

1 AN ACT relating to guardianship.

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

3 ➔Section 1. KRS 210.290 is amended to read as follows:

- 4 (1) The cabinet ~~[for Health and Family Services]~~ may be appointed and act as executor,  
5 administrator, guardian, limited guardian, conservator, or limited conservator as  
6 provided in this section. In this capacity the cabinet may act as a fiduciary and  
7 transact business in the same manner as any individual and for fiduciary purposes  
8 may sue and be sued in any of the courts of the state. Bond shall not be required of  
9 the cabinet.
- 10 (2) (a) Whenever a resident of the state is adjudged partially disabled or disabled and  
11 no other suitable person or entity is available and willing to act as limited  
12 guardian, guardian, limited conservator, or conservator, the cabinet may be  
13 appointed as the resident's limited guardian, guardian, limited conservator, or  
14 conservator. As used in this paragraph, "resident of the state" means an  
15 individual who has a permanent, full-time residence in Kentucky prior to the  
16 filing of a petition for or appointment of a limited guardian, guardian, limited  
17 conservator, or conservator for at least the previous six (6) months that is not  
18 a hospital, treatment facility, correctional facility, or long-term care facility,  
19 and who is a citizen or permanent resident of the United States.
- 20 (b) Notwithstanding paragraph (a) of this subsection, except upon written order of  
21 the court in exceptional circumstances, the cabinet shall not be appointed as a  
22 limited guardian, guardian, limited conservator, or conservator of a partially  
23 disabled or disabled person when the person:
- 24 1. Has been convicted of, pled guilty to, or entered an Alford plea for a sex  
25 crime as defined in KRS 17.500 or an offense that would classify the  
26 person as a violent offender under KRS 439.3401; or
  - 27 2. Is not alive or cannot be physically located.

- 1 (c) Before appointing the cabinet, consideration shall be given to the average  
2 caseload of each field social worker.
- 3 (d) The cabinet, acting through its designated officer, may apply to the District  
4 Court of the county in which the adjudication is made for appointment as  
5 limited guardian, guardian, limited conservator, or conservator for a partially  
6 disabled or disabled person who meets the requirements of this subsection.
- 7 (3) When the cabinet is appointed as a limited guardian, guardian, limited conservator,  
8 or conservator of a partially disabled or disabled person, the cabinet shall not:
- 9 (a) Assume physical custody of the person;
- 10 (b) Be assigned as the person's caregiver or custodian; or
- 11 (c) Become personally liable for the person's expenses or placement, or to third  
12 parties for the person's actions. However, the cabinet shall procure resources  
13 and services for which the person is eligible when necessary and available.
- 14 (4) (a) Except as provided in paragraph (b) of this subsection, upon the death of a  
15 person for whom the cabinet has been appointed guardian, limited guardian,  
16 conservator, or limited conservator, or upon the death of a person who has  
17 been committed to the cabinet leaving an estate and having no relatives at the  
18 time residing within the state, the cabinet may apply for appointment as  
19 administrator and upon appointment shall close the administration of the  
20 estate.
- 21 (b) If a person for whom the cabinet has been appointed guardian, limited  
22 guardian, conservator, or limited conservator dies with less than ten thousand  
23 dollars (\$10,000) of personal property or money, the cabinet shall not be  
24 required to apply for appointment as administrator. However, prior to the  
25 release of funds to the person's estate, the cabinet shall ensure all outstanding  
26 bills related to living expenses, reasonable funeral expenses when not prepaid,  
27 and estate recovery are paid. Any funds that remain after those expenses are

1           paid may be released first to other creditors and then to the relatives of the  
2           *person subject to guardianship or conservatorship*<sup>[ward]</sup>. The cabinet shall  
3           establish an online registry to provide public notice of remaining funds to  
4           other creditors and relatives of the *person subject to guardianship or*  
5           *conservatorship*<sup>[ward]</sup>, and the process for claiming those funds.  
6           Notwithstanding KRS 393.020, if the funds of a *person subject to*  
7           *guardianship or conservatorship*<sup>[ward]</sup> are less than ten thousand dollars  
8           (\$10,000) and remain unclaimed after the expiration of one (1) year from the  
9           date public notice is made, the funds shall escheat to the guardianship trust  
10          fund established in subsection (5) of this section.

