

1 AN ACT relating to guardianship proceedings.

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

3 ➔Section 1. KRS 387.500 is amended to read as follows:

- 4 (1) It is the intent and purpose of the General Assembly to recognize that disabled
5 persons have varying degrees of disability.
- 6 (2) Persons who are only partially disabled must be legally protected without a
7 determination of total incompetency and without the attendant deprivation of civil
8 and legal rights that such a determination requires.
- 9 (3) To this end, guardianship and conservatorship for disabled persons shall be utilized
10 only as is necessary to promote their well-being, including protection from neglect,
11 exploitation, and abuse; shall be designed to encourage the development of
12 maximum self-reliance and independence in each person; and shall be ordered only
13 to the extent necessitated by each person's actual mental and adaptive limitations.
- 14 (4) If the court determines that some form of guardianship or conservatorship is
15 necessary, partial guardianship or partial conservatorship shall be the preferred
16 form of protection and assistance for a disabled person.

17 **(5) *District Courts of the Commonwealth shall preserve the due process rights of all***
18 ***persons alleged to be incapacitated by conducting all disability proceedings in***
19 ***conformity with statutory procedures.***

20 ➔Section 2. KRS 387.510 is amended to read as follows:

21 As used in KRS 387.500 to 387.770 and 387.990:

- 22 (1) "Conservator" means an individual, agency, or corporation appointed by the court
23 to manage the financial resources of a disabled person;
- 24 (2) "Limited conservator" means an individual, agency, or corporation appointed by the
25 court to assist in managing the financial resources of a partially disabled person and
26 whose powers and duties have been specifically enumerated by court order;
- 27 (3) "Guardian" means any individual, agency, or corporation appointed by the court to

- 1 manage the personal affairs of a disabled person;
- 2 (4) "Limited guardian" means an individual, agency, or corporation appointed by the
3 court to assist in managing the personal affairs of a partially disabled person and
4 whose powers and duties have been specifically enumerated by court order;
- 5 (5) "Standby" guardian or conservator means a person or entity designated by the court
6 to assume the powers and duties assigned to a limited guardian, guardian, limited
7 conservator, or conservator upon his or her death, resignation, removal, or
8 incapacity;
- 9 (6) "Testamentary" guardian or conservator means an individual, agency, or
10 corporation nominated in the will of a limited guardian, guardian, limited
11 conservator, or conservator to succeed the testator in that capacity upon his or her
12 death;
- 13 (7) "Developmental disability" means a severe, chronic disability of a person which:
- 14 (a) Is attributable to a mental or physical impairment or combination of mental
15 and physical impairments, including pervasive developmental disorder;
- 16 (b) Is manifested before the person attains age twenty-two (22);
- 17 (c) Is likely to continue indefinitely;
- 18 (d) Results in substantial functional limitations in three (3) or more of the
19 following areas of major life activity:
- 20 1. Self-care;
- 21 2. Receptive and expressive language;
- 22 3. Learning;
- 23 4. Mobility;
- 24 5. Self-direction;
- 25 6. Capacity for independent living; and
- 26 7. Economic self-sufficiency; and
- 27 (e) Reflects the person's need for a combination and sequence of special

1 interdisciplinary or generic care, treatment, or other services which are of
2 lifelong or extended duration and are individually planned and coordinated;

3 (8) "Disabled" means a legal disability, not a medical disability, and is measured by
4 functional inabilities. It refers to any person seventeen (17) years of age or older
5 who is:

6 (a) Unable to make informed decisions with respect to his or her personal affairs
7 to such an extent that he or she lacks the capacity to provide for his or her
8 physical health and safety, including but not limited to health care, food,
9 shelter, clothing, or personal hygiene; or

10 (b) Unable to make informed decisions with respect to his or her financial
11 resources to such an extent that he or she lacks the capacity to manage his or
12 her property effectively by those actions necessary to obtain, administer, and
13 dispose of both real and personal property.

14 Such inability shall be evidenced by acts or occurrences within six (6) months prior
15 to the filing of the petition for guardianship or conservatorship and shall not be
16 evidenced solely by isolated instances of negligence, improvidence, or other
17 behavior;

18 (9) "Partially disabled" refers to an individual who lacks the capacity to manage some
19 of his or her personal affairs and/or financial resources as provided in subsection
20 (8) of this section, but who cannot be found to be fully disabled as provided therein;

21 (10) "Mentally ill person" means a person with substantially impaired capacity to use
22 self-control, judgment, or discretion in the conduct of his or her affairs and social
23 relations, associated with maladaptive behavior or recognized emotional symptoms
24 where impaired capacity, maladaptive behavior, or emotional symptoms can be
25 related to physiological, psychological, or social factors;

26 (11) "Interdisciplinary evaluation report" means a report of an evaluation of a respondent
27 performed pursuant to the provisions of KRS 387.540 to determine whether he or

1 she is partially disabled or disabled as defined herein;

2 (12) "Interested person or entity" means an adult relative or friend of the respondent or
3 protected person~~[ward]~~, an official or representative of a public or private agency,
4 corporation, or association concerned with that person's welfare, or any other
5 person found suitable by the court;

6 (13) "Petitioner" means a person who institutes a proceeding under KRS 387.530;

7 (14) "Respondent" means an individual alleged to be a partially disabled or disabled
8 person;

9 (15) "Protected person"~~["Ward"]~~ means a person for whom a limited guardian,
10 guardian, limited conservator, or conservator has been appointed;

11 (16) "Committee" means a person appointed by the court prior to July 1, 1982, to have
12 full care, custody, and control of a disabled person and his or her estate; ~~[and]~~

13 (17) "Personal affairs" means decisions regarding the person of an adult, including but
14 not limited to health care, food, shelter, clothing, or personal hygiene;

15 (18) "Respondent's attorney" means either private or appointed counsel representing
16 the respondent, who is:

17 (a) Not a guardian ad litem; and

18 (b) Bound by the ethical requirements of all attorneys in Kentucky, including
19 the duties of loyalty and competent, zealous representation; and

20 (19) "Guardian ad litem" means an attorney appointed to inform the court about and
21 to represent the needs and best interests of the respondent.

22 ➔Section 3. KRS 387.520 is amended to read as follows:

23 (1) The District Courts shall have exclusive jurisdiction over all proceedings involving
24 a determination of partial disability or disability, the modification of orders, the
25 appointment and removal of guardians and conservators, and the management and
26 settlement of their accounts.

