

1 AN ACT relating to the care and treatment of individuals with mental illness.

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

3 ➔Section 1. KRS 202A.011 is amended to read as follows:

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

5 (1) "Authorized staff physician" means a physician who is a bona fide member of the
6 hospital's medical staff;

7 (2) "Benefit from treatment" means the desired outcomes of treatment in a
8 psychiatric hospital for a person who has been diagnosed with mental illness,
9 including but not limited to:

10 (a) Symptom management and increased stability;

11 (b) A lessening of irrational thoughts and behaviors;

12 (c) Reduced risk of harm;

13 (d) Acquisition of skills for self-care and for interacting and living in the
14 community; or

15 (e) Willingness to continue psychiatric care after discharge;

16 (3) "Cabinet" means the [Kentucky]Cabinet for Health and Family Services;

17 (4) "Contract mental health evaluator" means a qualified mental health
18 professional who is employed by or under contract with a community mental health
19 center, crisis stabilization unit, mental institution, or any other facility designated by
20 the secretary to provide mental health evaluations to determine whether an
21 individual meets the criteria for involuntary hospitalization;

22 (5) "Danger" or "threat of danger to self, family, or others" means:

23 (a) Substantial physical harm or threat of substantial physical harm upon self,
24 family, or others; or;

25 (b) Due to severe mental illness:

26 1. A person without the care, supervision, or continued assistance of
27 others would be unable to:

1 a. Exercise self-control, judgment, and discretion in the course of
2 his or her affairs or social relations; or

3 b. Provide himself or herself~~including actions which deprive self~~,
4 family, or others of the basic means of survival, including
5 provision for reasonable shelter, food, ~~or~~clothing, necessary
6 medical treatment, or protection from harm or injury; and

7 2. There is a reasonable probability that the person will suffer
8 debilitation, disease, substantial physical injury, or death unless
9 prompt and adequate treatment is provided;

10 (6)~~(5)~~ "Forensic psychiatric facility" means a mental institution or facility, or part
11 thereof, designated by the secretary for the purpose and function of providing
12 inpatient evaluation, care, and treatment for ~~mentally ill persons or~~ individuals
13 with an intellectual disability or mental illness, who have been charged with or
14 convicted of a felony;

15 (7)~~(6)~~ "Hospital" means:

16 (a) A state mental hospital or institution or other licensed public or private
17 hospital, institution, health-care facility, or part thereof, approved by the
18 cabinet~~Kentucky Cabinet for Health and Family Services~~ as equipped to
19 provide full-time residential care and treatment for ~~mentally ill persons or~~
20 ~~individuals with an intellectual disability~~ or mental illness; or
21 (b) A hospital, institution, or health-care facility of the government of the United
22 States equipped to provide residential care and treatment for ~~mentally ill~~
23 ~~persons or~~ individuals with an intellectual disability or mental illness;

24 (8) "Individual with a mental illness" means a person with substantially impaired
25 capacity to use self-control, judgment, or discretion in the conduct of the person's
26 affairs and social relations, associated with maladaptive behavior or recognized
27 emotional symptoms where impaired capacity, maladaptive behavior, or

1 *emotional symptoms can be related to physiological, psychological, or social*
2 *factors:*

3 ~~(9){(7)}~~ "Judge" means any judge or justice of the Court of Justice or a trial
4 commissioner of the District Court acting under authority of SCR 5.030;

5 ~~(10){(8)}~~ "Least restrictive alternative mode of treatment" means that treatment which
6 will give ~~an~~~~a mentally ill~~ individual *with a mental illness* a realistic opportunity
7 to improve the individual's level of functioning, consistent with accepted
8 professional practice in the least confining setting available;{

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

14 ~~(11){(10)}~~ "Patient" means a person under observation, care, or treatment in a hospital
15 pursuant to the provisions of this chapter;

16 ~~(12){(11)}~~ "Petitioner" means a person who institutes a proceeding under this chapter;

17 ~~(13){(12)}~~ "Psychiatric facility" means a crisis stabilization unit or any facility licensed
18 by the cabinet and which provides inpatient, outpatient, psychosocial rehabilitation,
19 emergency, and consultation and education services for the diagnosis and treatment
20 of persons who have a mental illness;

21 ~~(14){(13)}~~ "Qualified mental health professional" means:

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

25 (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or
26 osteopathy, or a medical officer of the government of the United States while
27 engaged in the practice of official duties, who is certified or eligible to apply

- 1 for certification by the American Board of Psychiatry and Neurology, Inc.;
- 2 (c) A psychologist with the health service provider designation, a psychological
3 practitioner, a certified psychologist, or a psychological associate, licensed
4 under the provisions of KRS Chapter 319;
- 5 (d) A licensed registered nurse with a master's degree in psychiatric nursing from
6 an accredited institution and two (2) years of clinical experience with
7 individuals with mental illness~~mentally ill persons~~, or a licensed registered
8 nurse, with a bachelor's degree in nursing from an accredited institution, who
9 is certified as a psychiatric and mental health nurse by the American Nurses
10 Association and who has three (3) years of inpatient or outpatient clinical
11 experience in psychiatric nursing and is currently employed by a hospital or
12 forensic psychiatric facility licensed by the Commonwealth or a psychiatric
13 unit of a general hospital or a private agency or company engaged in the
14 provision of mental health services or a regional community program for
15 mental health and individuals with an intellectual disability;
- 16 (e) A licensed clinical social worker licensed under the provisions of KRS
17 335.100, or a certified social worker licensed under the provisions of KRS
18 335.080 with three (3) years of inpatient or outpatient clinical experience in
19 psychiatric social work and currently employed by a hospital or forensic
20 psychiatric facility licensed by the Commonwealth or a psychiatric unit of a
21 general hospital or a private agency or company engaged in the provision of
22 mental health services or a regional community program for mental health and
23 individuals with an intellectual disability;
- 24 (f) A marriage and family therapist licensed under the provisions of KRS
25 335.300 to 335.399 with three (3) years of inpatient or outpatient clinical
26 experience in psychiatric mental health practice and currently employed by a
27 hospital or forensic facility licensed by the Commonwealth, a psychiatric unit

1 of a general hospital, a private agency or company engaged in providing
2 mental health services, or a regional community program for mental health
3 and individuals with an intellectual disability;

4 (g) A professional counselor credentialed under the provisions of KRS Chapter
5 335.500 to 335.599 with three (3) years of inpatient or outpatient clinical
6 experience in psychiatric mental health practice and currently employed by a
7 hospital or forensic facility licensed by the Commonwealth, a psychiatric unit
8 of a general hospital, a private agency or company engaged in providing
9 mental health services, or a regional community program for mental health
10 and individuals with an intellectual disability; or

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

1. Provides documentation that he or she has completed a psychiatric
2. residency program for physician assistants;
 3. Has completed at least one thousand (1,000) hours of clinical experience
4. under a supervising physician, as defined by KRS 311.840, who is a
5. psychiatrist and is certified or eligible for certification by the American
6. Board of Psychiatry and Neurology, Inc.;
 7. Holds a master's degree from a physician assistant program accredited
8. by the Accreditation Review Commission on Education for the
9. Physician Assistant or its predecessor or successor agencies, is
10. practicing under a supervising physician as defined by KRS 311.840,
11. and:
 12. a. Has two (2) 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

hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability for at least two (2) years; or

4. Holds a bachelor's degree, possesses a current physician assistant certificate issued by the board prior to July 15, 2002, is practicing under a supervising physician as defined by KRS 311.840, and:
 - a. Has three (3) years of clinical experience in the assessment, evaluation, and treatment of mental disorders; or
 - b. Has been employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability for at least three (3) years;

16 **(15)****[(14)]** "Residence" means legal residence as determined by applicable principles
17 governing conflicts of law;

18 **(16)**[(15)] "Respondent" means a person alleged in a hearing under this chapter to be ~~a~~
19 ~~mentally ill person or an~~ individual with an intellectual disability **or mental**
20 **illness;**~~[and]~~

21 **(17)**~~(16)~~ "Secretary" means the secretary of the Cabinet for Health and Family
22 Services; ***and***

23 (18) "*Severe mental illness*":

24 (a) Means a mental illness or disorder that impairs or impedes functioning in
25 one (1) or more major areas of living and is unlikely to improve without
26 treatment, services, or supports, as described in the most recent edition of
27 the Diagnostic and Statistical Manual of Mental Disorders published by the

1 American Psychiatric Association; and

2 (b) Does not include a primary diagnosis of Alzheimer's disease, dementia, or
3 substance use disorder.

4 ➔ Section 2. KRS 202A.028 is amended to read as follows:

5 (1) Following an examination by a qualified mental health professional and a
6 certification by that professional that the person meets the criteria for involuntary
7 hospitalization, a judge may order the person hospitalized for a period not to exceed
8 seventy-two (72) hours, excluding weekends and holidays. For the purposes of this
9 section, the qualified mental health professional shall be:

10 (a) A staff member of a regional community program for mental health or
11 individuals with an intellectual disability;
12 (b) An individual qualified and licensed to perform the examination through the
13 use of telehealth services; or
14 (c) The psychiatrist ordered, subject to the court's discretion, to perform the
15 required examination.

16 (2) Any person who has been admitted to a hospital under subsection (1) of this section
17 shall be released from the hospital within seventy-two (72) hours, excluding
18 weekends and holidays, unless further held under the applicable provisions of this
19 chapter.