11 (5) There is created in the cabinet a trust and agency fund to be known as the  
12          guardianship trust fund. The trust shall consist of funds of deceased *persons subject*  
13          *to guardianship or conservatorship*<sup>[wards]</sup> that remain after living, funeral, and  
14          estate recovery expenses are paid and that are unclaimed for one (1) year after  
15          public notice is made. The trust may also receive donations or grant funds for the  
16          support of indigent *persons subject to guardianship or conservatorship*<sup>[wards]</sup>.  
17          Notwithstanding KRS 45.229, any unused trust balance at the close of the fiscal  
18          year shall not lapse but shall be carried forward to the next fiscal year. Any interest  
19          earnings of the trust shall become part of the trust and shall not lapse. The trust may  
20          make investments as authorized by subsection (7) of this section and may use funds  
21          in the trust for the benefit of indigent *persons subject to guardianship or*  
22          *conservatorship*<sup>[wards]</sup> for expenses including:

- 23          (a) Temporary housing costs;
- 24          (b) Medical supplies or transportation services not covered by Medicaid;
- 25          (c) Emergency personal needs, including clothing or food;
- 26          (d) Burial expenses if no county funds are available in the county of death; and
- 27          (e) Expenses necessary to ensure health, safety, and well-being when no other

1 funds are available or accessible in a timely manner.

2 (6) The cabinet shall make available an annual report of income and expenditures from  
3 the guardianship trust fund. The trust shall be subject to an independent audit at the  
4 request of the General Assembly or the State Auditor.

5 (7) The cabinet may invest funds held as fiduciary in bonds or other securities  
6 guaranteed by the United States, and may sell or exchange such securities in its  
7 discretion. In addition, the cabinet may establish or place funds held as fiduciary in  
8 a trust.

9 (8) The cabinet shall receive such fees for its fiduciary services as provided by law.  
10 These fees shall be placed in a trust and agency account, from which may be drawn  
11 expenses for filing fees, court costs, and other expenses incurred in the  
12 administration of estates. Claims of the cabinet against the estates shall be  
13 considered in the same manner as any other claim.

14 (9) An officer designated by the secretary may act as legal counsel for any patient in a  
15 state mental hospital or institution against whom a suit of any nature has been filed,  
16 without being appointed as guardian, limited guardian, conservator, or limited  
17 conservator.

18 (10) Patients hospitalized pursuant to KRS Chapters 202A and 202B who are not  
19 adjudged disabled or partially disabled may authorize the cabinet ~~for Health and~~  
20 ~~Family Services~~ to handle personal funds received by them at the hospital in the  
21 same manner as prescribed in subsections (7) and (8) of this section.

22 ➔Section 2. KRS 216B.303 is amended to read as follows:

23 Every resident in a boarding home~~[,]~~ as defined in KRS 216B.300~~[,]~~ shall have at least  
24 the following rights:

25 (1) Before entering a boarding home, the resident or the resident's guardian, if any,  
26 shall be fully informed in writing, as evidenced by the resident's written  
27 acknowledgment or that of the resident's guardian, of all services provided by the

- 1 boarding home and all applicable charges.
- 2 (2) Before entering a boarding home, the resident or the resident's guardian shall be  
3 fully informed in writing, as evidenced by the resident's written acknowledgment or  
4 that of the resident's guardian, of all the resident's rights as defined in this section,  
5 and a list of any rules established by the boarding home.
- 6 (3) All residents shall be allowed to exercise their rights as a resident and a citizen, and  
7 may voice grievances and recommend changes in policies and services to the  
8 boarding home operator and to outside representatives of their choice, free from  
9 restraint, interference, coercion, discrimination, or reprisal.
- 10 (4) All residents shall be free from mental and physical abuse.
- 11 (5) Each resident may manage the use of his or her personal funds. The boarding home  
12 operator shall not require a resident to designate the operator as payee for any  
13 benefits received by the resident. However, if the operator accepts the responsibility  
14 for managing the resident's personal funds as evidenced by the operator's written  
15 acknowledgment, proper accounting and monitoring of such funds shall be made.  
16 This shall include the operator giving quarterly itemized statements to the resident  
17 or the resident's guardian which detail the status of the resident's personal funds and  
18 any transactions in which such funds have been received or disbursed. The operator  
19 shall return to the resident his or her valuables, personal possessions, and any  
20 unused balance of moneys from his or her account at the time the resident leaves  
21 the boarding home.
- 22 (6) Residents shall not be required to perform services for the boarding home.
- 23 (7) Residents may associate and communicate privately with persons of their choice,  
24 within reasonable hours established by the boarding home, and send and receive  
25 personal mail unopened.
- 26 (8) ~~A~~No resident shall not be detained against the resident's will. Residents shall be  
27 permitted and encouraged to go outdoors and leave the premises as they wish.

- 1 (9) Residents shall be permitted to participate in activities of social, religious, and  
2 community groups at their discretion.
- 3 (10) Residents shall be assured of at least visual privacy in multibed rooms and in  
4 bathrooms.
- 5 (11) If the resident has been adjudicated wholly mentally disabled in both financial and  
6 personal affairs in accordance with KRS 387.590, the resident's guardian shall not  
7 place the person subject to guardianship or conservatorship~~[ward]~~ in a boarding  
8 home.
- 9 (12) Each resident shall be treated with consideration, respect, and full recognition of his  
10 or her dignity and individuality.
- 11 (13) Residents shall have access to a telephone at a convenient location within the  
12 boarding home for making and receiving telephone calls subject to reasonable rules  
13 established by the boarding home.
- 14 (14) Residents have the right to have private meetings with inspectors representing the  
15 cabinet~~[for Health and Family Services]~~.
- 16 (15) Each resident and his or her guardian has the right to have access to all inspection  
17 reports on the boarding home.

