

1 AN ACT relating to disabled persons.

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

3 ➔Section 1. KRS 387.530 is amended to read as follows:

4 (1) A petition for a determination of partial disability or disability and the appointment  
5 of a limited guardian, guardian, limited conservator, or conservator may be filed by  
6 any interested person or by an individual needing guardianship or conservatorship.

7 The petition shall set forth the following:

- 8 (a) The name and address of the respondent;
- 9 (b) The date of birth of the respondent, if known;
- 10 (c) The nature and degree of the alleged disability of the respondent;
- 11 (d) The facts and reasons supporting the need for guardianship or  
12 conservatorship;
- 13 (e) A description and approximation of the value of the respondent's financial  
14 resources, including government benefits, insurance entitlements, and  
15 anticipated yearly income, if known;
- 16 (f) The names and addresses of the respondent's next of kin, ***including but not***

17 ***limited to a:***

18 ***1. Spouse;***

19 ***2. Relative of half-blood;***

20 ***3. First cousin;***

21 ***4. Aunt;***

22 ***5. Uncle;***

23 ***6. Nephew;***

24 ***7. Niece;***

25 ***8. Person of a preceding generation as denoted by prefixes of grand,***  
26 ***great, or great-great;***

27 ***9. Stepparent;***

1            **10. Stepsibling; or**

2            **11. Fictive kin, if known;**

3            **(g) The names and addresses of any parents, stepparents, or adoptive parents,** if  
4            known;

5            **(h)**~~(g)~~ The name and address of the individual or facility, if any, having  
6            custody of the respondent;

7            **(i)**~~(h)~~ The name, address and interest of the petitioner;

8            **(j)**~~(i)~~ The name and address of the petitioner's attorney, if any; ~~and~~

9            **(k)**~~(j)~~ **Whether any civil or criminal action is pending against the**  
10            **respondent, and whether any custodial order is in effect regarding the**  
11            **respondent, if known; and**

12            **(l)** The name and address of any person or entity appointed by the respondent as  
13            respondent's attorney in fact under a durable power of attorney or as  
14            respondent's surrogate to make health care decisions under an advance  
15            directive.

16            (2) The petition shall be accompanied by a verified application of the person or entity  
17            desiring appointment as limited guardian, guardian, limited conservator, or  
18            conservator. The application shall state the name, address, and qualifications of the  
19            applicant and his relationship to the respondent. If it is proposed that a standby  
20            limited guardian, guardian, limited conservator, or conservator be designated, the  
21            petition shall also be accompanied by the application of the person or entity desiring  
22            to be so designated. Additional petitions may be filed prior to the date of the hearing  
23            by other persons desiring appointment.

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

25            (1) At a hearing convened under KRS 387.500 to 387.770 for a determination of partial  
26            disability or disability, the court, or the jury if one is impaneled, shall:

27            (a) Inquire into the nature and extent of the general intellectual functioning of the

- 1           respondent;
- 2           (b) Inquire into the respondent's capacity to make informed decisions concerning
- 3           his personal affairs and financial resources;
- 4           (c) Determine whether the respondent is disabled, partially disabled, or has no
- 5           disability in relation to the management of his financial resources; and
- 6           (d) Determine whether the respondent is disabled, partially disabled, or has no
- 7           disability in relation to the management of his personal affairs.
- 8           (2) If the respondent is found not to be disabled or partially disabled, the petition shall
- 9           be dismissed.
- 10          (3) If the respondent is found to be disabled or partially disabled, the court shall, at the
- 11          same hearing, without a jury, determine:
- 12          (a) The type of guardian, conservator, or guardian and conservator to be
- 13          appointed;
- 14          (b) The specific legal disabilities to which the respondent is subject, if the
- 15          respondent has been determined to be partially disabled; **although the right to**
- 16          **contact and retain legal counsel shall not be restricted;**
- 17          (c) Whether the respondent retains the right to vote;
- 18          (d) The corresponding powers and duties of the limited guardian or limited
- 19          conservator, if the respondent has been determined to be partially disabled;
- 20          (e) The individual or entity to be appointed by the court as limited guardian,
- 21          guardian, limited conservator, or conservator;
- 22          (f) The individual or entity, if any, to be appointed as standby guardian or
- 23          conservator; and
- 24          (g) The duration of the term of guardianship or conservatorship.
- 25          **(4) If the respondent is found to be disabled or partially disabled, the court shall, at**
- 26          **the same hearing:**
- 27          **(a) Make a finding on the record and inform the guardian or conservator of**