20 (3) (a) Upon motion of the Commonwealth, any person who is subject to a court
21 order for admission to a hospital under subsection (1) of this section and
22 found by a qualified mental health professional to not meet the criteria for
23 involuntary hospitalization shall be admitted to a hospital pending an
24 emergency hearing to be held within forty-eight (48) hours, excluding
25 weekends and holidays, to determine if the court reasonably believes that:

26 1. The person presents an imminent threat of danger to self, family, or
27 others:

- 1 2. The person has been the subject of two (2) or more proceedings under
2 this chapter within the previous six (6) months; and
3 3. Probable cause would be found at a preliminary hearing under
4 Section 3 of this Act.

5 (b) If the court:

- 6 1. Reasonably believes that the person presents an imminent threat of
7 danger to self, family, or others, the person has been the subject of two
8 (2) or more proceedings under this chapter within the previous six (6)
9 months, and that probable cause would be found at a preliminary
10 hearing under Section 3 of this Act:

- 11 a. The person shall not be released from hospitalization before the
12 preliminary hearing under Section 3 of this Act; and

- 13 b. i. The court shall order an additional examination by a
14 qualified mental health professional as required under
15 subsection (8) of Section 3 of this Act.

- 16 ii. The qualified mental health professional shall be a
17 physician unless a physician has already performed an
18 examination; or

19 2. Does not reasonably believe that:

- 20 a. The person presents an imminent threat of danger to self, family,
21 or others;

- 22 b. The person has been the subject of two (2) of more proceedings
23 under this chapter within the previous six (6) months; and

- 24 c. That probable cause would be found at a preliminary hearing
25 under Section 3 of this Act;

26 the person shall be released from hospitalization.

27 (4) (a) Any person admitted to a hospital under subsection (1) of this section or

1 transferred to a hospital while ordered hospitalized under subsection (1) of
2 this section shall be transported from the person's home county by the sheriff
3 of that county or other peace officer as ordered by the court.

17 **(b)** The transportation cost of transporting the patient to the patient's county of
18 discharge when performed by a peace officer, ambulance service, or other
19 private agency on contract with the cabinet shall be paid by the cabinet in
20 accordance with an administrative regulation *promulgated*~~[issued]~~ by the
21 cabinet *in accordance with*~~[pursuant to]~~ KRS Chapter 13A.

22 ~~(6)~~(5) A person who has been held under subsection (1) of this section shall not
23 be held in jail pending evaluation and transportation to the hospital.

24 (7) A court order under subsection (1) of this section shall expire after thirty (30)
25 *days if not served upon the person subject to the order.*

26 ➔Section 3. KRS 202A.051 is amended to read as follows:

27 (1) Proceedings for *up to* sixty (60) days or *up to* three hundred

27 (1) Proceedings for up to sixty (60) days or up to three hundred sixty (360) days of

- 1 involuntary hospitalization of an individual shall be initiated by the filing of a
2 verified petition in District Court.
- 3 (2) The petition and all subsequent court documents shall be entitled: "In the interest of
4 (name of respondent)."
- 5 (3) The petition shall be filed by a qualified mental health professional, peace officer,
6 county attorney, Commonwealth's attorney, spouse, relative, friend, or guardian of
7 the individual concerning whom the petition is filed, or any other interested person.
- 8 (4) The petition shall set forth:
- 9 (a) Petitioner's relationship to the respondent;
- 10 (b) Respondent's name, residence, and current location, if known;
- 11 (c) The name and residence of respondent's parents, if living and if known, or
12 respondent's legal guardian, if any and if known;
- 13 (d) The name and residence of respondent's husband or wife, if any and if known;
- 14 (e) The name and residence of the person having custody of the respondent, if
15 any, or if no such person is known, the name and residence of a near relative
16 or that the person is unknown; **and**
- 17 (f) Petitioner's belief, including the factual basis therefor, that the respondent is
18 **an individual with a mental illness** [mentally ill] and presents a danger or
19 threat of danger to self, family or others if not restrained; **and**
- 20 (g) ~~If the petition seeks a three hundred sixty (360) day involuntary~~
21 ~~hospitalization of the respondent, the petition shall further set forth that the~~
22 ~~respondent has been hospitalized in a hospital or a forensic psychiatric facility~~
23 ~~for a period of thirty (30) days under the provisions of this chapter or KRS~~
24 ~~Chapter 504 within the preceding six (6) months].~~
- 25 (5) **A petition brought under this section shall seek up to a three hundred sixty (360)**
26 **day involuntary hospitalization of the individual if the respondent has been**
27 **hospitalized in a hospital or a forensic psychiatric facility for a period of thirty**

1 (30) days under the provisions of this chapter or KRS Chapter 504 within the
2 preceding six (6) months.

3 (6) Upon receipt of the petition, the court shall examine the petitioner under oath as to
4 the contents of the petition. If the petitioner is a qualified mental health
5 professional, the court may dispense with the examination.

6 (7)~~(6)~~ If after reviewing the allegations contained in the petition and examining the
7 petitioner under oath, it appears to the court that there is probable cause to believe
8 the respondent should be involuntarily hospitalized, the court shall, unless either the
9 court or one (1) of the parties objects, implement the procedures provided in KRS
10 202A.028 and order the individual to be examined without unnecessary delay by a
11 qualified mental health professional. If the person is not being hospitalized~~held~~
12 under the provisions of this chapter, the court may order that the sheriff of the
13 county or other peace officer transport the person to a hospital or psychiatric facility
14 designated by the cabinet for the purpose of the evaluation. The sheriff or other
15 peace officer may, upon agreement of a person authorized by the peace officer,
16 authorize the cabinet, a private agency on contract with the cabinet, or an
17 ambulance service designated by the cabinet to transport the person to a hospital or
18 psychiatric facility. Following that, the procedures as set forth in KRS 202A.028
19 shall be carried out. Otherwise, the court shall:

- 20 (a) Set a date for a preliminary hearing within six (6) days from the date of
21 hospitalization~~holding~~ the person under the provisions of this
22 section,~~section (excluding holidays and weekends.)~~ to determine if there is
23 probable cause to believe the person should be involuntarily hospitalized;
24 (b) Notify the respondent, the legal guardian, if any, and if known, and the
25 spouse, parents, or nearest relative or friend of the respondent concerning the
26 allegations and contents of the petition and the date and purpose of the
27 preliminary hearing; and the name, address, and telephone number of the

1 attorney appointed to represent the respondent; and

- 2 (c) Cause the respondent to be examined without unnecessary delay by two (2)
3 qualified mental health professionals, at least one (1) of whom is a physician.
4 The qualified mental health professionals shall certify within twenty-four (24)
5 hours, ~~{excluding weekends and holidays.}~~ their findings.

- 6 (8)[(7)] (a) If the respondent is being presently hospitalized[held] under the
7 provisions of this chapter, the court may order further
8 hospitalization[holding] of the respondent to accomplish the examination
9 ordered by the court.

- 10 (b) If the respondent is not being presently hospitalized[held] under the
11 provisions of this chapter, the court may order that the sheriff of the county or
12 a peace officer transport the respondent to a hospital or a psychiatric facility
13 designated by the cabinet so that the respondent shall be examined without
14 unnecessary delay by two (2) qualified mental health professionals, at least
15 one (1) of whom is a physician. The sheriff or other peace officer may
16 authorize, upon agreement of a person authorized by the peace officer, the
17 cabinet, a private agency on contract with the cabinet, or an ambulance
18 service designated by the cabinet to transport the person to a hospital or
19 psychiatric facility.

- 27 (b) If a respondent who has been summoned fails to appear for such examination

1 or at the preliminary hearing, the court may order that the sheriff of the county
2 or a peace officer transport the respondent to a hospital or psychiatric facility
3 designated by the cabinet for the purpose of an evaluation.

4 (10)(9) If upon completion of the preliminary hearing, the court finds:

5 (a) 1. There is probable cause to believe the respondent should be
6 involuntarily hospitalized, the court shall order a final hearing within
7 twenty-one (21) days from the date of hospitalization of [holding] the
8 respondent under ~~the provisions of~~ this section to determine if the
9 respondent should be involuntarily hospitalized.

10 2. If the court finds there is probable cause under subparagraph 1. of
11 this paragraph, the court may order the hospital to notify the court
12 and the Commonwealth if the hospital releases the respondent prior to
13 the final hearing under subsection (11) of this section.

14 3. Upon notification of early release under subparagraph 2. of this
15 paragraph, the court upon its own motion or upon motion of the
16 Commonwealth may request a discharge review hearing to be
17 conducted within forty-eight (48) hours. If upon completion of the
18 discharge review hearing, the court finds that the respondent is an
19 individual with a mental illness, who presents a danger or threat of
20 danger to self, family, or others as a result of the mental illness, who
21 may reasonably benefit from outpatient treatment, and for whom
22 outpatient treatment is the least restrictive alternative mode of
23 treatment available, the court shall order:

24 a. For a respondent who meets the criteria for court-ordered
25 assisted outpatient treatment set forth in KRS 202A.0815:

26 i. That a treatment plan be developed in accordance with
27 KRS 202A.0817 within forty-eight (48) hours; and

that shall not exceed three hundred sixty (360) days; and

c. The respondent to comply with any other reasonable conditions necessary to ensure compliance; or

4 (c) [If the court finds] There is no probable cause ***to believe the respondent:***

1. Should be involuntarily hospitalized; or

2. Is an individual with a mental illness:

a. Who presents a danger or threat of danger to self, family, or others as a result of the mental illness;

b. Who may reasonably benefit from outpatient treatment; and

c. For whom outpatient treatment is the least restrictive alternative mode of treatment available,

12 the proceedings against the respondent shall be dismissed, and the respondent
13 shall be released from any *hospitalization*[holding].