18 ➔Section 3. KRS 387.510 is amended to read as follows:

19 As used in KRS 387.500 to 387.770 and 387.990:

- 20 (1) "Conservator" means an individual, agency, or corporation appointed by the court  
21 to manage the financial resources of a disabled person;
- 22 (2) "Limited conservator" means an individual, agency, or corporation appointed by the  
23 court to assist in managing the financial resources of a partially disabled person and  
24 whose powers and duties have been specifically enumerated by court order, and  
25 includes any limited conservator appointed by the court on an emergency basis in  
26 accordance with Section 16 of this Act;
- 27 (3) "Guardian" means any individual, agency, or corporation appointed by the court to

1 manage the personal affairs of a disabled person;

2 (4) "Limited guardian" means an individual, agency, or corporation appointed by the  
3 court to assist in managing the personal affairs of a partially disabled person and  
4 whose powers and duties have been specifically enumerated by court order, **and**  
5 **includes any limited guardian appointed by the court on an emergency basis in**  
6 **accordance with Section 16 of this Act;**

7 (5) "Standby" guardian or conservator means a person or entity designated by the court  
8 to assume the powers and duties assigned to a limited guardian, guardian, limited  
9 conservator, or conservator upon his **or her** death, resignation, removal, or  
10 incapacity;

11 (6) "Testamentary" guardian or conservator means an individual, agency, or  
12 corporation nominated in the will of a limited guardian, guardian, limited  
13 conservator, or conservator to succeed the testator in that capacity upon his **or her**  
14 death;

15 (7) "Developmental disability" means a severe, chronic disability of a person which:

16 (a) Is attributable to a mental or physical impairment or combination of mental  
17 and physical impairments, including pervasive developmental disorder;

18 (b) Is manifested before the person attains age twenty-two (22);

19 (c) Is likely to continue indefinitely;

20 (d) Results in substantial functional limitations in three (3) or more of the  
21 following areas of major life activity:

22 1. Self-care;

23 2. Receptive and expressive language;

24 3. Learning;

25 4. Mobility;

26 5. Self-direction;

27 6. Capacity for independent living; and

- 1           7. Economic self-sufficiency; and
- 2           (e) Reflects the person's need for a combination and sequence of special
- 3           interdisciplinary or generic care, treatment, or other services which are of
- 4           lifelong or extended duration and are individually planned and coordinated;
- 5       (8) "Disabled" means a legal disability, not a medical disability, and is measured by
- 6           functional inabilities. It refers to any person seventeen (17) years of age or older
- 7           who is:
- 8           (a) Unable to make informed decisions with respect to his or her personal affairs
- 9           to such an extent that he or she lacks the capacity to provide for his or her
- 10          physical health and safety, including but not limited to health care, food,
- 11          shelter, clothing, or personal hygiene; or
- 12          (b) Unable to make informed decisions with respect to his or her financial
- 13          resources to such an extent that he or she lacks the capacity to manage his or
- 14          her property effectively by those actions necessary to obtain, administer, and
- 15          dispose of both real and personal property.
- 16          Such inability shall be evidenced by acts or occurrences within six (6) months prior
- 17          to the filing of the petition for guardianship or conservatorship and shall not be
- 18          evidenced solely by isolated instances of negligence, improvidence, or other
- 19          behavior;
- 20       (9) "Partially disabled" refers to an individual who lacks the capacity to manage some
- 21          of his or her personal affairs ~~and~~ or financial resources as provided in subsection
- 22          (8) of this section, but who cannot be found to be fully disabled as provided therein;
- 23       (10) "Mentally ill person" means a person with substantially impaired capacity to use
- 24          self-control, judgment, or discretion in the conduct of his or her affairs and social
- 25          relations, associated with maladaptive behavior or recognized emotional symptoms
- 26          where impaired capacity, maladaptive behavior, or emotional symptoms can be
- 27          related to physiological, psychological, or social factors;