27 (2) If the respondent or protected person~~[ward]~~ is a resident of this state, the venue for

1 all proceedings under KRS 387.500 to 387.770 shall be:

2 (a) In the county where the respondent or protected person^[ward] resides;

3 (b) In the county of domicile of the respondent or protected person^[ward]; ~~{or}~~

4 (c) In the county where the parent of the respondent or protected person^[ward] is
5 domiciled if the respondent or protected person^[ward] is a minor; or~~[-~~

6 ~~Nothing in this section shall preclude transfer of venue for good cause~~
7 ~~shown.]~~

8 **(d) In the county where a curatorship has been established for the respondent**
9 **or protected person.**

10 **Nothing in this subsection shall preclude transfer of venue for good cause shown.**

11 (3) If no local conservator has been appointed and no petition in a disability proceeding
12 is pending in this state, a domiciliary foreign conservator may file with a court in
13 this state in a county in which property belonging to the disabled person is located,
14 authenticated copies of his or her appointment and of any official bond he or she
15 has given. Thereafter, he or she may exercise as to assets in this state all powers of
16 a local conservator and may maintain actions and proceedings in this state subject
17 to any conditions imposed upon nonresident parties generally.

18 (4) This section shall be subordinate to KRS 387.810 to 387.854 to the extent that those
19 sections govern jurisdiction between Kentucky and other states.

20 ➔Section 4. KRS 387.530 is amended to read as follows:

21 (1) A petition for a determination of partial disability or disability and the appointment
22 of a limited guardian, guardian, limited conservator, or conservator may be filed by
23 any interested person or by an individual needing guardianship or conservatorship.
24 The petition shall set forth the following:

25 (a) The name and address of the respondent;

26 (b) The date of birth of the respondent, if known;

27 (c) The nature and degree of the alleged disability of the respondent;

- 1 (d) The facts and reasons supporting the need for guardianship or
 2 conservatorship;
- 3 (e) A description and approximation of the value of the respondent's financial
 4 resources, including government benefits, insurance entitlements, and
 5 anticipated yearly income, if known;
- 6 (f) The names and addresses of the respondent's next of kin, **including but not**
 7 **limited to the respondent's spouse, children, grandchildren, or parents,** if
 8 known;
- 9 (g) The name and address of the individual or facility, if any, having custody of
 10 the respondent;
- 11 (h) The name, address and interest of the petitioner;
- 12 (i) The name and address of the petitioner's attorney, if any; ~~and~~
- 13 (j) The name and address of any person or entity appointed by the respondent as
 14 respondent's **agent**~~[attorney in fact]~~ under a durable power of attorney or as
 15 respondent's surrogate to make health care decisions under an advance
 16 directive; **and**
- 17 **(k) The name and address of any person or entity appointed curator of the**
 18 **respondent under KRS 387.320.**
- 19 (2) The petition shall be accompanied by a verified application of the person or entity
 20 desiring appointment as limited guardian, guardian, limited conservator, or
 21 conservator. The application shall state the name, address, and qualifications of the
 22 applicant and his **or her** relationship to the respondent. If it is proposed that a
 23 standby limited guardian, guardian, limited conservator, or conservator be
 24 designated, the petition shall also be accompanied by the application of the person
 25 or entity desiring to be so designated. Additional petitions may be filed prior to the
 26 date of the hearing by other persons desiring appointment.
- 27 ➔Section 5. KRS 387.540 is amended to read as follows:

- 1 (1) Prior to a hearing on a petition for a determination of partial disability or disability
2 and the appointment of a limited guardian, guardian, limited conservator, or
3 conservator, an interdisciplinary evaluation report shall be filed with the court. The
4 report may be filed as a single and joint report of the interdisciplinary evaluation
5 team, or it may otherwise be constituted by the separate reports filed by each
6 individual of the team. If the court and all parties to the proceeding and their
7 attorneys agree to the admissibility of the report or reports, the report or reports
8 shall be admitted into evidence and shall be considered by the court or the jury if
9 one is impaneled. The report shall be compiled by at least three (3) individuals,
10 **chosen and appointed by the court,** including a physician, an advanced practice
11 registered nurse, or a physician assistant, a psychologist licensed or certified under
12 the provisions of KRS Chapter 319, and a person licensed or certified as a social
13 worker or an employee of the Cabinet for Health and Family Services who meets
14 the qualifications of KRS 335.080(1)(a), (b), and (c) or 335.090(1)(a), (b), and (c).
15 The social worker shall, when possible, be chosen from among employees of the
16 Cabinet for Health and Family Services residing or working in the area, and there
17 shall be no additional compensation for their service on the interdisciplinary
18 evaluation team.
- 19 (2) At least one (1) person participating in the compilation of the report shall have
20 knowledge of the particular disability which the respondent is alleged to have or
21 knowledge of the skills required of the respondent to care for himself **or herself** and
22 his **or her** estate.
- 23 (3) If the respondent is alleged to be partially disabled or disabled due to mental illness,
24 at least one (1) person participating in the compilation of the interdisciplinary
25 evaluation report shall be a qualified mental health professional as defined in KRS
26 202A.011(12). If the respondent is alleged to be partially disabled or disabled due
27 to an intellectual disability, at least one (1) person participating in the compilation

1 of the evaluation report shall be a qualified professional in the area of intellectual
2 disabilities as defined in KRS 202B.010(12).

- 3 (4) The interdisciplinary evaluation report shall contain:
- 4 (a) A description of the nature and extent of the respondent's disabilities, if any;
 - 5 (b) Current evaluations of the respondent's social, intellectual, physical, and
6 educational condition, adaptive behavior, and social skills. Such evaluations
7 may be based on prior evaluations not more than three (3) months old, except
8 that evaluations of the respondent's intellectual condition may be based on
9 individual intelligence test scores not more than one (1) year old;
 - 10 (c) An opinion as to whether guardianship or conservatorship is needed, the type
11 of guardianship or conservatorship needed, if any, and the reasons therefor;
 - 12 (d) An opinion as to the length of time guardianship or conservatorship will be
13 needed by the respondent, if at all, and the reasons therefor;
 - 14 (e) If limited guardianship or conservatorship is recommended, a further
15 recommendation as to the scope of the guardianship or conservatorship,
16 specifying particularly the rights to be limited and the corresponding powers
17 and duties of the limited guardian or limited conservator;
 - 18 (f) A description of the social, educational, medical, and rehabilitative services
19 currently being utilized by the respondent, if any;
 - 20 (g) A determination whether alternatives to guardianship or conservatorship are
21 available;
 - 22 (h) A recommendation as to the most appropriate treatment or rehabilitation plan
23 and living arrangement for the respondent and the reasons therefor;
 - 24 (i) A listing of all medications the respondent is receiving, the dosage, and a
25 description of the impact of the medication upon the respondent's mental and
26 physical condition and behavior;
 - 27 (j) An opinion whether attending a hearing on a petition filed under KRS