14 (11) If upon completion of the final hearing, the court finds:

15 **(a) 1.** The respondent should be involuntarily hospitalized, the court shall
16 order the respondent hospitalized in a hospital for a period not to exceed
17 sixty (60) consecutive days from the date of the court order or a period
18 not to exceed three hundred sixty (360) consecutive days from the date
19 of the court order, whatever was the period of time that was requested in
20 the petition;

2. If the court orders the respondent to be hospitalized under subparagraph 1. of this paragraph, the court may order the hospital to notify the court and the Commonwealth if the hospital releases the respondent prior to expiration of the period of involuntary hospitalization;

3. Upon notification of early release under subparagraph 2. of this paragraph, the court upon its own motion or upon motion of the

1 Commonwealth may request a discharge review hearing to be
2 conducted within forty-eight (48) hours. If upon completion of the
3 discharge review hearing, the court finds that the respondent is an
4 individual with a mental illness, who presents a danger or threat of
5 danger to self, family, or others as a result of the mental illness, who
6 may reasonably benefit from outpatient treatment, and for whom
7 outpatient treatment is the least restrictive alternative mode of
8 treatment available, the court shall order:

9 a. For a respondent who meets the criteria for court-ordered
10 assisted outpatient treatment set forth in KRS 202A.0815:

11 i. That a treatment plan be developed in accordance with
12 KRS 202A.0817 within forty-eight (48) hours; and
13 ii. The respondent to receive court-ordered assisted outpatient
14 treatment under KRS 202A.0811 to 202A.0831; or

15 b. For any other respondent who may benefit from outpatient
16 treatment:

17 i. A qualified mental health professional to develop a
18 treatment plan within forty-eight (48) hours;

19 ii. The respondent to receive community-based outpatient
20 treatment that shall not exceed three hundred sixty (360)
21 days; and

22 iii. The respondent to comply with any other reasonable
23 conditions necessary to ensure compliance;

24 (b) The respondent should not be involuntarily hospitalized but that the
25 respondent is an individual with a mental illness, who presents a danger or
26 threat of danger to self, family, or others as a result of the mental illness,
27 who may reasonably benefit from outpatient treatment, and for whom

1 outpatient treatment is the least restrictive mode of treatment available, the
2 court shall order:

3 1. For a respondent who meets the criteria for court-ordered assisted
4 outpatient treatment set forth in KRS 202A.0815:

5 a. That a treatment plan be developed in accordance with KRS
6 202A.0817 within forty-eight (48) hours; and

7 b. The respondent to receive court-ordered assisted outpatient
8 treatment under KRS 202A.0811 to 202A.0831; or

9 2. For any other respondent who may benefit from outpatient treatment:

10 a. A qualified mental health professional to develop a treatment
11 plan within forty-eight (48) hours;

12 b. The respondent to receive community-based outpatient treatment
13 that shall not exceed three hundred sixty (360) days; and

14 c. The respondent to comply with any other reasonable conditions
15 necessary to ensure compliance; or

16 (c) The respondent:

17 1. Should not be involuntary hospitalized; or

18 2. Is not an individual with a mental illness:

19 a. Who presents a danger or threat of danger to self, family, or
20 others as a result of the mental illness;

21 b. Who may reasonably benefit from outpatient treatment; and

22 c. For whom outpatient treatment is the least restrictive mode of
23 treatment available;

24 the proceedings against the respondent shall be dismissed, and the
25 respondent shall be released from any hospitalization.

26 (12) Any petition under this section shall expire after thirty (30) days if not served
27 upon the respondent.

1 ➔Section 4. KRS 202A.061 is amended to read as follows:

2 **(1) (a)** In any proceeding for involuntary hospitalization under the applicable
3 provisions of this chapter, if the criteria for involuntary hospitalization are not
4 certified by at least two (2) examining qualified mental health professionals,
5 the court shall, without taking any further action, terminate the proceedings
6 and order the release of the person.

7 **(b)** The qualified mental health professionals shall certify to the court within
8 twenty-four (24) hours, ~~{excluding weekends and holidays,}~~ of the
9 examination, their findings and opinions as to whether the person shall be
10 involuntarily hospitalized.

11 **(2) (a) Upon motion of the Commonwealth, any person who is subject to a court**
12 **order for admission to a hospital under subsection (1) of this section and**
13 **found by a qualified mental health professional to not meet the criteria for**
14 **involuntary hospitalization shall be admitted to a hospital pending an**
15 **emergency hearing to be held within forty-eight (48) hours, excluding**
16 **weekends and holidays, to determine if the court reasonably believes that:**

17 **1. The person presents an imminent threat of danger to self, family, or**
18 **others;**
19 **2. The person has been the subject of two (2) or more proceedings under**
20 **this chapter within the previous six (6) months; and**
21 **3. Probable cause would be found at a preliminary hearing under**
22 **Section 3 of this Act.**

23 **(b) If the court:**

24 **1. Reasonably believes that:**

25 **a. The person presents an imminent threat of danger to self, family,**
26 **or others;**

27 **b. The person has been the subject of two (2) of more proceedings**

under this chapter within the previous six (6) months; and

c. Probable cause would be found at a preliminary hearing under Section 3 of this Act;

the person shall not be released from hospitalization before the preliminary hearing under Section 3 of this Act; or

2. Does not reasonably believe that:

a. The person presents an imminent threat of danger to self, family, or others;

b. The person has been the subject of two (2) or more proceedings under this chapter within the previous six (6) months; and

c. Probable cause would be found at a preliminary hearing under Section 3 of this Act;

person shall be released from ho

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

16 (1) If the court orders community-based outpatient mental health treatment under
17 this chapter, the court shall:

(a) Appoint an outpatient provider agency recognized by the cabinet which shall assemble a multidisciplinary team; and

(b) Report every order for community-based outpatient treatment issued under this section to the Department for Behavioral Health, Developmental and Intellectual Disabilities.

23 (2) (a) The multidisciplinary team shall regularly monitor the person's adherence
24 to the conditions of the order and regularly report this information to the
25 court that ordered the person's release.

(b) Any interested party may report nonadherence to the conditions of the order to the court that ordered the person's release.

1 (3) Reports may be provided in written format, in person, or via electronic means, at
2 the court's discretion.

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

5 (1) A person's substantial failure to comply with a court order for community-based
6 outpatient treatment may constitute presumptive grounds for the court or an
7 authorized staff physician to order a seventy-two (72) hour emergency admission.

8 (2) Failure to comply with an order for community-based outpatient treatment shall
9 not be grounds to find the person in contempt of court but shall be *prima facia*
10 evidence that:

11 (a) The person can benefit from inpatient hospitalization; and

12 (b) Inpatient hospitalization is the least restrictive mode of treatment.

13 (3) (a) Any person admitted to a hospital under subsection (1) of this section or
14 transferred to a hospital while ordered hospitalized under subsection (1) of
15 this section shall be transported from the person's home county by the
16 sheriff of that county or other peace officer as ordered by the court.

17 (b) The sheriff or other peace officer may, upon agreement of a person
18 authorized by the peace officer, authorize the cabinet, a private agency on
19 contract with the cabinet, or an ambulance service designated by the cabinet
20 to transport the person to the hospital.

21 (c) The transportation costs of the sheriff, other peace officer, ambulance
22 service, or other private agency on contract with the cabinet shall be paid by
23 the cabinet in accordance with an administrative regulation promulgated by
24 the cabinet in accordance with KRS Chapter 13A.

25 (4) (a) Any person released from the hospital under subsection (1) of this section
26 shall be transported to the person's county of discharge by a sheriff or other
27 peace officer, by an ambulance service designated by the cabinet, or by

1 other appropriate means of transportation which is consistent with the
2 treatment plan of that person.

3 (b) The transportation cost of transporting the patient to the patient's county of
4 discharge when performed by a peace officer, ambulance service, or other
5 private agency on contract with the cabinet shall be paid by the cabinet in
6 accordance with an administrative regulation promulgated by the cabinet in
7 accordance with KRS Chapter 13A.

8 → SECTION 7. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO
9 READ AS FOLLOWS:

10 (1) No later than seventy-two (72) hours prior to the expiration or request for early
11 release by a hospital of the period of involuntary hospitalization under subsection
12 (11)(a) of Section 3 of this Act, the court shall conduct a hearing to determine if
13 the discharge plan gives the respondent a realistic opportunity to avoid imminent
14 readmittance into an inpatient psychiatric hospital for treatment. This hearing
15 shall only be conducted for a respondent who:

16 (a) Is diagnosed with a severe mental illness and within the past twelve (12)
17 months has been involuntarily committed to a hospital setting for
18 psychiatric treatment; or

19 (b) Within the past twelve (12) months, has been found incompetent to stand
20 trial in a criminal proceeding and has not been committed under KRS
21 Chapter 202C.