- 1 (11) "Interdisciplinary evaluation report" means a report of an evaluation of a respondent  
2 performed pursuant to the provisions of KRS 387.540 to determine whether he ***or***  
3 ***she*** is partially disabled or disabled as defined ***in this section***~~[herein]~~;
- 4 (12) "Interested person or entity" means an adult relative or friend of the respondent or  
5 ***person subject to guardianship or conservatorship***~~[ward]~~, an official or  
6 representative of a public or private agency, corporation, or association concerned  
7 with that person's welfare, or any other person found suitable by the court;
- 8 (13) "Petitioner" means a person who institutes a proceeding under KRS 387.530;
- 9 (14) "Respondent" means an individual alleged to be a partially disabled or disabled  
10 person;
- 11 (15) ***"Person subject to guardianship or conservatorship"***~~["Ward"]~~ means a person for  
12 whom a limited guardian, guardian, limited conservator, or conservator has been  
13 appointed;
- 14 (16) "Committee" means a person appointed by the court prior to July 1, 1982, to have  
15 full care, custody, and control of a disabled person and his ***or her*** estate; and
- 16 (17) "Personal affairs" means decisions regarding the person of an adult, including but  
17 not limited to health care, food, shelter, clothing, or personal hygiene.
- 18 ➔Section 4. KRS 387.520 is amended to read as follows:
- 19 (1) The District Courts shall have exclusive jurisdiction over all proceedings involving  
20 a determination of partial disability or disability, the modification of orders, the  
21 appointment and removal of guardians and conservators, and the management and  
22 settlement of their accounts.
- 23 (2) ***(a)*** If the respondent or ***person subject to guardianship or conservatorship***~~[ward]~~  
24 is a resident of this state, the venue for all proceedings under KRS 387.500 to  
25 387.770 shall be:
- 26 ***1.[(a)]*** In the county where the respondent or ***person subject to***  
27 ***guardianship or conservatorship***~~[ward]~~ resides;

1           2.~~[(b)]~~     In the county of domicile of the respondent or person subject to  
2                    guardianship or conservatorship~~[ward]~~; or

3           3.~~[(e)]~~     In the county where the parent of the respondent or person subject  
4                    to guardianship or conservatorship~~[ward]~~ is domiciled if the  
5                    respondent or person subject to guardianship or conservatorship~~[ward]~~  
6                    is a minor.

7           **(b) This subsection**~~[Nothing in This section]~~ shall **not** preclude transfer of venue  
8                    for good cause shown.

9           (3) If ~~a~~~~[no]~~ local conservator has **not** been appointed and ~~a~~~~[no]~~ petition in a disability  
10                   proceeding is **not** pending in this state, a domiciliary foreign conservator may file  
11                   with a court in this state in a county in which property belonging to the disabled  
12                   person is located, authenticated copies of his or her appointment and of any official  
13                   bond he or she has given. Thereafter, he or she may exercise as to assets in this state  
14                   all powers of a local conservator and may maintain actions and proceedings in this  
15                   state subject to any conditions imposed upon nonresident parties generally.

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

18           ➔Section 5. KRS 387.530 is amended to read as follows:

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

- 23           (a) The name and address of the respondent;
- 24           (b) The date of birth of the respondent, if known;
- 25           (c) The nature and degree of the alleged disability of the respondent;
- 26           (d) The facts and reasons supporting the need for guardianship or
- 27                    conservatorship;

- 1 (e) A description and approximation of the value of the respondent's financial  
2 resources, including government benefits, insurance entitlements, and  
3 anticipated yearly income, if known;
- 4 (f) The names and addresses of the respondent's next of kin, if known;
- 5 (g) The name and address of the individual or facility, if any, having custody of  
6 the respondent;
- 7 (h) The name, address, and interest of the petitioner;
- 8 (i) The name and address of the petitioner's attorney, if any; and
- 9 (j) The name and address of any person or entity appointed by the respondent as  
10 respondent's attorney in fact under a durable power of attorney or as  
11 respondent's surrogate to make health care decisions under an advance  
12 directive.

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

21 ➔Section 6. KRS 387.590 is amended to read as follows:

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

- 1 (c) If the respondent is found partially disabled in managing both his or her  
2 personal affairs and financial resources, a limited guardian and a limited  
3 conservator shall be appointed. The limited guardian and the limited  
4 conservator may be the same individual, agency, or corporation.
- 5 (2) (a) If the respondent is found disabled in managing his or her personal affairs,  
6 but not partially disabled or disabled in managing his or her financial  
7 resources, a guardian shall be appointed.
- 8 (b) If the respondent is found disabled in managing his or her financial resources,  
9 but not partially disabled or disabled in managing his or her personal affairs, a  
10 conservator shall be appointed.
- 11 (c) If the respondent is found disabled in managing both his or her personal  
12 affairs and his or her financial resources, a guardian and a conservator shall  
13 be appointed. The guardian and the conservator may be the same individual,  
14 agency, or corporation.
- 15 (3) The order of appointment of a limited guardian, guardian, limited conservator, or  
16 conservator shall specify:
- 17 (a) The type of guardianship, conservatorship, or guardianship and  
18 conservatorship to which the person subject to guardianship or  
19 conservatorship~~[ward]~~ is subject;
- 20 (b) The name and address of the limited guardian, guardian, limited conservator,  
21 or conservator;
- 22 (c) The name and address of the standby guardian or conservator, if a standby  
23 guardian or conservator is designated;
- 24 (d) The specific legal disabilities to which the respondent is subject, if the  
25 respondent has been determined to be partially disabled;
- 26 (e) The corresponding powers and duties of the limited guardian or limited  
27 conservator, if the respondent has been determined to be partially disabled;

1           and

2           (f) The duration of the term of guardianship or conservatorship.