- 1 387.530 would subject the respondent to serious risk of harm;
- 2 (k) The names and addresses of all individuals who examined or interviewed the
3 respondent or otherwise participated in the evaluation; and
- 4 (l) Any dissenting opinions or other comments by the evaluators.
- 5 (5) The evaluation report may be compiled by a community center for mental health or
6 individuals with an intellectual disability, a licensed facility for mentally ill or
7 developmentally disabled persons, if the respondent is a resident of such facility, or
8 a similar agency.
- 9 (6) In all cases where the respondent is a resident of a licensed facility for mentally ill
10 or developmentally disabled persons and the petition is filed by an employee of that
11 facility, the petition shall be accompanied by an interdisciplinary evaluation report
12 prepared by the facility.
- 13 (7) Except as provided in subsection (6) of this section, the court shall order
14 appropriate evaluations to be performed by qualified persons or a qualified agency.
15 The report shall be prepared and filed with the court and copies mailed to the
16 attorneys for both parties at least ten (10) days prior to the hearing. All items
17 specified in subsection (4) of this section shall be included in the report.
- 18 (8) If the person evaluated is a poor person as defined in KRS 453.190, the examiners
19 shall be paid by the county in which the petition is filed upon an order of allowance
20 entered by the court. Payment shall be in an amount which is reasonable as
21 determined by the court, except no payment shall be required of the county for an
22 evaluation performed by a salaried employee of a state agency for an evaluation
23 performed within the course of his or her employment. Additionally, no payment
24 shall be required of the county for an evaluation performed by a salaried employee
25 of a community center for mental health or individuals with an intellectual
26 disability or private facility or agency where the costs incurred by the center,
27 facility, or agency are reimbursable through third-party payors. Affidavits or other

1 competent evidence shall be admissible to prove the services rendered but not to
2 prove their value.

3 (9) The respondent may file a response to the evaluation report no later than five (5)
4 days prior to the hearing.

5 (10) The respondent may secure an independent evaluation. If the respondent is unable
6 to pay for the evaluation, compensation for the independent evaluation may be paid
7 by the county in an amount which is reasonable as determined by the court.

8 ➔Section 6. KRS 387.550 is amended to read as follows:

9 (1) ~~[If the petition is accompanied by an interdisciplinary evaluation report when filed,~~
10 ~~the court shall fix a date and a place for a hearing to be held within thirty (30) days~~
11 ~~after the filing of the petition. If no interdisciplinary evaluation report accompanies~~
12 ~~the petition when filed,]~~The court shall **endeavor to hear the petition expeditiously,**
13 **but in all cases shall** fix a date and a place for a hearing to be held within sixty (60)
14 days after the filing of the petition. The time for a hearing may be extended by the
15 court, on motion of either party, for cause.

16 (2) Notice of the time and place of the hearing shall be given by the clerk of the court
17 not less than fourteen (14) days prior to the hearing to the attorneys for both parties,
18 all persons named in the petition, and the person proposed for appointment as
19 limited guardian, guardian, limited conservator, or conservator.

20 ➔Section 7. KRS 387.560 is amended to read as follows:

21 (1) **The respondent shall be represented by counsel. If private counsel has not**
22 **entered an appearance on behalf of the respondent after ten (10) days**~~[Unless an~~
23 ~~appearance has been entered on behalf of the respondent, the court shall appoint~~
24 ~~counsel for the respondent within one (1) week]~~ of the filing of a petition for
25 determination of disability under KRS 387.500 to 387.770, **the court shall appoint**
26 **an attorney to represent the respondent, who shall serve as the attorney for the**
27 **respondent and not as a guardian ad litem.**

1 (2) Appointed counsel shall be entitled to compensation for services. If counsel is
 2 appointed for a poor person as defined in KRS 453.190, the court shall prescribe
 3 reasonable compensation to be paid by the county in which the proceeding is held
 4 in accordance with the complexity of the issues, the time involved, and other
 5 relevant considerations, except that appointed counsel shall not be compensated at a
 6 rate higher than one hundred fifty dollars (\$150)~~[sixty dollars (\$60)]~~ an hour for
 7 time spent in court and no higher than one hundred dollars (\$100)~~[forty dollars~~
 8 ~~(\$40)]~~ an hour for time spent out of court. If the petition is found to be frivolous or
 9 not brought in good faith, counsel fees shall be charged to the petitioner.

10 **(3) Court-appointed counsel's representation shall terminate upon:**

11 **(a) The retention of private counsel;**

12 **(b) Appointment of a guardian, conservator, limited guardian, or limited**
 13 **conservator; or**

14 **(c) Dismissal of the petition.**

15 **(4)**~~(3)~~ In all proceedings under KRS 387.500 to 387.770, it shall be the duty of the
 16 county attorney to assist the petitioner, to represent the interest of the
 17 Commonwealth, and to assist the court in its inquiry by the presentation of
 18 evidence. **The Commonwealth shall present an opening statement, call witnesses,**
 19 **and make a closing argument to the court, and these duties are not affected by**
 20 **the presence of private counsel in the proceeding, either representing the**
 21 **respondent or the petitioner.**

22 ➔Section 8. KRS 387.570 is amended to read as follows:

23 (1) At a hearing convened pursuant to KRS 387.500 to 387.770 for the purpose of
 24 determining the disability of a respondent, the respondent shall have the right to
 25 present evidence and to confront and cross-examine all witnesses.

26 (2) The hearing may be closed to the public on request of the respondent or his **or her**
 27 counsel.

- 1 (3) The respondent shall have the right to be present at the hearing, and his or her
2 presence may be waived only by his or her failure to appear at the hearing or upon
3 a determination of the court that his or her attendance would subject him or her to
4 serious risk of harm. Such determination shall be evidence only of the respondent's
5 inability to attend the hearing and shall not be considered in determining the need
6 for guardianship or conservatorship.
- 7 (4) The court may remove itself to the place of residence of the respondent to conduct
8 the hearing in the presence of the respondent.
- 9 (5) The burden of proof and burden of presentation of evidence:
10 (a) Shall be on the Commonwealth to prove the disability or partial disability of
11 the respondent by clear and convincing evidence; and
12 (b) Are not affected in any way if the respondent is represented by private
13 counsel or if private counsel has entered an appearance representing the
14 petitioner in the proceeding.
- 15 (6) The respondent will not be determined partially disabled or disabled unless at least
16 one (1) of the persons who participated in the interdisciplinary evaluation required
17 by KRS 387.540 testifies in person at the hearing. This section shall not be
18 interpreted to preclude the respondent from requiring the testimony of more than
19 one (1) person participating in the preparation of the evaluation report.
- 20 (7) The hearing shall be a jury trial, unless:
21 (a) The respondent if present, counsel for the respondent, and the attorney for the
22 Commonwealth agree to a bench trial;
23 (b) No objection to a bench trial is made by an interested person or entity; and
24 (c) The interdisciplinary evaluation report prepared for the proceeding reflects a
25 unanimous consensus of the persons preparing it that the respondent is
26 disabled or partially disabled, the court has reviewed the report, and the court
27 finds no cause to require a jury trial.