22 (2) The court shall consider the following to determine if the discharge plan gives the
23 respondent a realistic opportunity to avoid imminent readmittance into an
24 inpatient psychiatric hospital for treatment:

25 (a) The living arrangements of the respondent upon discharge;

26 (b) The respondent's community or familial support system;

27 (c) The plan for the respondent's continuity of care;

- 1 (d) *The acuity of the respondent's psychiatric needs;*
2 (e) *The respondent's history of psychiatric hospitalizations, if any;*
3 (f) *Any finding by a court that the respondent is incompetent to stand trial in a*
4 *criminal proceeding; and*
5 (g) *Any other factor the court deems appropriate to consider.*

6 (3) *If the court finds by clear and convincing evidence that the discharge plan does*
7 *give the respondent a realistic opportunity to avoid imminent readmittance into*
8 *an inpatient psychiatric hospital for treatment, then the respondent shall be*
9 *discharged in accordance with the discharge plan.*

10 (4) *If the court finds by clear and convincing evidence that the discharge plan does*
11 *not give the respondent a realistic opportunity to avoid imminent readmittance*
12 *into an inpatient psychiatric hospital for treatment, then the respondent shall not*
13 *be discharged and the commitment order made under subsection (11)(a) of*
14 *Section 3 of this Act shall be renewed until the court finds that the discharge plan*
15 *gives the respondent a realistic opportunity to avoid imminent readmittance into*
16 *an inpatient psychiatric hospital for treatment.*

17 (5) (a) *If a respondent is not discharged under subsection (4) of this section, a*
18 *review hearing shall be conducted by the court not sooner than one*
19 *hundred twenty (120) days after the order under subsection (4) of this*
20 *section and every one hundred twenty (120) days after.*

21 (b) *Prior to each review hearing, the court shall cause the respondent to be*
22 *examined without unnecessary delay by two (2) qualified mental health*
23 *professionals, at least one (1) of whom is a physician. The qualified mental*
24 *health professionals shall, within seven (7) days prior to the hearing,*
25 *excluding weekends and holidays, certify to the court their findings as to*
26 *whether the respondent meets the criteria for involuntarily hospitalization*
27 *under Section 20 of this Act.*

- 1 (c) *A review hearing may be conducted in an informal manner, consistent with*
2 *orderly procedures, and in a physical setting not likely to have a harmful*
3 *effect on the mental or physical health of the respondent. The hearing may*
4 *be held by the court in chambers, remotely from a hospital, or in another*
5 *suitable place. The respondent shall be present in person or remotely for all*
6 *review hearings, unless presence is waived by the respondent through*
7 *counsel.*
- 8 (d) *The Commonwealth shall present evidence regarding whether the*
9 *respondent continues to meet the criteria for involuntary commitment under*
10 *Section 20 of this Act. The respondent shall be afforded an opportunity to*
11 *present evidence and to cross-examine any witnesses.*
- 12 (e) *The Kentucky Rules of Evidence shall apply and the standard of proof shall*
13 *be proof by clear and convincing evidence. Proceedings shall be heard by a*
14 *judge without a jury.*
- 15 (f) *The respondent's right to this hearing shall not be waived.*
- 16 (g) 1. *At the conclusion of a review hearing, the court shall make written*
17 *findings of fact concerning whether the criteria for involuntary*
18 *commitment under Section 20 of this Act continue to be satisfied by*
19 *clear and convincing evidence.*
- 20 2. *If the court finds that the criteria continue to be satisfied, the court*
21 *shall enter an order authorizing the continued care and treatment of*
22 *the respondent.*
- 23 3. *If the court finds that the criteria are not satisfied and that the*
24 *respondent is an individual with a mental illness, who presents a*
25 *danger or threat of danger to self, family, or others as a result of the*
26 *mental illness, who may reasonably benefit from outpatient treatment,*
27 *and for whom outpatient treatment is the least restrictive mode of*

1 treatment available, the court shall discharge the respondent and may
2 order:

3 a. For a respondent who meets the criteria for court-ordered
4 assisted outpatient treatment set forth in KRS 202A.0815:

5 i. That a treatment plan be developed in accordance with
6 KRS 202A.0817 within forty-eight (48) hours; and

7 ii. The respondent to receive court-ordered assisted outpatient
8 treatment under KRS 202A.0811 to 202A.0831; or

9 b. For any other respondent who may benefit from outpatient
10 treatment:

11 i. A qualified mental health professional to develop a
12 treatment plan within forty-eight (48) hours;

13 ii. The respondent to receive community-based outpatient
14 treatment that shall not exceed three hundred sixty (360)
15 days; and

16 iii. The respondent to comply with any other reasonable
17 condition necessary to ensure compliance.

18 (6) The Commonwealth, respondent, or hospital where the respondent is being
19 hospitalized may make a motion for an additional review hearing if a material
20 change in circumstances has occurred and the respondent no longer meets the
21 criteria for involuntary hospitalization under Section 20 of this Act. If the court
22 has probable cause to believe that a material change in circumstances has
23 occurred, the court shall:

24 (a) Conduct a review hearing within fourteen (14) days of the filing of the
25 motion for an additional review hearing; and

26 (b) Order the respondent to be evaluated as described under subsection (5)(b) of
27 this section.

1 (7) (a) Any respondent being hospitalized under this section shall be transferred to
2 an inpatient psychiatric hospital owned by the Commonwealth upon request
3 of the hospital or psychiatric facility where the respondent is being held.

4 (b) An inpatient psychiatric hospital contracted with the cabinet shall not
5 request transfer under paragraph (a) of this subsection.

6 ➔Section 8. KRS 202A.0819 is amended to read as follows:

- 7 (1) At a hearing and at all stages of a proceeding for court-ordered assisted outpatient
8 treatment, the respondent shall be:
 - 9 (a) Represented by counsel;
 - 10 (b) Accompanied by a peer support specialist or other person in a support
11 relationship, if requested by the respondent; and
 - 12 (c) Afforded an opportunity to present evidence, call witnesses on his or her
13 behalf, and cross-examine adverse witnesses.
- 14 (2) If a respondent does not appear at the hearing, and appropriate attempts to elicit the
15 respondent's appearance have failed, the court may conduct the hearing in the
16 respondent's absence.
- 17 (3) A qualified mental health professional who recommends court-ordered assisted
18 outpatient treatment for the respondent shall:
 - 19 (a) Testify at the hearing, in person or via electronic means;
 - 20 (b) State the facts and clinical determinations which support the allegation that
21 the respondent meets the criteria stated in KRS 202A.0815; and
 - 22 (c) Testify in support of the treatment plan provided pursuant to KRS 202A.0817,
23 and for each category of proposed evidence-based treatment, he or she shall
24 state the specific recommendation and the clinical basis for his or her belief
25 that such treatment is essential to the maintenance of the respondent's health
26 or safety.
- 27 (4) If after hearing all relevant evidence, the court does not find by clear and

1 convincing evidence that the respondent meets the criteria stated in KRS
2 202A.0815, the court shall deny the petition and the proceedings against the
3 respondent shall be dismissed.

4 (5) If after hearing all relevant evidence, the court finds by clear and convincing
5 evidence that the respondent meets the criteria stated in KRS 202A.0815, the court
6 may order the respondent to receive assisted outpatient treatment for a period of
7 time not to exceed three hundred sixty (360) days and to comply with any other
8 reasonable conditions necessary to ensure compliance. The court's order shall
9 incorporate a treatment plan, which shall be limited in scope to the
10 recommendations included in the treatment plan provided by the qualified mental
11 health professional pursuant to KRS 202A.0817.

12 (6) The court shall report every order for assisted outpatient treatment issued under this
13 section to the Department for Behavioral Health, Developmental and Intellectual
14 Disabilities.

15 ➔Section 9. KRS 202A.0823 is amended to read as follows:

16 (1) A person's substantial failure to comply with a court order for assisted outpatient
17 treatment may constitute presumptive grounds for the court or an authorized staff
18 physician to order a seventy-two (72) hour emergency admission[~~pursuant to KRS~~
19 ~~202A.031~~].

20 (2) (a) Upon the refusal of a person subject to a court order for assisted outpatient
21 treatment to participate in any or all aspects of his or her treatment plan,
22 the person's outpatient provider shall establish a review committee that is
23 made up of three (3) qualified mental health professionals to examine the
24 appropriateness of the person's treatment plan. Within three (3) days of the
25 refusal, the review committee shall meet the person and his or her counsel
26 or other representative to discuss its recommendations.

27 (b) If the person still refuses to participate in any or all aspects of his or her

1 treatment plan, the person's outpatient provider may petition the District
2 Court for a de novo determination of the appropriateness of the proposed
3 treatment.

4 (c) Within seven (7) days, the court shall conduct a hearing, consistent with the
5 person's rights to due process of law, and shall utilize the following factors
6 in reaching its determination:

- 7 1. Whether the treatment is necessary to protect the person or others
8 from harm;
- 9 2. Whether the person is incapable of giving informed consent to the
10 proposed treatment;
- 11 3. Whether any less restrictive alternative treatment exists; and
- 12 4. Whether the proposed treatment carries any risk of permanent side
13 effects.

14 (d) Upon completion of the hearing, the court shall enter an appropriate
15 judgment.

16 (e) A judgment entered under paragraph (d) of this subsection may extend to
17 treatment provided during a seventy-two (72) hour emergency admission.

18 (3) Failure to comply with an order for assisted outpatient treatment shall not be
19 grounds to find the person in contempt of court but shall be prima facia evidence
20 that:

- 21 (a) The person can benefit from inpatient hospitalization; and
- 22 (b) Inpatient hospitalization is the least restrictive mode of treatment.

23 (4) (a) Any person admitted to a hospital under subsection (1) of this section or
24 transferred to a hospital while ordered hospitalized under subsection (1) of
25 this section shall be transported from the person's home county by the
26 sheriff of that county or other peace officer as ordered by the court.

27 (b) The sheriff or other peace officer may, upon agreement of a person

1 authorized by the peace officer, authorize the cabinet, a private agency on
2 contract with the cabinet, or an ambulance service designated by the cabinet
3 to transport the person to the hospital.

4 (c) The transportation costs of the sheriff, other peace officer, ambulance
5 service, or other private agency on contract with the cabinet shall be paid by
6 the cabinet in accordance with an administrative regulation promulgated by
7 the cabinet in accordance with KRS Chapter 13A.

8 (5) (a) Any person released from the hospital under subsection (1) of this section
9 shall be transported to the person's county of discharge by a sheriff or other
10 peace officer, by an ambulance service designated by the cabinet, or by
11 other appropriate means of transportation which is consistent with the
12 treatment plan of that person.

13 (b) The transportation cost of transporting the patient to the patient's county of
14 discharge when performed by a peace officer, ambulance service, or other
15 private agency on contract with the cabinet shall be paid by the cabinet in
16 accordance with an administrative regulation promulgated by the cabinet in
17 accordance with KRS Chapter 13A.