3 (4) A limited guardian or limited conservator shall not be appointed for a term greater  
4 than five (5) years and may be appointed for a lesser period. A guardian or  
5 conservator may be appointed for a period of unlimited duration.

6 (5) The judgment of partial disability or disability and the order of appointment shall be  
7 filed in the District Court. The judgment shall be indexed by the county clerk in the  
8 book in which notices of actions and encumbrances are indexed. Unless such  
9 judgment is filed and indexed, it shall not constitute notice to any subsequent bona  
10 fide purchaser for value, mortgagee, or encumbrancer.

11 (6) If the respondent is determined to be disabled or partially disabled but no limited  
12 guardian, guardian, limited conservator, or conservator is appointed at the hearing,  
13 the determination shall have no legal effect.

14 (7) The rights of which a **person subject to guardianship or conservatorship**~~[ward]~~ is  
15 legally deprived upon a determination of disability in managing his **or her** personal  
16 affairs and financial resources include but are not limited to **the right to:**

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

18       **(b)** Execute instruments;~~;~~

19       **(c)** Enter into contractual relationships;~~;~~

20       **(d)** Determine his **or her** living arrangements;~~;~~

21       **(e)** Consent to medical procedures;~~;~~ and

22       **(f)** Obtain a motor vehicle operator's license.

23 **(8)** A **person subject to guardianship or conservatorship**~~[ward]~~ shall only be deprived  
24 of the right to vote if the court separately and specifically makes a finding on the  
25 record as established in KRS 387.580(3)(c).

26 ~~**(9)**~~~~[(8)]~~ A partially disabled or disabled person for whom a limited guardian, limited  
27 conservator, or conservator has been appointed retains all legal and civil rights

1       except those which have by court order been designated as legal disabilities or  
 2       which have been specifically granted to the limited guardian, limited conservator,  
 3       or conservator. A person who is partially disabled may be subject to some but not  
 4       all of the disabilities specified in subsection (7) of this section.

5       ➔Section 7. KRS 387.620 is amended to read as follows:

6       (1) A partially disabled or disabled person, his ***or her*** limited guardian, guardian,  
 7       limited conservator, or conservator, or any other interested person may petition the  
 8       court for:

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

10      (b) Removal, ~~and/or~~ replacement, ***or removal and replacement*** of a limited  
 11      guardian, guardian, limited conservator, or conservator; or

12      (c) Renewal of the appointment of a limited guardian, guardian, limited  
 13      conservator, or conservator.

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

15      (a) The name and address of the ***person subject to guardianship or***  
 16      ***conservatorship***~~[ward]~~;

17      (b) The name and address of the limited guardian, guardian, limited conservator,  
 18      or conservator;

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

20      (d) The names and addresses of the~~[ward's]~~ next of kin ***of the person subject to***  
 21      ***guardianship or conservatorship***, if known;

22      (e) The name and address of the individual or facility, if any, having custody of  
 23      the ***person subject to guardianship or conservatorship***~~[ward]~~;

24      (f) The relief requested; and

25      (g) The facts and reasons supporting the request.

26      (3) A request under subsection (1) of this section, if made by the ***person subject to***  
 27      ***guardianship or conservatorship***~~[ward]~~, may be communicated to the court by any

1 means, including~~[redacted]~~ but not limited to~~[redacted]~~ oral communication or informal letter. If  
2 such a request is communicated by means other than a petition, the court shall  
3 appoint a suitable person who may~~[redacted]~~ but need not be~~[redacted]~~ an employee of the state,  
4 county, or court to prepare a written petition to be filed with the court within seven  
5 (7) days following the appointment.

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

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

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

27 (a) Dismiss the petition;