1           any pending civil or criminal action involving the respondent, and whether  
 2           any custodial order is in effect regarding the respondent; and

3           **(b) Inform the respondent of the right to petition the court to modify or**  
 4           **terminate the guardianship or conservatorship, pursuant to Section 5 of this**  
 5           **Act. If the respondent is not present at the hearing, the appointed guardian**  
 6           **or conservator for the respondent shall convey this information to the**  
 7           **respondent in writing.**

8           **(5) Unless the order of guardianship or conservatorship establishes otherwise:**

9           **(a) Court-appointed counsel shall represent the respondent through the end of**  
 10           **the period in which to perfect an appeal, or upon the resolution of the**  
 11           **appeal or action; and**

12           **(b) Counsel retained by the respondent shall be subject to the previous terms of**  
 13           **the representation.**

14           ➔Section 3. KRS 387.600 is amended to read as follows:

15           (1) The court may appoint as limited guardian, guardian, limited conservator, or  
 16           conservator any suitable person or any entity, public or private, capable of  
 17           conducting an active guardianship or conservatorship program. The court shall not  
 18           ordinarily or customarily appoint the Cabinet for Health and Family Services or any  
 19           other person or entity, public or private, that is directly providing services to the  
 20           respondent unless no other suitable person or entity is available and willing to be  
 21           appointed. Appointment of the Cabinet for Health and Family Services shall be  
 22           consistent with the provisions of KRS 210.290.

23           (2) Prior to the appointment, the court shall make a reasonable effort to question the  
 24           respondent concerning his preference regarding the person or entity to be appointed  
 25           limited guardian, guardian, limited conservator, or conservator, and any preference  
 26           indicated shall be given due consideration. If the respondent has designated another  
 27           as his attorney in fact or agent by executing a power of attorney in writing, that

1 designation ~~may~~~~shall~~ be treated as an indication of the respondent's preference as  
2 to the person or entity to be appointed as his limited guardian, guardian, limited  
3 conservator, or conservator, and that preference shall be given due consideration.  
4 The court shall appoint the person or entity best qualified and willing to serve.

5 ➔Section 4. KRS 387.610 is amended to read as follows:

6 Prior to the expiration of a term of guardianship or conservatorship, the limited guardian,  
7 guardian, limited conservator, or conservator may petition, pursuant to KRS 387.620, for  
8 a renewal of his appointment for a period not to exceed **three (3)**~~five (5)~~ years. The  
9 petition shall be accompanied by verified affidavits of a physician, an advanced practice  
10 registered nurse or physician assistant working within his or her scope of practice, or a  
11 psychologist licensed or certified under the provisions of KRS Chapter 319, or a person  
12 licensed or certified as a social worker or an employee of the Cabinet for Health and  
13 Family Services who meets the qualifications of KRS 335.080(1)(a), (b), and (c) or  
14 335.090(1)(a), (b), and (c), supporting the need for the continuation of the guardianship or  
15 conservatorship.

16 ➔Section 5. KRS 387.620 is amended to read as follows:

17 (1) A partially disabled or disabled person, his limited guardian, guardian, limited  
18 conservator, or conservator, or any other interested person may petition the court  
19 for:

- 20 (a) Termination or modification of an order of partial disability or disability;  
21 (b) Removal and/or replacement of a limited guardian, guardian, limited  
22 conservator or conservator; or  
23 (c) Renewal of the appointment of a limited guardian, guardian, limited  
24 conservator, or conservator.

25 (2) Petitions pursuant to this section shall set forth:

- 26 (a) The name and address of the ward;  
27 (b) The name and address of the limited guardian, guardian, limited conservator,

1 or conservator;

2 (c) The name, address, and interest of the petitioner;

3 (d) The names and addresses of the ward's next of kin, **including but not limited**

4 **to a:**

5 **1. Spouse;**

6 **2. Relative of half-blood;**

7 **3. First cousin;**

8 **4. Aunt;**

9 **5. Uncle;**

10 **6. Nephew;**

11 **7. Niece;**

12 **8. Person of a preceding generation as denoted by prefixes of grand,**  
13 **great, or great-great;**

14 **9. Stepparent;**

15 **10. Stepsibling; or**

16 **11. Fictive kin, if known;**

17 **(e) The names and addresses of any parents, stepparents, or adoptive parents,** if  
18 known;

19 ~~(f)~~~~(e)~~ The name and address of the individual or facility, if any, having  
20 custody of the ward;

21 ~~(g)~~~~(f)~~ The relief requested; and

22 ~~(h)~~~~(g)~~ The facts and reasons supporting the request.