18 ➔Section 10. KRS 202A.091 is amended to read as follows:

19 (1) The court records of a respondent made in all proceedings pursuant to this[KRS
20]chapter [202A]are hereby declared to be confidential and shall not be open to the
21 general public for inspection except when such disclosure is provided in KRS
22 202A.016.

23 (2) Following the discharge of a respondent from a treatment facility or the issuance of
24 a court order denying a petition for a commitment, a respondent may at any time
25 move to have all court records pertaining to the proceedings expunged from the
26 files of the court. The county attorney shall be given notice of the[any such] motion
27 and shall have five (5) days in which to respond to the motion[same] or request a

1 hearing on the motion[thereon].

2 (3) (a) Any petitioner under Section 3 of this Act who qualifies as a responsible
3 party under KRS 311.631 may motion the court to participate in court
4 proceedings and be informed by a hospital of the discharge plan prior to a
5 respondent's release under this chapter, except for any confidential
6 therapeutic communication or any other medical records.

7 (b) The court may enter a written order allowing the petitioner to participate as
8 described in paragraph (a) of this subsection, unless the court finds the
9 petitioner's participation is not in the best interests of the respondent

10 (4) Any person seeking information contained in the court files or the court records of
11 proceedings involving persons under this chapter may file a written motion in the
12 cause setting out why the information is needed. A District Judge may issue an
13 order to disclose the information sought if he or she finds the[such] order is
14 appropriate under the circumstances and if he or she finds it is in the best interest of
15 the person or of the public to have the[such] information disclosed.

16 ➔Section 11. KRS 202A.101 is amended to read as follows:

17 (1) The court which orders any person to the receiving hospital or psychiatric facility,
18 under the provisions of this chapter[,] shall immediately[at once] notify the
19 receiving hospital or psychiatric facility that the[such] order has been made,
20 advising of the sex and condition of the person.

21 (2) After the facility has been [so]notified, the court shall order the sheriff of the
22 county or other peace officer to transport the patient within forty-eight (48) hours,
23 [excluding weekends and holidays,] from the county in which the person is
24 located to the hospital or psychiatric facility designated by the cabinet. The sheriff
25 or other peace officer may, upon agreement of a person authorized by the peace
26 officer, authorize the cabinet, a private agency on contract with the cabinet, or an
27 ambulance service designated by the cabinet to transport the person to the hospital.

- 1 (3) The transportation costs of transporting a person to a hospital or psychiatric facility,
2 when performed by a peace officer, an ambulance service, or other private agency
3 on contract with the cabinet shall be paid by the cabinet in accordance with
4 administrative regulation promulgated by the cabinet under the provisions of KRS
5 Chapter 13A.
- 6 (4) In returning any patient to the county from which the patient is sent, the
7 transportation cost of the sheriff or other peace officer, the ambulance service, or
8 the other agency on contract with the cabinet transporting the patient shall be paid
9 as provided in KRS 202A.028(5)~~(4)~~, when necessary.
- 10 (5) Whenever an individual is involuntarily hospitalized by a court order the patient
11 shall be transported to the hospital designated by the cabinet and accompanied by
12 the following documents:
 - 13 (a) A copy of the petition for involuntary hospitalization, unless hospitalization
14 takes place pursuant to KRS 202A.041 **or Section 6 or 9 of this Act;**
 - 15 (b) The certificate of qualified mental health professionals, **if any;** and
 - 16 (c) The order of involuntary hospitalization.
- 17 (6) The hospital may refuse to receive any person who has been ordered to be
18 involuntarily hospitalized by a court order if the papers presented with **the**~~[such]~~
19 person at the hospital do not comply with the provisions of this chapter or if it does
20 not receive notification of the order of involuntary hospitalization as required by
21 this chapter.

22 ➔Section 12. KRS 202C.010 is amended to read as follows:

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

- 24 (1) "Cabinet" means the ~~[Kentucky]~~Cabinet for Health and Family Services;
- 25 (2) "Commitment hearing" means the hearing under KRS 202C.040 to determine if a
26 respondent meets the criteria for involuntary commitment under this chapter;
- 27 (3) "Danger" means substantial physical harm or threat of substantial physical harm

- 1 upon self or others;
- 2 (4) "Evidentiary hearing" means the hearing under KRS 202C.030 to determine if the
3 **respondent is responsible for**~~defendant committed~~ the qualifying offense for
4 which he or she was charged by a preponderance of the evidence;
- 5 (5) "Forensic psychiatric facility" means a mental institution or facility, or part thereof,
6 designated by the secretary for the purpose and function of providing inpatient
7 evaluation, care, and treatment for ~~mentally ill persons or~~ individuals with an
8 intellectual disability **or mental illness** who have been charged with or convicted of
9 a felony;
- 10 (6) "Hospital" means:
- 11 (a) A state mental hospital or institution or other licensed public or private
12 hospital, institution, health-care facility, or part thereof, approved by the
13 **cabinet**~~Kentucky Cabinet for Health and Family Services~~ as equipped to
14 provide full-time residential care and treatment for ~~mentally ill persons or~~
15 ~~individuals with an intellectual disability **or mental illness**~~; or
- 16 (b) A hospital, institution, or health-care facility of the government of the United
17 States equipped to provide residential care and treatment for ~~mentally ill~~
18 ~~persons or~~ individuals with an intellectual disability **or mental illness**;
- 19 (7) **"Individual with a mental illness"** means a person with substantially impaired
20 capacity to use self-control, judgment, or discretion in the conduct of the person's
21 affairs and social relations, associated with maladaptive behavior or recognized
22 emotional symptoms where impaired capacity, maladaptive behavior, or
23 emotional symptoms can be related to physiological, psychological, or social
24 factors;
- 25 (8) "Individual with an intellectual disability" means a person with significantly
26 subaverage general intellectual functioning existing concurrently with deficits in
27 adaptive behavior and manifested during the developmental period;

1 (9){(8)} "Judge" means the judge who found the respondent incompetent to stand trial
2 in the criminal proceeding from which the petition for involuntary commitment
3 arose;

4 (10){(9)} "Less restrictive alternative mode of treatment" means a treatment given
5 outside of a forensic psychiatric facility which would provide a respondent with
6 appropriate treatment or care consistent with accepted professional practice
7 standards and protect the respondent's safety and the safety of others;{

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

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

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

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

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

24 (d) A licensed registered nurse with a master's degree in psychiatric nursing from
25 an accredited institution and two (2) years of clinical experience with
26 individuals with mental illness~~mentally ill persons~~, or a licensed registered
27 nurse, with a bachelor's degree in nursing from an accredited institution, who

- 1 is certified as a psychiatric and mental health nurse by the American Nurses
2 Association and who has three (3) years of inpatient or outpatient clinical
3 experience in psychiatric nursing and is currently employed by a hospital or
4 forensic psychiatric facility licensed by the Commonwealth or a psychiatric
5 unit of a general hospital or a private agency or company engaged in the
6 provision of mental health services or a regional community program for
7 mental health and individuals with an intellectual disability;
- 8 (e) A licensed clinical social worker licensed under the provisions of KRS
9 335.100, or a certified social worker licensed under the provisions of KRS
10 335.080 with three (3) years of inpatient or outpatient clinical experience in
11 psychiatric social work and currently employed by a hospital or forensic
12 psychiatric facility licensed by the Commonwealth or a psychiatric unit of a
13 general hospital or a private agency or company engaged in the provision of
14 mental health services or a regional community program for mental health and
15 individuals with an intellectual disability;
- 16 (f) A marriage and family therapist licensed under the provisions of KRS
17 335.300 to 335.399 with three (3) years of inpatient or outpatient clinical
18 experience in psychiatric mental health practice and currently employed by a
19 hospital or forensic facility licensed by the Commonwealth, a psychiatric unit
20 of a general hospital, a private agency or company engaged in providing
21 mental health services, or a regional community program for mental health
22 and individuals with an intellectual disability;
- 23 (g) A professional counselor credentialed under the provisions of KRS Chapter
24 335.500 to 335.599 with three (3) years of inpatient or outpatient clinical
25 experience in psychiatric mental health practice and currently employed by a
26 hospital or forensic facility licensed by the Commonwealth, a psychiatric unit
27 of a general hospital, a private agency or company engaged in providing

1 mental health services, or a regional community program for mental health
2 and individuals with an intellectual disability; or

5 1. Provides documentation that he or she has completed a psychiatric
6 residency program for physician assistants:

7 2. Has completed at least one thousand (1,000) hours of clinical experience
8 under a supervising physician, as defined by KRS 311.840, who is a
9 psychiatrist and is certified or eligible for certification by the American

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

27 a. Has three (3) years of clinical experience in the assessment,

1 evaluation, and treatment of mental disorders; or

2 b. Has been employed by a hospital or forensic psychiatric facility

3 licensed by the Commonwealth or a psychiatric unit of a general

4 hospital or a private agency or company engaged in the provision

5 of mental health services or a regional community program for

6 mental health and individuals with an intellectual disability for at

7 least three (3) years;

8 (12) "Qualifying offense" means a capital offense, a Class A felony, a Class B felony

9 resulting in death or serious physical injury, or a violation of KRS 510.040 or

10 510.070;

11 (13) "Respondent" means a person who was a criminal defendant found incompetent to

12 stand trial who is or was the subject of a petition for involuntary commitment filed

13 under KRS Chapter 504;

14 (14) "Review hearing" means any hearing conducted to determine if a respondent

15 continues to meet the criteria for involuntary commitment after the initial order for

16 involuntary commitment has been issued under this chapter; and

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

18 ➔Section 13. KRS 202C.020 is amended to read as follows:

19 (1) When a defendant who is charged with a qualifying offense has been found, after a

20 hearing under KRS Chapter 504, to be incompetent to stand trial with no substantial

21 probability that the defendant will attain competency within three hundred sixty

22 (360) days, the Commonwealth's attorney's office serving the county of criminal

23 prosecution shall immediately petition the Circuit Court that found the defendant

24 incompetent to stand trial or, if the finding was by a District Court, the Circuit

25 Court in the county of the criminal prosecution, for an involuntary commitment

26 proceeding, to include an evidentiary hearing and a commitment hearing, if

27 applicable, under this chapter.