- 1 (b) Remove the guardian or conservator and dissolve the guardianship or  
 2 conservatorship order;
- 3 (c) Remove the limited guardian, guardian, limited conservator, or conservator  
 4 and appoint a successor;
- 5 (d) Modify the original guardianship or conservatorship order; or
- 6 (e) Make any other order which the court deems appropriate and in the best  
 7 interest of the **person subject to guardianship or conservatorship**~~[ward]~~.
- 8 (7) If the original order is dissolved and no further order is issued, the **person subject to**  
 9 **guardianship or conservatorship**~~[ward]~~ shall be relieved of all legal disabilities.  
 10 The court shall enter an order and judgment restoring to the person all of the rights  
 11 and privileges of a citizen. The clerk shall note the judgment or modification in the  
 12 book in which notices of actions and encumbrances are indexed.
- 13 (8) The clerk of the court shall transmit a certified copy of the restoration judgment or  
 14 modification to the originating court, if the judgment or modification is ordered by  
 15 a court other than the court in which the original judgment was entered.
- 16 ➔Section 8. KRS 387.640 is amended to read as follows:
- 17 It shall be the general duty of the limited guardian or guardian to carry out diligently and  
 18 in good faith the specific duties and powers assigned by the court and to:
- 19 (1) **Ensure**~~[Assure]~~ that the personal, civil, and human rights of the **person subject to**  
 20 **guardianship or conservatorship**~~[ward]~~ are protected; and
- 21 (2) Encourage the **person subject to guardianship or conservatorship**~~[ward]~~ to:
- 22 (a) Participate to the maximum extent of his **or her** abilities in all decisions which  
 23 affect him **or her**;
- 24 (b) Act in his **or her** own behalf on all matters in which he **or she** is able to do so;  
 25 and
- 26 (c) Develop or regain, to the maximum extent possible, his **or her** capacity to  
 27 meet the essential requirements for his **or her** physical health or safety, and, if

1           impaired, his or her capacity to manage his or her financial resources.

2           ➔Section 9. KRS 387.650 is amended to read as follows:

3           The court may assign to a limited guardian any portion of the powers and duties specified  
4           in KRS 387.660. The court may assign other duties as are necessary to enhance the  
5           ~~ward's~~safety and well-being of the person subject to guardianship or  
6           conservatorship~~well-being~~. A limited guardian shall comply with the reporting  
7           requirements specified by KRS 387.670 which pertain to his or her powers and duties as  
8           specified by the court, provided that all reports submitted shall include the information  
9           required by paragraphs (d) and (f) of KRS 387.670(1).

10          ➔Section 10. KRS 387.660 is amended to read as follows:

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

13          (1) To establish the ~~ward's~~place of abode for the person subject to guardianship or  
14          conservatorship within the state, except that, if at any time a guardian places a  
15          person subject to guardianship or conservatorship~~ward~~ in a licensed residential  
16          facility for developmentally disabled persons, the guardian shall, within thirty (30)  
17          days of such placement, file with the court notice of the placement, stating with  
18          specificity the reasons for such placement, and an interdisciplinary evaluation  
19          report detailing the social, psychological, medical or other considerations on which  
20          such placement is predicated, a description of the treatment or habilitation programs  
21          which will benefit the person subject to guardianship or conservatorship~~ward~~ as  
22          a result of such placement, and a determination that such placement will provide  
23          appropriate treatment in the least restrictive available treatment and residential  
24          program. For purposes of this subsection, the interdisciplinary evaluation report  
25          may be one performed within two (2) months prior to the placement for purposes of  
26          determining whether such placement is necessary and appropriate, or may be an  
27          evaluation and assessment provided by the residential facility immediately after

1 placement. Notice to the court shall not be required where the **person subject to**  
2 **guardianship or conservatorship**<sup>[ward]</sup> is transferred from one licensed residential  
3 facility to another;

4 (2) To make provision for the ~~[ward's]~~ care, comfort, and maintenance **of the person**  
5 **subject to guardianship or conservatorship**, and arrange for such educational,  
6 social, vocational, and rehabilitation services as are appropriate and as will assist  
7 the **person subject to guardianship or conservatorship**<sup>[ward]</sup> in the development  
8 of maximum self-reliance and independence;

9 (3) To give any necessary consent or approval to enable the **person subject to**  
10 **guardianship or conservatorship**<sup>[ward]</sup> to receive medical or other professional  
11 care, counsel, treatment or service, except that a guardian may not consent on  
12 behalf of a **person subject to guardianship or conservatorship**<sup>[ward]</sup> to an  
13 abortion, sterilization, psychosurgery, removal of a bodily organ, or amputation of a  
14 limb unless the procedure is first approved by order of the court or is necessary, in  
15 an emergency situation, to preserve the life or prevent serious impairment of the  
16 physical health of the **person subject to guardianship or conservatorship**<sup>[ward]</sup>;

17 (4) To act with respect to the **person subject to guardianship or conservatorship**<sup>[ward]</sup>  
18 in a manner which limits the deprivation of civil rights and restricts his **or her**  
19 personal freedom only to the extent necessary to provide needed care and services  
20 to him **or her**; and

21 (5) To expend sums from the financial resources of the **person subject to guardianship**  
22 **or conservatorship**<sup>[ward]</sup> reasonable and necessary to carry out the powers and  
23 duties assigned to him **or her** by the court.

24 If a separate limited conservator or conservator has been appointed for the **person subject**  
25 **to guardianship or conservatorship**<sup>[ward]</sup>, the expenditure of funds by the limited  
26 guardian shall be consistent with the duties assigned to and procedures and policies  
27 established by such limited conservator or conservator. Conflicts arising between a

1 limited guardian and a limited conservator or conservator regarding the expenditure of  
2 funds which are unable to be otherwise resolved shall be submitted to the court for  
3 resolution.