1 ➔Section 9. KRS 387.580 is amended to read as follows:

- 2 (1) At a hearing convened under KRS 387.500 to 387.770 for a determination of partial
3 disability or disability, the court, or the jury if one is impaneled, shall:
- 4 (a) Inquire into the nature and extent of the general intellectual functioning of the
5 respondent;
- 6 (b) Inquire into the respondent's capacity to make informed decisions concerning
7 his or her personal affairs and financial resources;
- 8 (c) Determine whether the respondent is disabled, partially disabled, or has no
9 disability in relation to the management of his or her financial resources;
10 ~~and~~
- 11 (d) Determine whether the respondent is disabled, partially disabled, or has no
12 disability in relation to the management of his or her personal affairs; and
- 13 (e) Determine whether any less restrictive alternatives such as an existing
14 power of attorney or court-appointed curator are sufficient to protect the
15 respondent.
- 16 (2) If the respondent is found not to be disabled or partially disabled, the petition shall
17 be dismissed.
- 18 (3) If the respondent is found to be disabled or partially disabled, the court shall, at the
19 same hearing, without a jury, determine:
- 20 (a) The type of guardian, conservator, or guardian and conservator to be
21 appointed;
- 22 (b) The specific legal disabilities to which the respondent is subject, if the
23 respondent has been determined to be partially disabled;
- 24 (c) Whether the respondent retains the right to vote;
- 25 (d) If the respondent has been determined to be partially disabled, the court
26 shall detail in the orders of appointment the specific~~The~~ corresponding
27 powers and duties of the limited guardian, as set forth in Sections 16 and 17

1 of this Act, or limited conservator, as set forth in Sections 20 and 21 of this
2 Act~~if the respondent has been determined to be partially disabled~~;

3 (e) If the respondent has been determined to be partially disabled, the court
4 shall determine whether or not the respondent shall retain the right to drive
5 a vehicle;

6 ~~(f)(e)~~ The individual or entity to be appointed by the court as limited guardian,
7 guardian, limited conservator, or conservator;

8 ~~(g)(f)~~ The individual or entity, if any, to be appointed as standby guardian or
9 conservator; and

10 ~~(h)(g)~~ The duration of the term of guardianship or conservatorship.

11 ➔Section 10. KRS 387.590 is amended to read as follows:

12 (1) (a) If the respondent is found partially disabled in managing his or her personal
13 affairs, but not partially disabled or disabled in managing his or her financial
14 resources, a limited guardian shall be appointed.

15 (b) If the respondent is found partially disabled in managing his or her financial
16 resources, but not partially disabled or disabled in managing his or her
17 personal affairs, a limited conservator shall be appointed.

18 (c) If the respondent is found partially disabled in managing both his or her
19 personal affairs and financial resources, a limited guardian and a limited
20 conservator shall be appointed. The limited guardian and the limited
21 conservator may be the same individual, agency, or corporation.

22 (2) (a) If the respondent is found disabled in managing his or her personal affairs,
23 but not partially disabled or disabled in managing his or her financial
24 resources, a guardian shall be appointed.

25 (b) If the respondent is found disabled in managing his or her financial resources,
26 but not partially disabled or disabled in managing his or her personal affairs, a
27 conservator shall be appointed.

- 1 (c) If the respondent is found disabled in managing both his or her personal
2 affairs and his or her financial resources, a guardian and a conservator shall
3 be appointed. The guardian and the conservator may be the same individual,
4 agency, or corporation.
- 5 (3) The order of appointment of a limited guardian, guardian, limited conservator, or
6 conservator shall specify:
- 7 (a) The type of guardianship, conservatorship, or guardianship and
8 conservatorship to which the protected person~~[ward]~~ is subject;
- 9 (b) The name and address of the limited guardian, guardian, limited conservator,
10 or conservator;
- 11 (c) The name and address of the standby guardian or conservator, if a standby
12 guardian or conservator is designated;
- 13 (d) The specific legal disabilities to which the respondent is subject, if the
14 respondent has been determined to be partially disabled;
- 15 (e) The corresponding powers and duties of the limited guardian or limited
16 conservator, if the respondent has been determined to be partially disabled;
17 and
- 18 (f) The duration of the term of guardianship or conservatorship.
- 19 (4) A limited guardian or limited conservator shall not be appointed for a term greater
20 than five (5) years and may be appointed for a lesser period. A guardian or
21 conservator may be appointed for a period of unlimited duration.
- 22 (5) The judgment of partial disability or disability and the order of appointment shall be
23 filed in the District Court. The judgment shall be indexed by the county clerk in the
24 book in which notices of actions and encumbrances are indexed. Unless such
25 judgment is filed and indexed, it shall not constitute notice to any subsequent bona
26 fide purchaser for value, mortgagee, or encumbrancer.
- 27 (6) If the respondent is determined to be disabled or partially disabled but no limited

1 guardian, guardian, limited conservator, or conservator is appointed at the hearing,
2 the determination shall have no legal effect.

3 (7) The rights of which a protected person~~[ward]~~ is legally deprived upon a
4 determination of disability in managing his or her personal affairs and financial
5 resources include but are not limited to the right to:

6 (a) ~~[The right to]~~Dispose of property;~~;~~

7 (b) Execute instruments;~~;~~

8 (c) Enter into contractual relationships;~~;~~

9 (d) Determine his or her living arrangements;~~;~~

10 (e) Consent to medical procedures;~~;~~~~and~~

11 (f) Obtain a motor vehicle operator's license;~~;~~and

12 (g) Engage private counsel.

13 (8) A protected person~~[ward]~~ shall only be deprived of the right to vote if the court
14 separately and specifically makes a finding on the record as established in KRS
15 387.580(3)(c).

16 ~~(9)~~~~(8)~~ A partially disabled or disabled person for whom a limited guardian, limited
17 conservator, or conservator has been appointed retains all legal and civil rights
18 except those which have by court order been designated as legal disabilities or
19 which have been specifically granted to the limited guardian, limited conservator,
20 or conservator. A person who is partially disabled may be subject to some but not
21 all of the disabilities specified in subsection (7) of this section.

22 ➔Section 11. KRS 387.600 is amended to read as follows:

23 (1) The court may appoint as limited guardian, guardian, limited conservator, or
24 conservator any suitable person or any entity, public or private, capable of
25 conducting an active guardianship or conservatorship program. The court shall not
26 ordinarily or customarily appoint the Cabinet for Health and Family Services or any
27 other person or entity, public or private, that is directly providing services to the

1 respondent unless no other suitable person or entity is available and willing to be
2 appointed. Appointment of the Cabinet for Health and Family Services shall be
3 consistent with the provisions of KRS 210.290.