- 1 (2) (a) Upon the filing of the petition, the court shall assign a guardian ad litem to
2 represent the [needs and] best interest of the respondent, independent of the
3 respondent's defense attorney.
- 4 (b) The guardian ad litem shall:
- 5 1. Be a full and active participant in all proceedings other than the
6 evidentiary hearing under KRS 202C.030. At the evidentiary hearing,
7 the guardian ad litem's role shall be limited to assisting the respondent
8 with decision-making related to the hearing, including but not limited
9 to whether to waive the hearing, whether to stipulate to the allegations,
10 and whether to testify. The guardian ad litem shall not act as an
11 attorney advocate at the evidentiary hearing; [and shall]
- 12 2. Independently investigate, assess, and advocate for the
13 respondent's [defendant's] best interest; [The guardian ad litem is]
- 14 3. Not be a replacement for the respondent's defense attorney; and
- 15 4. Be paid an hourly rate not to exceed the maximum hourly rate
16 provided in the Legal Services Duties and Maximum Rate Schedule
17 promulgated by the Government Contract Review Committee
18 established pursuant to KRS 45A.705, to be paid by the Finance and
19 Administration Cabinet.
- 20 (c) If the respondent[defendant] has retained or been appointed a defense
21 attorney in the criminal case, that attorney may continue to represent the
22 respondent[defendant] in proceedings under this chapter. If, at any time
23 during the pendency of proceedings under this chapter, the
24 respondent[defendant] is not represented by an attorney, the court shall
25 appoint counsel for the respondent[defendant], without a showing of
26 indigency, to be provided by the Department of Public Advocacy or its
27 designee.

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

3 ➔Section 14. KRS 202C.030 is amended to read as follows:

4 (1) An adversarial evidentiary hearing on the record shall be held within forty-five
5 (45)~~(twenty (20))~~ days, excluding weekends and holidays, of the filing of a petition
6 pursuant to KRS 202C.020, unless the court orders a later hearing for good cause
7 shown. Appropriate notice shall be served on all parties. The court shall order the
8 Commonwealth to provide all available discovery to the respondent no later than
9 seven (7) days, excluding weekends and holidays, before the hearing, unless the
10 court orders a later date for good cause shown. ~~No~~ Evidence that has not been
11 disclosed through discovery shall not~~may~~ be presented at the hearing~~that has~~
12 ~~not been disclosed through discovery~~.

13 (2) The respondent may stipulate to potential responsibility~~guilt~~ and waive the
14 hearing. A stipulation of potential responsibility shall not~~guilt cannot~~ be used
15 against the respondent in any future criminal prosecution or civil litigation.

16 (3) (a) The purpose of the evidentiary hearing shall be to determine whether
17 sufficient evidence exists to support a finding that the respondent is
18 responsible for~~guilty of~~ the charged crime against him or her.

19 (b) The Commonwealth's attorney's office serving the county of criminal
20 prosecution shall have the burden of proving the sufficiency of the evidence
21 by a preponderance of the evidence.

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

1 preponderance of the evidence.

2 (5) (a) If the court determines that sufficient evidence has been presented to support a
3 finding that the respondent is responsible for~~guilty of~~ the charged crime
4 against him or her, the court shall immediately schedule a commitment
5 hearing under this chapter to be held within forty-five (45)~~(20)~~ days,
6 unless the court orders a later hearing for good cause shown, excluding
7 weekends and holidays.

8 (b) 1. The court shall cause the respondent to be examined without
9 unnecessary delay by two (2) qualified mental health professionals, at
10 least one (1) of whom is a physician. The qualified mental health
11 professionals shall, no fewer than~~within~~ seven (7) days, excluding
12 weekends and holidays, prior to the hearing, certify to the court their
13 findings as to whether the respondent meets the criteria for involuntarily
14 commitment under KRS 202C.050.

15 2. A copy of the findings submitted under subparagraph 1. of this
16 paragraph shall be sent to the Commonwealth, the respondent's
17 attorney of record, the respondent's guardian ad litem, and all other
18 parties of record.

19 (6) If the court determines that insufficient evidence has been presented to support a
20 finding that the respondent is responsible for~~guilty of~~ the charged crime against
21 him or her, the court shall order the immediate release of the respondent.

22 (7) Any~~No~~ evidence or statement submitted by the respondent at the evidentiary
23 hearing shall not be admissible in any criminal prosecution or civil litigation.

24 ➔ Section 15. KRS 202C.040 is amended to read as follows:

25 (1) A commitment hearing shall be held within forty-five (45)~~(20)~~ days,
26 unless the court orders a later hearing for good cause shown, excluding weekends
27 and holidays, after the court finds that the evidence presented in an evidentiary

- 1 hearing pursuant to KRS 202C.030 supports a finding that the respondent is
2 responsible for~~guilty of~~ the charged crime against him or her by a preponderance
3 of the evidence.
- 4 (2) The commitment hearing may be conducted in an informal manner, consistent with
5 orderly procedures, and in a physical setting not likely to have a harmful effect on
6 the mental or physical health of the respondent. The hearing may be held by the
7 court in chambers, at a forensic psychiatric facility, or other suitable place.
- 8 (3) **(a)** The Commonwealth's attorney's office serving the county of criminal
9 prosecution which led to the finding that the respondent was incompetent to
10 stand trial shall present evidence regarding whether the respondent meets the
11 criteria for involuntary commitment under KRS 202C.050.
- 12 **(b)** The respondent ~~and the respondent's guardian ad litem~~ shall be afforded an
13 opportunity to testify, and the respondent's counsel shall conduct the
14 hearing on the respondent's behalf to present evidence~~,~~ and to cross-
15 examine any witnesses.
- 16 **(c)** The respondent's guardian ad litem shall participate in the proceeding in a
17 best-interest, friend-of-the-court capacity and may submit independent
18 recommendations to the court or jury, if a jury has been requested,
19 regarding the respondent's best interest.
- 20 (4) The manner of proceeding and the rules of evidence shall be the same as those in
21 any criminal proceeding. The standard of proof shall be proof beyond a reasonable
22 doubt. Proceedings shall be heard by the judge unless a party or the guardian ad
23 litem requests a jury.
- 24 (5) The respondent's right to the commitment hearing shall not be waived.
- 25 ➔ Section 16. KRS 202C.050 is amended to read as follows:
- 26 (1) ~~A~~~~No~~ respondent shall not be involuntarily committed under this chapter unless
27 there is a determination that:

- 1 (a) The respondent presents, or would present if released, a danger to self or
2 others as a result of his or her mental condition; and
3 (b) ~~The respondent needs care, training, or treatment in order to mitigate or~~
4 ~~prevent substantial physical harm to self or others;~~
5 (c) ~~The respondent has a demonstrated history or recent manifestation of criminal~~
6 ~~behavior that has endangered or caused injury to others or has a substantial~~
7 ~~history of involuntary hospitalizations under KRS Chapter 202A or 202B~~
8 ~~prior to the commission of the charged crime; or~~
9 (d) ~~]A~~ presently available less restrictive alternative mode of treatment would
10 endanger the safety of the respondent or others.
- 11 (2) When a respondent is involuntarily committed under this chapter, the cabinet shall
12 place that respondent in a forensic psychiatric facility designated by the secretary.
13 ➔ Section 17. KRS 202C.060 is amended to read as follows:
14 (1) (a) A review hearing to determine if a respondent involuntarily committed under
15 this chapter should remain in a forensic psychiatric facility shall be conducted
16 by the court that issued the initial order in accordance with~~[according to the~~
17 ~~provisions of]~~ subsection (2) of this section; and
18 (b) If at any point during the respondent's placement at a forensic psychiatric
19 facility it appears that the respondent no longer meets the criteria for
20 involuntary commitment under KRS 202C.050 because there has been a
21 material change in circumstances or there is new evidence to present, the
22 respondent or the respondent's guardian ad litem may request a review hearing
23 pursuant to this section.
24 (2) The schedule for review hearings shall be as follows:
25 (a) From the initial order of commitment, a ~~standard~~ ~~]review~~ hearing shall be
26 conducted no earlier~~[not sooner]~~ than ninety (90) days and no~~[not]~~ later than
27 one hundred twenty (120) days;

- 1 (b) After the review hearing under paragraph (a) of this subsection, review
2 hearings shall be conducted not less than once every two (2) years unless a
3 review hearing has been requested under subsection (1)(b) of this
4 section [For the first two (2) years after the initial order of commitment,
5 standard review hearings shall be conducted not less than one hundred eighty
6 (180) days and not more than two hundred ten (210) days from the most
7 recent review;
8 (c) Beginning two (2) years after the initial order of commitment, a standard
9 review hearing shall be conducted not more than three hundred sixty five
10 (365) days from the most recent review hearing; and
11 (d) A heightened review hearing shall be conducted not more than five (5) years
12 from the initial order of commitment and, thereafter, not more than five (5)
13 years from the most recent heightened review hearing].
14 (3) (a) Prior to each ~~standard~~ review hearing, the court shall cause the respondent to
15 be examined without unnecessary delay by two (2) qualified mental health
16 professionals, at least one (1) of whom is a physician. The qualified mental
17 health professionals shall, no fewer than ~~[within]~~ seven (7) days prior to the
18 hearing, excluding weekends and holidays, certify to the court their findings
19 as to whether the respondent meets the criteria for involuntarily commitment
20 under KRS 202C.050.
21 (b) 1. In addition to the examinations required under paragraph (a) of this
22 subsection, the respondent shall undergo evaluations of competency at
23 least once every two (2) years to be conducted at a forensic psychiatric
24 facility.
25 2. Upon a finding by the forensic psychiatric facility that the
26 respondent's competency has been restored, the forensic psychiatric
27 facility shall provide written notice of restoration to the court, the

Commonwealth, the respondent's attorney of record, the respondent's guardian ad litem, and all other parties of record within ten (10) days of the determination of restoration.