4 →Section 11. KRS 387.670 is amended to read as follows:

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

6 (a) The ~~ward's~~ current mental, physical, and social condition **of the person**  
7 **subject to guardianship or conservatorship**;

8 (b) The address of every residence of the **person subject to guardianship or**  
9 **conservatorship**~~ward~~ during the reporting period and length of stay at each  
10 residence;

11 (c) A summary of the medical, social, educational, vocational, and other  
12 professional services received by the **person subject to guardianship or**  
13 **conservatorship**~~ward~~ during the reporting period;

14 (d) An outline of the guardian's visits with and activities on behalf of the **person**  
15 **subject to guardianship or conservatorship**~~ward~~;

16 (e) A recommendation as to the need for continued guardianship;

17 (f) A statement signed by the standby guardian, if one has been appointed, that  
18 the standby guardian continues to be willing to serve in the event of the death,  
19 resignation, removal, or incapacity of the guardian; and

20 (g) Other information requested by the court or useful in the opinion of the  
21 guardian.

22 (2) For the purpose of filing the report required by subsection (1) of this section, the  
23 guardian shall be given access to records pertaining to the **person subject to**  
24 **guardianship or conservatorship**~~ward~~ held by public or private agencies which  
25 contain information necessary for the guardian to perform his **or her** duties.

26 (3) The court shall review the report required in subsection (1) of this section and take  
27 whatever action it considers necessary to enhance the well-being of the **person**

1 **subject to guardianship or conservatorship**~~[ward]~~.

2 ➔Section 12. KRS 387.680 is amended to read as follows:

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

- 5 (1) Manage or assist in managing those financial resources placed under his **or her**  
6 supervision ~~[and]~~ or control as would a prudent person managing his **or her** own  
7 resources, including establishing or placing resources in a trust, and, if a  
8 conservator has special skills or is named conservator on the basis of  
9 representations of special skills or expertise, he **or she** shall use those skills; and
- 10 (2) Encourage the **person subject to guardianship or conservatorship**~~[ward]~~ to:
- 11 (a) Participate, to the maximum extent of his **or her** abilities, in all decisions  
12 which affect him **or her**;
- 13 (b) Act on his **or her** own behalf on all matters in which he **or she** is able to do  
14 so; and
- 15 (c) Develop or regain, to the maximum extent possible, his **or her** capacity to  
16 manage his **or her** financial resources and, if impaired, his **or her** capacity to  
17 meet the essential requirements for his **or her** physical health or safety.

18 ➔Section 13. KRS 387.690 is amended to read as follows:

- 19 (1) A limited conservator or conservator shall expend or distribute, or authorize the  
20 expenditure or distribution of, or assist in the expenditure or distribution of, the  
21 principal or income from the financial resources placed under his **or her** supervision  
22 and control to **ensure**~~[assure]~~ that:
- 23 (a) The essential requirements for the physical health or safety of the **person**  
24 **subject to guardianship or conservatorship**~~[ward]~~ are met;
- 25 (b) The rights of the **person subject to guardianship or conservatorship**~~[ward]~~  
26 are protected;
- 27 (c) The financial resources of the **person subject to guardianship or**

1            conservatorship<sup>[ward]</sup> which are subject to the conservatorship are prudently  
2 managed;

3            (d) The person subject to guardianship or conservatorship<sup>[ward]</sup> has the  
4 opportunity to develop or regain the capacity to perform the functions listed in  
5 paragraphs (a), (b), and (c) of subsection (2) of KRS 387.680; and

6            (e) The limited guardian or guardian for the person subject to guardianship or  
7 conservatorship<sup>[ward]</sup>, if any, is able to carry out the duties and powers  
8 assigned to him or her by the court.

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

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

13            (b) The probable duration of the conservatorship;

14            (c) The likelihood that the person subject to guardianship or  
15 conservatorship<sup>[ward]</sup> may be able to manage his or her financial resources  
16 in the future;

17            (d) The accustomed standard of living of the person subject to guardianship or  
18 conservatorship<sup>[ward]</sup>;

19            (e) Other funds or resources used for the support of the person subject to  
20 guardianship or conservatorship<sup>[ward]</sup> which have not been placed under  
21 the control or supervision of the limited conservator or conservator; and

22            (f) The requests of the person subject to guardianship or conservatorship<sup>[ward]</sup>  
23 and the request of the<sup>[ward's]</sup> limited guardian or guardian of the person  
24 subject to guardianship or conservatorship, if any.

25            (3) In addition to the duties and powers listed in subsection (1) of this section, the court  
26 may assign to a limited conservator any of the duties and powers listed in KRS  
27 387.700 which the partially disabled person lacks the ability to perform.