4 (2) Prior to the appointment, the court shall make a reasonable effort to question the
5 respondent concerning his or her preference regarding the person or entity to be
6 appointed limited guardian, guardian, limited conservator, or conservator, and any
7 preference indicated shall be given due consideration. If the respondent has
8 designated another as his or her ~~attorney in fact or~~ agent by executing a power of
9 attorney in writing, or has had an existing curator, that designation shall be treated
10 as an indication of the respondent's preference as to the person or entity to be
11 appointed as his or her limited guardian, guardian, limited conservator, or
12 conservator, and that preference shall be given due consideration. The court shall
13 appoint the person or entity best qualified and willing to serve.

14 ➔Section 12. KRS 387.620 is amended to read as follows:

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

18 (a) Termination or modification of an order of partial disability or disability;

19 (b) Removal and/or replacement of a limited guardian, guardian, limited
20 conservator or conservator; or

21 (c) Renewal of the appointment of a limited guardian, guardian, limited
22 conservator, or conservator.

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

24 (a) The name and address of the protected person ~~[ward]~~;

25 (b) The name and address of the limited guardian, guardian, limited conservator,
26 or conservator;

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

- 1 (d) The names and addresses of the protected person's[ward's] next of kin, if
2 known;
- 3 (e) The name and address of the individual or facility, if any, having custody of
4 the protected person[ward];
- 5 (f) The relief requested; and
- 6 (g) The facts and reasons supporting the request.
- 7 (3) A request under subsection (1) of this section, if made by the protected
8 person[ward], may be communicated to the court by any means, including, but not
9 limited to, oral communication or informal letter. If such a request is communicated
10 by means other than a petition, the court shall appoint a suitable person who may,
11 but need not be, an employee of the state, county, or court to prepare a written
12 petition to be filed with the court within seven (7) days following the appointment.
13 *A protected person may retain private counsel to assist in the filing of a petition*
14 *or request under this section. Alternately, upon request to the court, the protected*
15 *person is entitled to counsel appointed on his or her behalf to assist in the filing*
16 *of the petition.*
- 17 (4) Within thirty (30) days after the filing of a petition, the court shall conduct a
18 hearing at which the protected person[ward] shall be entitled to counsel. The time
19 for a hearing may be extended by the court, on motion of either party, for cause.
20 Notice of the time and place of the hearing shall be given by the clerk of the court
21 not less than fourteen (14) days prior to the hearing to both parties and all persons
22 named in the petition. The petitioner shall, upon his or her motion, be entitled to
23 have the motion for termination or modification determined by a jury.
- 24 (5) At the request of any party or on its own initiative, the court may order an
25 interdisciplinary evaluation of the protected person[ward]. The time period in
26 which the court must review a petition may be extended for an appropriate period of
27 time if an evaluation is ordered by the court. The interdisciplinary evaluation report

1 may be filed as a single or joint report of the interdisciplinary evaluation team, or it
2 may otherwise be constituted by the separate reports filed by each individual of the
3 team. If the court and all parties to the proceeding and their attorneys agree to the
4 admissibility of the report or reports, the report or reports shall be admitted into
5 evidence and shall be considered by the court.

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

9 (a) Dismiss the petition;

10 (b) Remove the guardian or conservator and dissolve the guardianship or
11 conservatorship order;

12 (c) Remove the limited guardian, guardian, limited conservator, or conservator
13 and appoint a successor;

14 (d) Modify the original guardianship or conservatorship order; or

15 (e) Make any other order which the court deems appropriate and in the best
16 interest of the ***protected person***~~[ward]~~.

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

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

25 ➔Section 13. KRS 387.740 is amended to read as follows:

26 (1) The court may exercise the powers of a limited guardian or limited conservator or
27 may appoint an individual or agency to exercise such powers before or during the

1 pendency of a proceeding for a determination of partial disability or disability or an
 2 appeal therefrom, if it appears that there is danger of serious impairment to the
 3 health or safety of the respondent or damage or dissipation to his or her property if
 4 immediate action is not taken.

5 (2) Prior to a hearing on the need for an emergency appointment of a limited guardian
 6 or limited conservator, a petition shall be filed by any person or entity which sets
 7 forth the following:

- 8 (a) The name, age, and address of the respondent;
- 9 (b) The danger alleged to be imminent;
- 10 (c) The type of appointment and the protection and assistance requested;
- 11 (d) The facts and reasons supporting the request;
- 12 (e) The name, address, and qualifications of the proposed limited guardian or
 13 limited conservator, if any;
- 14 (f) The name, address, and interest of the petitioner;
- 15 (g) The names and addresses of the respondent's next of kin, including but not
 16 limited to spouse, children, grandchildren, or parents, if known;
- 17 (h) The name and address of the individual or facility, if any, having custody of
 18 the respondent; ~~and~~
- 19 (i) The name and address of the petitioner's attorney, if any;
- 20 (j) The name and address of any person or entity appointed by the respondent
 21 as respondent's agent under a durable power of attorney or as respondent's
 22 health care surrogate under an advanced directive;
- 23 (k) The name and address of any person or entity appointed curator of the
 24 respondent under KRS 387.320, if known, and
- 25 (L)(i) The date of filing of the petition for determination of disability or partial
 26 disability.

27 (3) (a) The court shall review any and all petitions for an emergency appointment of

- 1 a limited guardian or limited conservator without delay and not more than one
2 (1) week after the petition is filed. The circuit clerk in the county in which the
3 petition is filed shall accept all petitions and the Commonwealth shall not
4 exclude any petition filed under this section from presentation to the court.
5 Within one (1) week of the filing of a petition pursuant to this section, the
6 court shall conduct a hearing at which the respondent shall be entitled to
7 counsel. *Court-appointed counsel shall be withdrawn immediately if the*
8 *respondent hires private counsel who enters an appearance on his or her*
9 *behalf.*
- 10 (b) Notice of the time and place of the hearing shall be given not less than forty-
11 eight (48) hours prior to the hearing to all persons named in the petition, *the*
12 *attorney for the respondent,* the petitioner, and the Commonwealth unless
13 waived in writing or on the record.
- 14 (4) The Commonwealth shall present evidence at the hearing. The petitioner shall have
15 the right to present evidence in support of the petition at the hearing in addition to
16 any evidence presented by the Commonwealth, and shall have the right to cross-
17 examine witnesses.
- 18 (5) The burden shall be on the Commonwealth and the petitioner to prove by clear and
19 convincing evidence the need for the emergency appointment of a limited guardian
20 or conservator. *The retention of private counsel by the petitioner or the*
21 *respondent does not change the burden of the Commonwealth.*
- 22 (6) If the court exercises the powers of a limited guardian or limited conservator or
23 appoints another to do so in an emergency situation as set forth in subsection (1) of
24 this section, the court shall state on the record findings of fact as to the danger
25 determined to be imminent, the sources relied on in arriving at such determination,
26 the type of assistance to be provided, and the powers and duties of the emergency
27 guardian or conservator. The authority of the guardian or conservator shall expire

1 upon resolution of the appeal or action.