23 (3) A request under subsection (1) of this section, if made by the ward, may be  
24 communicated to the court by any means, including, but not limited to, oral  
25 communication or informal letter. **Any attorney or employee of the court who**  
26 **receives an informal request under subsection (1) of this section shall transmit**  
27 **the request to the Circuit Court clerk for the county in which the request was**

1        **received.** If such a request is communicated by means other than a petition, the  
2        court shall appoint a suitable person who may, but need not be, an employee of the  
3        state, county, or court to prepare a written petition to be filed with the court within  
4        seven (7) days following the appointment.

5        (4) Within thirty (30) days after the filing of a petition, the court shall conduct a hearing  
6        at which the ward shall be entitled to counsel. The time for a hearing may be  
7        extended by the court, on motion of either party, for cause. Notice of the time and  
8        place of the hearing shall be given by the clerk of the court not less than fourteen  
9        (14) days prior to the hearing to both parties and all persons named in the petition.  
10       The petitioner shall, upon his motion, be entitled to have the motion for termination  
11       or modification determined by a jury.

12       (5) At the request of any party or on its own initiative, the court may order an  
13       interdisciplinary evaluation of the ward. The time period in which the court must  
14       review a petition may be extended for an appropriate period of time if an evaluation  
15       is ordered by the court. The interdisciplinary evaluation report may be filed as a  
16       single or joint report of the interdisciplinary evaluation team, or it may otherwise be  
17       constituted by the separate reports filed by each individual of the team. If the court  
18       and all parties to the proceeding and their attorneys agree to the admissibility of the  
19       report or reports, the report or reports shall be admitted into evidence and shall be  
20       considered by the court.

21       (6) **The hearing shall be a jury trial, unless:**

22       **(a) The respondent if present, counsel for the respondent, and the attorney for**  
23       **the Commonwealth agree to a bench trial;**

24       **(b) No objection to a bench trial is made by an interested person or entity; and**

25       **(c) The interdisciplinary evaluation report prepared for the proceeding reflects**  
26       **a unanimous consensus of the persons preparing it that the respondent is**  
27       **disabled or partially disabled, the court has reviewed the report, and the**

1 *court finds no cause to require a jury trial.*

2 (7) Upon conclusion of a modification hearing ~~without a jury~~, the court shall enter a  
3 written order setting forth the factual basis for its finding and may do any of the  
4 following:

- 5 (a) Dismiss the petition;
- 6 (b) Remove the guardian or conservator and dissolve the guardianship or  
7 conservatorship order;
- 8 (c) Remove the limited guardian, guardian, limited conservator, or conservator  
9 and appoint a successor;
- 10 (d) Modify the original guardianship or conservatorship order; or
- 11 (e) Make any other order which the court deems appropriate and in the best  
12 interest of the ward, *including but not limited to establishing a visitation*  
13 *arrangement with any person, and limiting the ward's ability to enter into a*  
14 *contract.*

15 (8)~~(7)~~ If the original order is dissolved and no further order is issued, the ward shall  
16 be relieved of all legal disabilities. The court shall enter an order and judgment  
17 restoring to the person all of the rights and privileges of a citizen. The clerk shall  
18 note the judgment or modification in the book in which notices of actions and  
19 encumbrances are indexed.

20 (9)~~(8)~~ The clerk of the court shall transmit a certified copy of the restoration  
21 judgment or modification to the originating court, if the judgment or modification is  
22 ordered by a court other than the court in which the original judgment was entered.

23 ➔Section 6. KRS 387.640 is amended to read as follows:

24 It shall be the general duty of the limited guardian or guardian to carry out diligently and  
25 in good faith the specific duties and powers assigned by the court and to:

- 26 (1) Assure that the personal, civil, and human rights of the ward are protected; and  
27 (2) Encourage the ward to:

- 1 (a) Participate to the maximum extent of his or her abilities in all decisions which  
 2 affect him or her;
- 3 (b) Act in his or her own behalf on all matters in which he or she is able to do so;  
 4 and
- 5 (c) Develop or regain, to the maximum extent possible, his or her capacity to  
 6 meet the essential requirements for his physical health or safety, and, if  
 7 impaired, his capacity to manage his or her financial resources; and[-]

