have the following
 26 rights as a patient:

27 (1) The right to be adequately informed as to his or her individual treatment

- 1 program;
- 2 (2) The right to assist in the planning of his or her treatment program;
- 3 (3) The right to refuse treatment subject to the provisions of Section 16 of this Act;
- 4 (4) The right to maintain, keep, and use personal possessions and money;
- 5 (5) The right to receive visitors;
- 6 (6) The right to receive payment for work performed on behalf of the forensic
- 7 psychiatric facility;
- 8 (7) The right to refuse intrusive treatment subject to the provisions of Section 16 of
- 9 this Act;
- 10 (8) The right to be free from unreasonable use of seclusion and restraint;
- 11 (9) The right to seek relief from participating in his or her treatment plan; and
- 12 (10) The right to the assistance of counsel to uphold these rights and all rights under
- 13 this chapter.

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

- 16 (1) Every forensic psychiatric facility caring for respondents involuntarily committed
- 17 under this chapter shall have a review committee of three (3) qualified mental
- 18 health professionals appointed by the facility director. This review committee
- 19 shall have the authority to review the appropriateness of a respondent's
- 20 individual treatment plan.
- 21 (2) Upon the refusal of a respondent to participate in any or all aspects of his or her
- 22 treatment plan, the review committee shall examine the appropriateness of the
- 23 respondent's individual treatment plan. Within three (3) days of the refusal, the
- 24 review committee shall meet with the respondent and his or her counsel,
- 25 guardian ad litem, or other representative to discuss its recommendations.
- 26 (3) If the respondent still refuses to participate in any or all aspects of his or her
- 27 individual treatment plan, the forensic psychiatric facility may petition the Circuit

1 Court for a de novo determination of the appropriateness of the proposed
 2 treatment. Within seven (7) days, excluding weekends and holidays, the court
 3 shall conduct a hearing, consistent with the respondent's rights to due process of
 4 law, and shall utilize the following factors in reaching its determination:

5 (a) Whether the treatment is necessary to protect the respondent or others from
 6 harm;

7 (b) Whether the respondent is incapable of giving informed consent to the
 8 proposed treatment;

9 (c) Whether any less restrictive alternative mode of treatment exists; and

10 (d) Whether the proposed treatment carries any risk of permanent side effects.

11 (4) Upon the completion of the hearing, the court shall enter an appropriate
 12 judgment.

13 ➔SECTION 17. A NEW SECTION OF KRS CHAPTER 202C IS CREATED
 14 TO READ AS FOLLOWS:

15 This chapter shall not apply to persons under eighteen (18) years of age unless
 16 specifically authorized by the Kentucky Unified Juvenile Code.

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

19 This cabinet shall promulgate administrative regulations in accordance with KRS
 20 Chapter 13A in order to carry out the provisions of this chapter.

21 ➔Section 19. KRS 31.110 is amended to read as follows:

22 (1) A needy person who is being detained by a law enforcement officer, on suspicion of
 23 having committed, or who is under formal charge of having committed, or is being
 24 detained under a conviction of, a serious crime, or who is accused of having
 25 committed a public or status offense or who has been committed to the Department
 26 of Juvenile Justice or Cabinet for Health and Family Services for having committed
 27 a public or status offense as those are defined by KRS 610.010(1), 610.010(2)(a),

1 (b), (c), or 630.020(2) is entitled:

2 (a) To be represented by an attorney to the same extent as a person having his or
3 her own counsel is so entitled; and

4 (b) Except as provided in subsection (2)(c) of this section, to be provided with the
5 necessary services and facilities of representation, including investigation and
6 other preparation. The courts in which the defendant is tried shall waive all
7 costs.

8 (2) A needy person who is entitled to be represented by an attorney under subsection
9 (1) of this section is entitled:

10 (a) To be counseled and defended at all stages of the matter beginning with the
11 earliest time when a person providing his or her own counsel would be
12 entitled to be represented by an attorney and including revocation of probation
13 or parole;

14 (b) To be represented in any appeal; and

15 (c) To be represented in any other post-conviction, or, if a minor under the age of
16 eighteen (18), post-disposition proceeding, including any appeal from a post-
17 conviction or post-disposition action. However, if the department and the
18 court of competent jurisdiction determines that it is not a proceeding that a
19 reasonable person with adequate means would be willing to bring at his or her
20 own expense, there shall be no further right to be represented by counsel
21 under the provisions of this chapter. In cases involving a minor under the age
22 of eighteen (18), prior to making a determination on whether or not a post-
23 disposition action is a proceeding that a reasonable person with adequate
24 means would be willing to bring at his or her own expense, an attorney with
25 the department shall be granted access to the court file of the minor:

26 1. Without the requirement of a formal court order in which the attorney
27 has provided a release signed by the minor or the minor's legal guardian

1 authorizing the use of the records; and

2 2. Notwithstanding any other statute prohibiting the disclosure of a
3 juvenile court file.

4 (3) A needy person's right to a benefit under subsection (1) or (2) of this section is not
5 affected by his or her having provided a similar benefit at his or her own expense, or
6 by he or she having waived it, at an earlier stage.

7 (4) A person, whether a needy person or not, who is a minor under the age of eighteen
8 (18) and who is in the custody of the Department of Juvenile Justice and is residing
9 in a residential treatment center or detention center is entitled to be represented on a
10 legal claim related to his or her confinement involving violations of federal or state
11 statutory rights or constitutional rights. Prior to representation, an attorney with the
12 department shall be granted access to the court file of the minor and residential
13 treatment center or detention center records pertaining to the juvenile:

14 (a) Without entering an appearance as an attorney of record; and

15 (b) Notwithstanding any other statute prohibiting the disclosure of a juvenile's
16 record, including KRS 15A.0651, 610.320, 610.340, or 610.345.

17 **(5) A person, whether a needy person or not, who is subject to a proceeding under**
18 **Sections 2 to 18 of this Act and is unrepresented at any time shall be entitled to**
19 **the same rights of representation as a needy person under subsection (1) of this**
20 **section.**