2 (7) The appointment of an emergency guardian or conservator does not prohibit the
3 respondent from retaining counsel to represent him or her in the disability trial.

4 (8) The authority of the emergency guardian or conservator:

5 (a) Shall expire upon resolution of the disability proceeding or after sixty (60)
6 days, whichever occurs sooner unless the court grants an extension;

7 (b) May extend for one (1) additional sixty (60) day term upon request of the
8 emergency guardian or conservator, provided the court determines the
9 emergency situation has not yet been resolved or is likely to continue until
10 the hearing for determination of the respondent's disability; and

11 (c) Shall expire no later than one hundred twenty (120) days after appointment.

12 (9) The emergency guardian or conservator shall file a report within fourteen (14)
13 days of appointment describing what actions he or she has taken to resolve the
14 emergency situation.

15 ➔SECTION 14. A NEW SECTION OF KRS 387.500 TO 387.770 IS CREATED
16 TO READ AS FOLLOWS:

17 (1) After the appointment of a guardian, conservator, limited conservator, or limited
18 guardian, the court may, upon request of the protected person's spouse or other
19 interested party, address the needs of the marital parties, including but not limited
20 to:

21 (a) Division of tangible personal property;

22 (b) Division of bank accounts, investment assets, and other financial holdings;
23 and

24 (c) A spousal allowance to provide for the support of either the protected
25 person or his or her spouse.

26 (2) In making such a determination under this section, the court shall consider:

27 (a) The respective care needs of the parties;

1 (b) The care available to each of the parties, including means-tested benefits;

2 (c) The incomes of the parties;

3 (d) The length of the marriage; and

4 (e) Support for any minor or disabled children.

5 (3) If a protected person or his or her spouse is applying for means-tested benefits,
6 including Medicaid for long-term care, the court may review and approve any
7 plan for the preservation of assets, including but not limited to:

8 (a) Funding trusts for the protected person or his or her spouse or disabled
9 child;

10 (b) Gifting;

11 (c) Purchase of assets;

12 (d) Purchase of a Medicaid-compliant annuity;

13 (e) Structure of a Medicaid-compliant promissory note; or

14 (f) Other appropriate planning mechanisms.

15 ➔SECTION 15. A NEW SECTION OF KRS 387.500 TO 387.770 IS CREATED
16 TO READ AS FOLLOWS:

17 (1) The court may at any time appoint a guardian ad litem for the respondent if the
18 court determines that his or her interests otherwise would not be adequately
19 represented.

20 (2) The guardian ad litem may not be the same individual as the attorney
21 representing the respondent.

22 (3) The court shall state the duties of the guardian ad litem and the reasons for the
23 appointment.

24 (4) The guardian ad litem shall file a report with recommendations with the court,
25 which shall be retained as part of the record.

26 (5) Any attorney serving as a guardian ad litem shall be entitled to compensation in
27 the same manner in which an attorney for the respondent is compensated under

1 **subsection (2) of Section 7 of this Act.**

2 ➔Section 16. KRS 387.640 is amended to read as follows:

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

5 (1) **Ensure**~~[Assure]~~ that the personal, civil, and human rights of the **protected**
6 **person**~~[ward]~~ are protected; and

7 (2) Encourage the **protected person**~~[ward]~~ to:

8 (a) Participate to the maximum extent of his **or her** abilities in all decisions which
9 affect him **or her**;

10 (b) Act in his **or her** own behalf on all matters in which he **or she** is able to do so;
11 and

12 (c) Develop or regain, to the maximum extent possible, his **or her** capacity to
13 meet the essential requirements for his **or her** physical health or safety, and, if
14 impaired, his **or her** capacity to manage his **or her** financial resources.

15 ➔Section 17. KRS 387.650 is amended to read as follows:

16 The court may assign to a limited guardian any portion of the powers and duties specified
17 in KRS 387.660. The court may assign other duties as are necessary to enhance the
18 **protected person's**~~[ward's]~~ safety and well being. A limited guardian shall comply with
19 the reporting requirements specified by KRS 387.670 which pertain to his **or her** powers
20 and duties as specified by the court, provided that all reports submitted shall include the
21 information required by paragraphs (d) and (f) of KRS 387.670(1).

22 ➔Section 18. KRS 387.660 is amended to read as follows:

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

25 (1) To establish the **protected person's**~~[ward's]~~ place of abode within the state, except
26 that, if at any time a guardian places a **protected person**~~[ward]~~ in a licensed
27 residential facility for developmentally disabled persons, the guardian shall, within

1 thirty (30) days of such placement, file with the court notice of the placement,
2 stating with specificity the reasons for such placement, and an interdisciplinary
3 evaluation report detailing the social, psychological, medical or other
4 considerations on which such placement is predicated, a description of the treatment
5 or habilitation programs which will benefit the protected person~~[ward]~~ as a result of
6 such placement, and a determination that such placement will provide appropriate
7 treatment in the least restrictive available treatment and residential program. For
8 purposes of this subsection, the interdisciplinary evaluation report may be one
9 performed within two (2) months prior to the placement for purposes of
10 determining whether such placement is necessary and appropriate, or may be an
11 evaluation and assessment provided by the residential facility immediately after
12 placement. Notice to the court shall not be required where the protected
13 person~~[ward]~~ is transferred from one licensed residential facility to another;

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

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

25 (4) To act with respect to the protected person~~[ward]~~ in a manner which limits the
26 deprivation of civil rights and restricts his or her personal freedom only to the
27 extent necessary to provide needed care and services to him or her; and

1 (5) To expend sums from the financial resources of the protected person^[ward]
2 reasonable and necessary to carry out the powers and duties assigned to him or her
3 by the court.

4 If a separate limited conservator or conservator has been appointed for the protected
5 person^[ward], the expenditure of funds by the limited guardian shall be consistent with
6 the duties assigned to and procedures and policies established by such limited conservator
7 or conservator. Conflicts arising between a limited guardian and a limited conservator or
8 conservator regarding the expenditure of funds which are unable to be otherwise resolved
9 shall be submitted to the court for resolution.

10 ➔Section 19. KRS 387.670 is amended to read as follows:

11 (1) A guardian shall file with the court at least annually a verified report stating:

- 12 (a) The protected person's^[ward's] current mental, physical, and social condition;
- 13 (b) The address of every residence of the protected person^[ward] during the
14 reporting period and length of stay at each residence;
- 15 (c) A summary of the medical, social, educational, vocational, and other
16 professional services received by the protected person^[ward] during the
17 reporting period;
- 18 (d) An outline of the guardian's visits with and activities on behalf of the
19 protected person^[ward];
- 20 (e) A recommendation as to the need for continued guardianship;
- 21 (f) A statement signed by the standby guardian, if one has been appointed, that
22 the standby guardian continues to be willing to serve in the event of the death,
23 resignation, removal, or incapacity of the guardian; and
- 24 (g) Other information requested by the court or useful in the opinion of the
25 guardian.