8 **(3) If the guardian or limited guardian is the Cabinet for Health and Family**  
 9 **Services:**

- 10 **(a) Facilitate and encourage the ward's connection to his or her family**  
 11 **members, unless:**
- 12 **1. There has been a previous finding of neglect or abuse by the family**  
 13 **member against the ward; or**
- 14 **2. The ward objects to having contact with the family;**
- 15 **(b) Provide information to the ward's family about how they can be considered**  
 16 **for appointment as the guardian or limited guardian, if information is**  
 17 **requested; and**
- 18 **(c) Provide the family of the ward with guidance, including but not limited to a**  
 19 **case plan, for changes necessary for the cabinet to consider the family**  
 20 **member for visitation with, or as a placement for, the ward.**

21 ➔Section 7. KRS 387.660 is amended to read as follows:

22 A guardian of a disabled person shall have the following powers and duties, except as  
 23 modified by order of the court:

- 24 (1) To establish the ward's place of abode within the state, except that, if at any time a  
 25 guardian places a ward in a licensed residential facility for developmentally disabled  
 26 persons, the guardian shall, within thirty (30) days of such placement, file with the  
 27 court notice of the placement, stating with specificity the reasons for such

1 placement, and an interdisciplinary evaluation report detailing the social,  
2 psychological, medical or other considerations on which such placement is  
3 predicated, a description of the treatment or habilitation programs which will  
4 benefit the ward as a result of such placement, and a determination that such  
5 placement will provide appropriate treatment in the least restrictive available  
6 treatment and residential program. For purposes of this subsection, the  
7 interdisciplinary evaluation report may be one performed within two (2) months  
8 prior to the placement for purposes of determining whether such placement is  
9 necessary and appropriate, or may be an evaluation and assessment provided by the  
10 residential facility immediately after placement. Notice to the court shall not be  
11 required where the ward is transferred from one licensed residential facility to  
12 another;

13 (2) To make provision for the ward's care, comfort, and maintenance and arrange for  
14 such educational, social, vocational, and rehabilitation services as are appropriate  
15 and as will assist the ward in the development of maximum self-reliance and  
16 independence;

17 (3) To give any necessary consent or approval to enable the ward to receive medical or  
18 other professional care, counsel, treatment or service, except that a guardian may  
19 not consent on behalf of a ward to an abortion, sterilization, psychosurgery, removal  
20 of a bodily organ, or amputation of a limb unless the procedure is first approved by  
21 order of the court or is necessary, in an emergency situation, to preserve the life or  
22 prevent serious impairment of the physical health of the ward;

23 (4) To act with respect to the ward in a manner which limits the deprivation of civil  
24 rights and restricts his personal freedom only to the extent necessary to provide  
25 needed care and services to him;~~and~~

26 (5) To expend sums from the financial resources of the ward reasonable and necessary  
27 to carry out the powers and duties assigned to him by the court; and~~;~~

1 (6) If the guardian or limited guardian is the Cabinet for Health and Family

2 Services, to:

3 (a) Facilitate and encourage the ward's connection to his or her family  
4 members, unless:

5 1. There has been a previous finding of neglect or abuse by the family  
6 member against the ward; or

7 2. The ward objects to having contact with the family;

8 (b) Provide information to the ward's family about how they can be considered  
9 for appointment as the guardian or limited guardian, if information is  
10 requested; and

11 (c) Provide the family of the ward with guidance, including but not limited to a  
12 case plan, for changes necessary for the cabinet to consider the family  
13 member for visitation with, or as a placement for, the ward.

14 If a separate limited conservator or conservator has been appointed for the ward, the  
15 expenditure of funds by the limited guardian shall be consistent with the duties assigned  
16 to and procedures and policies established by such limited conservator or conservator.  
17 Conflicts arising between a limited guardian and a limited conservator or conservator  
18 regarding the expenditure of funds which are unable to be otherwise resolved shall be  
19 submitted to the court for resolution.

20 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO  
21 READ AS FOLLOWS:

22 Prior to a hearing pursuant to Section 2 of this Act, the attorney for the respondent  
23 shall:

24 (1) Determine whether any civil or criminal action is pending against the  
25 respondent, and whether any custodial order is in effect regarding the  
26 respondent; and

27 (2) Inform the respondent of his or her right to petition the court for modification,

1        *including but not limited to changes in living arrangements, visitation, or the*  
2        *ability to date or marry, or termination of an order of guardianship or*  
3        *custodianship, if one is issued.*