

1 AN ACT relating to felony mediation.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 455 IS CREATED TO
4 READ AS FOLLOWS:

- 5 *(1) A court may order felony mediation if the defendant and the Commonwealth's*
6 *attorney, after consultation with the victim, agree to mediation and the court*
7 *determines the public interest is not harmed by ordering felony mediation.*
- 8 *(2) The Supreme Court may, by rule, determine all forms to be provided by the*
9 *Administrative Office of the Courts and other matters necessary for the proper*
10 *administration of felony mediation.*
- 11 *(3) No case of domestic violence, nor any case in which either of the parties has a*
12 *protective order against the other, shall be eligible for felony mediation, unless*
13 *requested by the victim, and:*
- 14 *(a) The victim's request is voluntary and not the result of coercion; and*
- 15 *(b) Mediation is a realistic and viable alternative to or adjunct to the charges*
16 *brought by the Commonwealth.*
- 17 *(4) Mediators shall be retired judges with previous experience in Kentucky criminal*
18 *law. Mediators shall also complete a minimum of forty (40) hours of mediation*
19 *training, which shall include specific felony mediation training, as approved by*
20 *the Supreme Court of Kentucky by rule.*
- 21 *(5) (a) After determining a case is eligible, the presiding judge shall sign and*
22 *submit a request for assignment on a form provided by the Administrative*
23 *Office of the Courts.*
- 24 *(b) A felony mediator project coordinator or other designee under the project*
25 *coordinator's guidance shall review the submitted form and assign a retired*
26 *judge mediator from a judicial mediator directory.*
- 27 *(6) (a) The judge mediator shall conduct the mediation within thirty (30) days of*

- 1 assignment;
- 2 (b) The judge mediator shall complete an agreement to mediate, confidentiality
- 3 agreement, and retired judge voucher; and
- 4 (c) The judge mediator shall provide a report to the court advising if an
- 5 agreement has been reached or if the parties were unable to agree.
- 6 (7) If the parties reach an agreement, the Circuit Court Judge shall receive the
- 7 Commonwealth's offer on a plea of guilty from the Commonwealth's attorney
- 8 and the defendant's motion to enter a guilty plea or an Alford plea.
- 9 (8) All records of confidentiality agreements, retired judge vouchers, and other
- 10 administrative records shall be maintained by the felony mediation project
- 11 coordinator of the Administrative Office of the Courts or an appropriate
- 12 designee.
- 13 (9) Any agreement reached through felony mediation shall be considered a related
- 14 statement under KRE 410.
- 15 (10) Failure to attend mediation scheduled by the judge mediator may constitute
- 16 contempt of court. Refusal to enter into mediation or termination of mediation by
- 17 any party at any time shall not be considered failure to attend.
- 18 (11) The court shall confirm that the defendant:
- 19 (a) Was willing to participate;
- 20 (b) Was not threatened or coerced either in participating in mediation or in the
- 21 agreement if an agreement is reached;
- 22 (c) Participated voluntarily and of his or her own free will;
- 23 (d) Was treated fairly; and
- 24 (e) Was given fair opportunity to consult with counsel and to consider the
- 25 consequences of any agreement reached.
- 26 (12) Felony mediation shall be considered a confidential settlement negotiation and
- 27 the judge mediator shall not be called as a witness.