26 (2) For the purpose of filing the report required by subsection (1) of this section, the
27 guardian shall be given access to records pertaining to the protected person^[ward]

1 held by public or private agencies which contain information necessary for the
2 guardian to perform his or her duties.

3 (3) The court shall review the report required in subsection (1) of this section and take
4 whatever action it considers necessary to enhance the well-being of the protected
5 person^[ward].

6 ➔Section 20. KRS 387.680 is amended to read as follows:

7 It shall be the general duty of the limited conservator or conservator to carry out,
8 diligently and in good faith, the specific duties and powers assigned by the court and to:

9 (1) Manage or assist in managing those financial resources placed under his or her
10 supervision and/or control as would a prudent person managing his or her own
11 resources, including establishing or placing resources in a trust, and, if a
12 conservator has special skills or is named conservator on the basis of
13 representations of special skills or expertise, he or she shall use those skills; and

14 (2) Encourage the protected person^[ward] to:

15 (a) Participate, to the maximum extent of his abilities, in all decisions which
16 affect him or her;

17 (b) Act on his or her own behalf on all matters in which he or she is able to do
18 so; and

19 (c) Develop or regain, to the maximum extent possible, his or her capacity to
20 manage his or her financial resources and, if impaired, his or her capacity to
21 meet the essential requirements for his or her physical health or safety.

22 ➔Section 21. KRS 387.690 is amended to read as follows:

23 (1) A limited conservator or conservator shall expend or distribute, or authorize the
24 expenditure or distribution of, or assist in the expenditure or distribution of, the
25 principal or income from the financial resources placed under his or her supervision
26 and control to ensure^[assure] that:

27 (a) The essential requirements for the physical health or safety of the protected

1 person^[ward] are met;

2 (b) The rights of the protected person^[ward] are protected;

3 (c) The financial resources of the protected person^[ward] which are subject to the
4 conservatorship are prudently managed;

5 (d) The protected person^[ward] has the opportunity to develop or regain the
6 capacity to perform the functions listed in paragraphs (a), (b), and (c) of
7 subsection (2) of KRS 387.680; and

8 (e) The limited guardian or guardian for the protected person^[ward], if any, is
9 able to carry out the duties and powers assigned to him or her by the court.

10 (2) In performing his or her duties, the limited conservator or conservator shall
11 consider:

12 (a) The size of the financial resources under the limited conservator's or
13 conservator's supervision or control;

14 (b) The probable duration of the conservatorship;

15 (c) The likelihood that the protected person^[ward] may be able to manage his or
16 her financial resources in the future;

17 (d) The accustomed standard of living of the protected person^[ward];

18 (e) Other funds or resources used for the support of the protected person^[ward]
19 which have not been placed under the control or supervision of the limited
20 conservator or conservator; and

21 (f) The requests of the protected person^[ward] and the protected
22 person's^[ward's] limited guardian or guardian, if any.

23 (3) In addition to the duties and powers listed in subsection (1) of this section, the court
24 may assign to a limited conservator any of the duties and powers listed in KRS
25 387.700 which the partially disabled person lacks the ability to perform.

26 ➔Section 22. KRS 387.700 is amended to read as follows:

27 (1) A conservator has all of the powers conferred herein and any additional powers

1 conferred by law on trustees in this state. The conservator may take possession of
2 the protected person's^[ward's] real and personal property, and of all rents, incomes,
3 and benefits therefrom, whether accruing before or after his or her appointment,
4 and of the proceeds arising from the sale, mortgage, lease or exchange thereof.
5 Subject to such possession the title of all such estate and to the increment and
6 proceeds thereof shall be to the protected person^[ward] and not to the conservator.
7 It is the duty of the conservator to protect and preserve the estate, to retain, sell and
8 invest it as hereinafter provided, prosecute or defend actions, claims or proceedings
9 in any jurisdiction for the protection of the estate's assets, to account for it
10 faithfully, to perform all other duties required of him or her by law, and, at the
11 termination of the conservatorship, to deliver the assets of the protected
12 person^[ward] to the persons lawfully entitled thereto.

13 (2) The conservator shall apply the money and property for the payments of debts,
14 taxes, claims, charges and expenses of the conservatorship and for the support, care,
15 maintenance and education of the protected person^[ward] or his or her dependents.

16 (3) Any sale of realty of a protected person^[ward] shall be as provided in KRS Chapter
17 389A.

18 (4) Any lease of mineral rights, oil and gas rights, or sale of timber owned by a
19 protected person^[ward], or consolidation agreement, as defined by KRS 353.220, to
20 be made on behalf of a protected person^[ward] by a conservator shall require the
21 authorization and order of the District Court of the county where the conservator
22 has qualified. Such order may be given only pursuant to written motion which
23 contains the grounds for the motion and a description of the lease or agreement
24 involved.

25 ➔Section 23. KRS 387.710 is amended to read as follows:

26 (1) Within sixty (60) days of appointment, the limited conservator or conservator shall
27 file with the court a verified inventory of all the property of the protected person

1 ~~ward~~ which has come to his or her possession or knowledge, including a
2 statement of all encumbrances, liens, and other secured claims on any item, any
3 claims against the estate of the protected person~~ward~~, and any cause of action
4 accruing to the protected person~~ward~~. The limited conservator or conservator
5 shall provide a copy thereof to the protected person~~ward~~ if he or she has
6 sufficient mental capacity to understand it.

- 7 (2) (a) A limited conservator or conservator shall file with the court a verified report
8 and financial account biennially within one hundred twenty (120) days after
9 the anniversary date of his or her appointment. The report shall contain:
- 10 1. The present personal status of the protected person~~ward~~ whose estate
11 is managed by the conservator;
 - 12 2. The conservator's plan for preserving and maintaining the estate of
13 which he or she has control or supervision;
 - 14 3. The need for continuation or cessation of the conservatorship; and
15 4. The need for any alteration in the powers of the conservatorship.
- 16 (b) The biennial report shall specify the amount and type of real and personal
17 property received by the conservator and remaining in his or her control or
18 invested by him or her, the nature of such investment, and expenditures made
19 during the preceding year. Upon request of the court, the conservator shall
20 produce for examination any information or documentation which the court
21 may consider relevant to the accounting of the financial and property
22 transactions of the estate.
- 23 (c) If the protected person~~ward~~ has no real property and possesses personal
24 property of two thousand five hundred dollars (\$2,500) or less for any year
25 during the biennial report, the conservator or limited conservator may file an
26 informal biennial financial report attesting to the identity of the protected
27 person's~~ward's~~ financial account and its current balance. If the balance does

1 not exceed two thousand five hundred dollars (\$2,500) for any year of the
2 biennial report, the conservator or limited conservator shall not be required to
3 render to the court a detailed accounting of the expenditures from the fund,
4 unless the court, on its own motion or that of any interested party or
5 individual, deems it necessary to order the conservator or limited conservator
6 to provide a detailed biennial accounting, including the listing of all
7 expenditures for that reporting period.