3. Upon receipt of the notice of restoration of the respondent's competency, a status conference shall be held within thirty (30) days, unless the court orders a later hearing for good cause shown.

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

14 (5) (a) The Commonwealth's attorney's office serving the county of criminal
15 prosecution which led to finding that the respondent was incompetent to stand
16 trial shall present evidence regarding whether the respondent ~~remains~~
17 ~~incompetent to stand trial and~~ continues to meet the criteria for involuntary
18 commitment under KRS 202C.050.

19 (b) The respondent, through counsel, ~~and the respondent's guardian ad litem~~
20 ~~shall~~ be afforded an opportunity to present evidence, and to cross-examine
21 any witnesses.

22 (c) The respondent's guardian ad litem shall be permitted to participate in the
23 review hearing in a best-interest, friend-of-the-court capacity and may
24 submit independent recommendations to the court regarding the
25 respondent's best interest.

26 (6) The manner of proceeding and the rules of evidence shall be the same as those in
27 any criminal proceeding. The standard of proof shall be proof beyond a reasonable

1 doubt. Proceedings shall be heard by a judge without a jury{, except that a
2 respondent shall be entitled to a jury upon request if the respondent has not had a
3 review hearing with a jury during the preceding twelve (12) months}.

- 4 (7) The respondent's right to this hearing shall not be waived.
- 5 (8) At the conclusion of a ~~standard~~ review hearing, the court shall make written
6 findings of fact concerning whether the criteria for involuntary commitment under
7 KRS 202C.050 continue to be satisfied based upon proof beyond a reasonable
8 doubt. If the court finds that the criteria continue to be satisfied, the court shall enter
9 an order authorizing the continued care and treatment of the respondent at the
10 forensic psychiatric facility. Otherwise, the court shall enter an order requiring the
11 respondent to be discharged.{
- 12 (9) ~~During a heightened review hearing, the procedures of a standard review hearing
13 shall apply. Additionally, the qualified mental health professionals who evaluated
14 the respondent in preparation for the hearing shall be required to give live testimony
15 and answer questions before the court. The respondent shall be physically present in
16 the courtroom for the hearing. If the respondent is unable to attend for any reason,
17 the hearing shall be rescheduled to a time, place, and manner in which the
18 respondent is able to attend.]~~

19 ➔Section 18. KRS 202C.130 is amended to read as follows:

- 20 (1) Forensic psychiatric facilities ordered to receive an involuntarily committed
21 respondent shall have standing to petition the Circuit Court for any necessary
22 clarification or modification of orders or judgments entered in proceedings under
23 this chapter and to appeal from final judgments or orders entered in proceedings
24 which have not complied with the provisions of this chapter.
- 25 (2) A copy of motions filed under subsection (1) of this section shall be sent to the
26 involuntarily committed respondent, the respondent's guardian ad litem, {and} the
27 respondent's attorney of record, the Commonwealth, and all other parties of

1 ~~record[of whatever pleadings are filed by the hospital]~~.

2 ➔Section 19. KRS 202A.014 is amended to read as follows:

3 All proceedings for the involuntary hospitalization of individuals with mental
4 illness[mentally ill persons] shall be initiated in the District Court of the county where the
5 person to be hospitalized resides or in which he may be at the time of the filing of a
6 petition.

7 ➔Section 20. KRS 202A.026 is amended to read as follows:

8 ~~A[No]~~ person shall not be involuntarily hospitalized unless ~~the~~[such] person is an
9 individual with a mental illness[a mentally ill person]:

- 10 (1) Who presents a danger or threat of danger to self, family or others as a result of the
11 mental illness;
- 12 (2) Who can reasonably benefit from treatment; and
- 13 (3) For whom hospitalization is the least restrictive alternative mode of treatment
14 presently available.

15 ➔Section 21. KRS 202A.231 is amended to read as follows:

16 (1) Upon receipt of a certificate of the United States Public Health Service or ~~such~~
17 ~~other~~ agency of the United States government that facilities are available for the
18 care or treatment of any person ~~heretofore~~ hospitalized in any mental hospital or
19 other institution in this state for the care of individuals with mental illness[mentally
20 ill persons] and that such person is eligible for such care or treatment, the secretary,
21 upon recommendation by any such hospital or institution in this state, is ~~hereby~~
22 ~~authorized~~ to cause the transfer of any such person to the United States Public
23 Health Service or other agency of the United States government for care or
24 treatment. Upon effecting any such transfer, the hospitalizing court shall be notified
25 ~~thereof~~ by the secretary.

26 (2) Any person transferred as provided in this section shall be deemed to be placed in
27 the custody of the United States Public Health Service or other agency of the United

1 States government pursuant to the original hospitalization the same as if he or she
2 had been originally so hospitalized.

3 (3) ~~A~~~~No~~ person shall not be transferred to any agency of the United States if he or
4 she be confined pursuant to conviction of any felony or misdemeanor or if he or
5 she has been acquitted of the charge solely on the ground of mental illness unless
6 prior to transfer the court issuing the confining order shall enter an order to transfer
7 after the motion and hearing. Any person transferred as provided in this section to
8 any agency of the United States shall be hospitalized by such agency pursuant to the
9 original order of hospitalization.

10 ➔Section 22. KRS 202A.261 is amended to read as follows:

11 No public or private hospital, other than a state-operated or contracted mental hospital or
12 institution, shall be required to provide services under KRS 202A.008, 202A.011,
13 202A.028, 202A.041, 202A.051, 202A.071, ~~[202A.081,]~~202A.0811 to 202A.0831,
14 202A.101, 202A.141, 202A.241, 202A.251, 202A.261, 202A.271, 202B.170, 202B.200,
15 387.540, 504.085, 600.020, 645.020, 645.120, and 645.280 unless the hospital agrees to
16 provide the services. Any hospital shall make every reasonable attempt to cooperate with
17 the implementation of KRS 202A.008, 202A.011, 202A.028, 202A.041, 202A.051,
18 202A.071, ~~[202A.081,]~~202A.101, 202A.141, 202A.241, 202A.251, 202A.261,
19 202A.271, 202B.170, 202B.200, 387.540, 504.085, 600.020, 645.020, 645.120, and
20 645.280.

21 ➔Section 23. KRS 202A.271 is amended to read as follows:

22 Each public or private hospital, other than a state-operated or contracted mental hospital
23 or institution, which provides services under KRS 202A.008, 202A.011, 202A.028,
24 202A.041, 202A.051, 202A.071, ~~[202A.081,]~~202A.0811 to 202A.0831, 202A.101,
25 202A.141, 202A.241, 202A.251, 202A.261, 202A.271, 202B.170, 202B.200, 387.540,
26 504.085, 600.020, 645.020, 645.120, and 645.280 shall be paid for the services at the
27 same rates the hospital negotiates with the Department for Behavioral Health,

1 Developmental and Intellectual Disabilities or the regional community program for
2 mental health and for individuals with an intellectual disability.

3 ➔Section 24. KRS 387.540 is amended to read as follows:

4 (1) (a) Prior to a hearing on a petition for a determination of partial disability or
5 disability and the appointment of a limited guardian, guardian, limited
6 conservator, or conservator, an interdisciplinary evaluation report shall be
7 filed with the court. The report may be filed as a single and joint report of the
8 interdisciplinary evaluation team, or it may otherwise be constituted by the
9 separate reports filed by each individual of the team.

10 (b) If the court and all parties to the proceeding and their attorneys agree to the
11 admissibility of the report or reports, the report or reports shall be admitted
12 into evidence and shall be considered by the court or the jury if one is
13 impaneled.

14 (c) The report shall be compiled by at least three (3) individuals, including:
15 1. A physician, an advanced practice registered nurse, or a physician
16 assistant;
17 2. A psychologist licensed or certified under the provisions of KRS
18 Chapter 319; and
19 3. A person licensed or certified as a social worker or an employee of the
20 Cabinet for Health and Family Services who has at least one (1) year of
21 investigative experience and has completed training in conducting
22 decisional capacity assessments. The social worker shall, when possible,
23 be chosen from among employees of the Cabinet for Health and Family
24 Services residing or working in the area, and there shall be no additional
25 compensation for their service on the interdisciplinary evaluation team.