8 (3) Upon the resignation, removal, or death of a limited conservator or conservator, or
9 on the termination of the conservatorship, the limited conservator or conservator, or
10 his or her personal representative, shall forthwith submit a final report and account
11 to the court and to the former protected person~~[ward]~~ and to the successor limited
12 conservator or conservator, or, if the protected person~~[ward]~~ is deceased, to his or
13 her personal representative, and shall pay over the trust estate to the person entitled
14 thereto. Upon approval of the report and account, the limited conservator or
15 conservator shall be discharged and his or her surety, if any, released.

16 ➔Section 24. KRS 387.750 is amended to read as follows:

17 (1) On appointment of a limited guardian, guardian, limited conservator, or
18 conservator, or at any time thereafter, the court may designate another suitable
19 person or entity to assume the powers and duties assigned to the limited guardian,
20 guardian, limited conservator, or conservator upon his or her death, resignation,
21 removal, or incapacity. Prior to such designation, the individual or entity to be
22 designated shall file with the court a written application stating the name, address,
23 and qualifications of the applicant and his or her relationship, if any, to the
24 respondent.

25 (2) The individual so designated shall file an acceptance with the court within ten (10)
26 days of the death, resignation, or incapacity of his predecessor. Notice shall also be
27 given to the protected person~~[ward]~~ and his or her nearest adult relative. An

1 individual serving on a standby basis may exercise all the powers and duties
2 assigned to his or her predecessor upon filing of his or her acceptance unless
3 otherwise ordered by the court.

4 (3) In an emergency situation and in the absence and unavailability of the initially
5 appointed guardian or conservator, the standby guardian or conservator may
6 temporarily assume the powers and duties of the initially appointed guardian or
7 conservator.

8 ➔Section 25. KRS 387.760 is amended to read as follows:

9 (1) No court costs shall be charged to a respondent or protected person~~[ward]~~ in any
10 proceeding under KRS 387.500 to 387.770, if the respondent or protected
11 person~~[ward]~~ is a poor person as defined in KRS 453.190.

12 (2) Limited guardians, guardians, limited conservators and conservators are entitled to
13 reasonable compensation for services rendered and to reimbursement for reasonable
14 and necessary expenses incurred in the exercise of their assigned guardianship or
15 conservatorship duties and powers. Such compensation and reimbursement shall be
16 paid from the financial resources of the protected person~~[ward]~~ and shall not
17 exceed:

18 (a) A commission of not more than six percent (6%) of the income collected by
19 the fiduciary, payable at the time the income is collected; and

20 (b) Either, but not both, of the following, as elected by the fiduciary:

21 1. An annual commission of three-tenths of one percent (0.3%) of the fair
22 market value of the real and personal property in the care of the
23 fiduciary; or

24 2. An annual commission of not more than six percent (6%) of the fair
25 market value of the principal distributed by the fiduciary, payable at the
26 time the principal is distributed.

27 In the absence of an agreement to the contrary, a commission on income shall be

1 paid out of the income of the estate and a commission on principal shall be paid out
2 of the principal of the estate.

3 (3) Upon submitted proof showing that in the handling of the estate the fiduciary has
4 performed additional and necessary services which have been unusual or
5 extraordinary and not normally incident to the care and management of a similar
6 estate, the court may allow the fiduciary additional compensation as is fair and
7 reasonable for the additional services rendered.

8 ➔Section 26. KRS 216B.303 is amended to read as follows:

9 Every resident in a boarding home, as defined in KRS 216B.300, shall have at least the
10 following rights:

11 (1) Before entering a boarding home, the resident or the resident's guardian, if any,
12 shall be fully informed in writing, as evidenced by the resident's written
13 acknowledgment or that of the resident's guardian, of all services provided by the
14 boarding home and all applicable charges.

15 (2) Before entering a boarding home, the resident or the resident's guardian shall be
16 fully informed in writing, as evidenced by the resident's written acknowledgment or
17 that of the resident's guardian, of all the resident's rights as defined in this section,
18 and a list of any rules established by the boarding home.

19 (3) All residents shall be allowed to exercise their rights as a resident and a citizen, and
20 may voice grievances and recommend changes in policies and services to the
21 boarding home operator and to outside representatives of their choice, free from
22 restraint, interference, coercion, discrimination, or reprisal.

23 (4) All residents shall be free from mental and physical abuse.

24 (5) Each resident may manage the use of his or her personal funds. The boarding home
25 operator shall not require a resident to designate the operator as payee for any
26 benefits received by the resident. However, if the operator accepts the responsibility
27 for managing the resident's personal funds as evidenced by the operator's written

- 1 acknowledgment, proper accounting and monitoring of such funds shall be made.
2 This shall include the operator giving quarterly itemized statements to the resident
3 or the resident's guardian which detail the status of the resident's personal funds and
4 any transactions in which such funds have been received or disbursed. The operator
5 shall return to the resident his or her valuables, personal possessions, and any
6 unused balance of moneys from his or her account at the time the resident leaves
7 the boarding home.
- 8 (6) Residents shall not be required to perform services for the boarding home.
- 9 (7) Residents may associate and communicate privately with persons of their choice,
10 within reasonable hours established by the boarding home, and send and receive
11 personal mail unopened.
- 12 (8) No resident shall be detained against the resident's will. Residents shall be
13 permitted and encouraged to go outdoors and leave the premises as they wish.
- 14 (9) Residents shall be permitted to participate in activities of social, religious, and
15 community groups at their discretion.
- 16 (10) Residents shall be assured of at least visual privacy in multibed rooms and in
17 bathrooms.
- 18 (11) If the resident has been adjudicated wholly mentally disabled in both financial and
19 personal affairs in accordance with KRS 387.590, the resident's guardian shall not
20 place the protected person~~[ward]~~ in a boarding home.
- 21 (12) Each resident shall be treated with consideration, respect, and full recognition of his
22 or her dignity and individuality.
- 23 (13) Residents shall have access to a telephone at a convenient location within the
24 boarding home for making and receiving telephone calls subject to reasonable rules
25 established by the boarding home.
- 26 (14) Residents have the right to have private meetings with inspectors representing the
27 Cabinet for Health and Family Services.

- 1 (15) Each resident and his or her guardian has the right to have access to all inspection
- 2 reports on the boarding home.