26 (2) At least one (1) person participating in the compilation of the report shall have
27 knowledge of the particular disability which the respondent is alleged to have or

- 1 knowledge of the skills required of the respondent to care for himself and his estate.
- 2 (3) If the respondent is alleged to be partially disabled or disabled due to mental illness,
3 at least one (1) person participating in the compilation of the interdisciplinary
4 evaluation report shall be a qualified mental health professional as defined in KRS
5 202A.011{(13)}. If the respondent is alleged to be partially disabled or disabled due
6 to an intellectual disability, at least one (1) person participating in the compilation
7 of the evaluation report shall be a qualified professional in the area of intellectual
8 disabilities as defined in KRS 202B.010(12).
- 9 (4) The interdisciplinary evaluation report shall contain:
- 10 (a) A description of the nature and extent of the respondent's disabilities, if any;
- 11 (b) Current evaluations of the respondent's social, intellectual, physical, and
12 educational condition, adaptive behavior, and social skills. Such evaluations
13 may be based on prior evaluations not more than three (3) months old, except
14 that evaluations of the respondent's intellectual condition may be based on
15 individual intelligence test scores not more than one (1) year old;
- 16 (c) An opinion as to whether guardianship or conservatorship is needed, the type
17 of guardianship or conservatorship needed, if any, and the reasons therefor;
- 18 (d) An opinion as to the length of time guardianship or conservatorship will be
19 needed by the respondent, if at all, and the reasons therefor;
- 20 (e) If limited guardianship or conservatorship is recommended, a further
21 recommendation as to the scope of the guardianship or conservatorship,
22 specifying particularly the rights to be limited and the corresponding powers
23 and duties of the limited guardian or limited conservator;
- 24 (f) A description of the social, educational, medical, and rehabilitative services
25 currently being utilized by the respondent, if any;
- 26 (g) A determination whether alternatives to guardianship or conservatorship are
27 available;

- 1 (h) A recommendation as to the most appropriate treatment or rehabilitation plan
2 and living arrangement for the respondent and the reasons therefor;

3 (i) A listing of all medications the respondent is receiving, the dosage, and a
4 description of the impact of the medication upon the respondent's mental and
5 physical condition and behavior;

6 (j) An opinion whether attending a hearing on a petition filed under KRS
7 387.530 would subject the respondent to serious risk of harm;

8 (k) The names and addresses of all individuals who examined or interviewed the
9 respondent or otherwise participated in the evaluation; and

10 (l) Any dissenting opinions or other comments by the evaluators.

11 (5) The evaluation report may be compiled by a community center for mental health or
12 individuals with an intellectual disability, a licensed facility for mentally ill or
13 developmentally disabled persons, if the respondent is a resident of such facility, or
14 a similar agency.

15 (6) In all cases where the respondent is a resident of a licensed facility for mentally ill
16 or developmentally disabled persons and the petition is filed by an employee of that
17 facility, the petition shall be accompanied by an interdisciplinary evaluation report
18 prepared by the facility.

19 (7) Except as provided in subsection (6) of this section, the court shall order
20 appropriate evaluations to be performed by qualified persons or a qualified agency.
21 The report shall be prepared and filed with the court and copies mailed to the
22 attorneys for both parties at least ten (10) days prior to the hearing. All items
23 specified in subsection (4) of this section shall be included in the report.

24 (8) If the person evaluated is a poor person as defined in KRS 453.190, the examiners
25 shall be paid by the county in which the petition is filed upon an order of allowance
26 entered by the court. Payment shall be in an amount which is reasonable as
27 determined by the court, except no payment shall be required of the county for an

- 1 evaluation performed by a salaried employee of a state agency for an evaluation
2 performed within the course of his employment. Additionally, no payment shall be
3 required of the county for an evaluation performed by a salaried employee of a
4 community center for mental health or individuals with an intellectual disability or
5 private facility or agency where the costs incurred by the center, facility, or agency
6 are reimbursable through third-party payors. Affidavits or other competent evidence
7 shall be admissible to prove the services rendered but not to prove their value.
- 8 (9) The respondent may file a response to the evaluation report no later than five (5)
9 days prior to the hearing.
- 10 (10) The respondent may secure an independent evaluation. If the respondent is unable
11 to pay for the evaluation, compensation for the independent evaluation may be paid
12 by the county in an amount which is reasonable as determined by the court.
- 13 ➔Section 25. KRS 625.090 is amended to read as follows:
- 14 (1) The Circuit Court may involuntarily terminate all parental rights of a parent of a
15 named child, if the Circuit Court finds from the record by clear and convincing
16 evidence that:
- 17 (a) 1. The child has been adjudged to be an abused or neglected child, as
18 defined in KRS 600.020~~(1)~~, by a court of competent jurisdiction;
19 2. The child is found to be an abused or neglected child, as defined in KRS
20 600.020~~(1)~~, by the Circuit Court in this proceeding;
21 3. The child is found to have been diagnosed with neonatal abstinence
22 syndrome at the time of birth, unless his or her birth mother:
23 a. Was prescribed and properly using medication for a legitimate
24 medical condition as directed by a health care practitioner that may
25 have led to the neonatal abstinence syndrome;
26 b. Is currently, or within ninety (90) days after the birth, enrolled in
27 and maintaining substantial compliance with both a substance

abuse treatment or recovery program and a regimen of prenatal care or postnatal care as recommended by her health care practitioner throughout the remaining term of her pregnancy or the appropriate time after her pregnancy; or

- c. In the absence of a prescription for the treatment of a legitimate medical condition, agrees, prior to discharge from the hospital, to participate in a court-ordered assessment by a drug treatment provider and the assigning of a certified peer support specialist for referral to appropriate treatment, and agrees to participate in treatment which shall commence within ninety (90) days after the birth; or

- 12 4. The parent has been convicted of a criminal charge relating to the
13 physical or sexual abuse or neglect of any child and that physical or
14 sexual abuse, neglect, or emotional injury to the child named in the
15 present termination action is likely to occur if the parental rights are not
16 terminated;

- 17 (b) 1. The Cabinet for Health and Family Services has filed a petition with the
18 court pursuant to KRS 620.180 or 625.050; or
19 2. A child-placing agency licensed by the cabinet, any county or
20 Commonwealth's attorney, or a parent has filed a petition with the court
21

- (c) Termination would be in the best interest of the child.

- 23 (2) [No]Termination of parental rights shall not be ordered unless the Circuit Court
24 also finds by clear and convincing evidence the existence of one (1) or more of the
25 following grounds:

- 26 (a) That the parent has abandoned the child for a period of not less than ninety
27 (90) days;

- (b) That the parent has inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;
 - (c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;
 - (d) That the parent has been convicted of a felony that involved the infliction of serious physical injury to any child;
 - (e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;
 - (f) That the parent has caused or allowed the child to be sexually abused or exploited;
 - (g) That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child;
 - (h) That:
 1. The parent's parental rights to another child have been involuntarily terminated;
 2. The child named in the present termination action was born subsequent to or during the pendency of the previous termination; and
 3. The conditions or factors which were the basis for the previous termination finding have not been corrected;

- 1 (i) That the parent has been convicted in a criminal proceeding of having caused
2 or contributed to the death of another child as a result of physical or sexual
3 abuse or neglect;
 - 4 (j) That the child has been in foster care under the responsibility of the cabinet
5 for fifteen (15) cumulative months out of forty-eight (48) months preceding
6 the filing of the petition to terminate parental rights; or
 - 7 (k) That the child has been removed from the biological or legal parents more
8 than two (2) times in a twenty-four (24) month period by the cabinet or a
9 court.

10 (3) In determining the best interest of the child and the existence of a ground for
11 termination, the Circuit Court shall consider the following factors:

12 (a) Mental illness as defined by KRS 202A.011~~(9)~~, or an intellectual disability
13 as defined by KRS 202B.010(9) of the parent as certified by a qualified
14 mental health professional, or a disability as defined in KRS 199.011, if the
15 mental illness, intellectual disability, or disability renders the parent
16 consistently unable to care for the immediate and ongoing physical or
17 psychological needs of the child for extended periods of time;

18 (b) Acts of abuse or neglect as defined in KRS 600.020~~(1)~~ toward any child in
19 the family;

20 (c) If the child has been placed with the cabinet, whether the cabinet has, prior to
21 the filing of the petition:
 - 22 1. Made reasonable efforts as defined in KRS 620.020 to reunite the child
23 with the parents unless one or more of the circumstances enumerated in
24 KRS 610.127 for not requiring reasonable efforts have been
25 substantiated in a written finding by the District Court; or
 - 26 2. Provided a parent with a disability as defined in KRS 199.011 with
27 targeted adaptive and supportive services based on an individual

1 assessment of the parent, or has received a written acknowledgement
2 from the parent knowingly and affirmatively rejecting the offered
3 services;

- 4 (d) The efforts and adjustments the parent has made in his or her circumstances,
5 conduct, or conditions to make it in the child's best interest to return the child
6 to his or her home within a reasonable period of time, considering the age of
7 the child;

8 (e) The physical, emotional, and mental health of the child and the prospects for
9 the improvement of the child's welfare if termination is ordered; and

10 (f) The payment or the failure to pay a reasonable portion of substitute physical
11 care and maintenance if financially able to do so.

12 (4) If the child has been placed with the cabinet, the parent may present testimony
13 concerning the reunification, adaptive or supportive services offered by the cabinet,
14 and whether additional services would be likely to bring about lasting parental
15 adjustment enabling a return of the child to the parent.

16 (5) If the parent proves by a preponderance of the evidence that the child will not
17 continue to be an abused or neglected child as defined in KRS 600.020{1} if
18 returned to the parent, or if the parent proves by a preponderance of the evidence
19 that appropriate and specifically targeted adaptive or supportive services based
20 upon an individual assessment of the parent have not been offered or provided to
21 the parent, the court in its discretion may determine not to terminate parental rights.

22 (6) Upon the conclusion of proof and argument of counsel, the Circuit Court shall enter
23 findings of fact, conclusions of law, and a decision as to each parent-respondent
24 within thirty (30) days either:

25 (a) Terminating the right of the parent; or

26 (b) Dismissing the petition and stating whether the child shall be returned to the
27 parent or shall remain in the custody of the state.

- 1 ➔Section 26. The following KRS section is repealed:
- 2 202A.081 Court-ordered community-based outpatient treatment.