1        ➔Section 14. KRS 387.700 is amended to read as follows:

- 2        (1) A conservator has all of the powers conferred herein and any additional powers  
3        conferred by law on trustees in this state. The conservator may take possession of  
4        the ~~[ward's]~~real and personal property **belonging to the person subject to**  
5        **guardianship or conservatorship**, and of all rents, incomes, and benefits therefrom,  
6        whether accruing before or after his **or her** appointment, and of the proceeds arising  
7        from the sale, mortgage, lease or exchange thereof. Subject to such possession the  
8        title of all such estate and to the increment and proceeds thereof shall be to the  
9        **person subject to guardianship or conservatorship**~~[ward]~~ and not to the  
10       conservator. It is the duty of the conservator to protect and preserve the estate, to  
11       retain, sell and invest it as hereinafter provided, prosecute or defend actions, claims  
12       or proceedings in any jurisdiction for the protection of the estate's assets, to account  
13       for it faithfully, to perform all other duties required of him **or her** by law, and, at the  
14       termination of the conservatorship, to deliver the assets of the **person subject to**  
15       **guardianship or conservatorship**~~[ward]~~ to the persons lawfully entitled thereto.
- 16       (2) The conservator shall apply the money and property for the payments of debts,  
17       taxes, claims, charges and expenses of the conservatorship and for the support, care,  
18       maintenance and education of the **person subject to guardianship or**  
19       **conservatorship**~~[ward]~~ or his **or her** dependents.
- 20       (3) Any sale of realty of a **person subject to guardianship or conservatorship**~~[ward]~~  
21       shall be as provided in KRS Chapter 389A.
- 22       (4) Any lease of mineral rights, oil and gas rights, or sale of timber owned by a **person**  
23       **subject to guardianship or conservatorship**~~[ward]~~, or consolidation agreement, as  
24       defined by KRS 353.220, to be made on behalf of a **person subject to guardianship**  
25       **or conservatorship**~~[ward]~~ by a conservator shall require the authorization and order  
26       of the District Court of the county where the conservator has qualified. Such order  
27       may be given only pursuant to written motion which contains the grounds for the

1 motion and a description of the lease or agreement involved.

2 ➔Section 15. KRS 387.710 is amended to read as follows:

3 (1) Within sixty (60) days of appointment, the limited conservator or conservator shall  
 4 file with the court a verified inventory of all the property of the **person subject to**  
 5 **guardianship or conservatorship**~~[ward]~~ which has come to his **or her** possession or  
 6 knowledge, including a statement of all encumbrances, liens, and other secured  
 7 claims on any item, any claims against the estate of the **person subject to**  
 8 **guardianship or conservatorship**~~[ward]~~, and any cause of action accruing to the  
 9 **person subject to guardianship or conservatorship**~~[ward]~~. The limited conservator  
 10 or conservator shall provide a copy thereof to the **person subject to guardianship**  
 11 **or conservatorship**~~[ward if he has sufficient mental capacity to understand it]~~.

12 (2) (a) A limited conservator or conservator shall file with the court a verified report  
 13 and financial account **annually**~~[biennially]~~ within one hundred twenty (120)  
 14 days after the anniversary date of his **or her** appointment, **unless the limited**  
 15 **conservator or conservator is the Cabinet for Health and Family Services,**  
 16 **in which case the verified report and financial account shall be filed**  
 17 **biennially**. The report shall contain:

18 1. The present personal status of the **person subject to guardianship or**  
 19 **conservatorship**~~[ward]~~ whose estate is managed by the conservator;  
 20 2. The **limited conservator or** conservator's plan for preserving and  
 21 maintaining the estate of which he **or she** has control or supervision;  
 22 3. The need for continuation or cessation of the conservatorship;~~[and]~~  
 23 4. The need for any alteration in the powers of the conservatorship; **and**  
 24 **5. If the limited conservator or conservator delegated a power to any**  
 25 **other person, a description of the power delegated and the reason for**  
 26 **the delegation**.

27 (b) The biennial report shall specify the amount and type of real and personal

1 property received by the limited conservator or conservator and remaining in  
2 his or her control or invested by him or her, the nature of such investment,  
3 and expenditures made during the preceding year. Upon request of the court,  
4 the limited conservator or conservator shall produce for examination any  
5 information or documentation which the court may consider relevant to the  
6 accounting of the financial and property transactions of the estate.

7 (c) If the person subject to guardianship or conservatorship~~[ward]~~ has no real  
8 property and possesses personal property of two thousand five hundred dollars  
9 (\$2,500) or less~~[ for any year during the biennial report]~~, the conservator or  
10 limited conservator may file an informal biennial financial report attesting to  
11 the identity of the ~~[ward's]~~ financial account belonging to the person subject  
12 to guardianship or conservatorship, and its current balance. If the balance  
13 does not exceed two thousand five hundred dollars (\$2,500)~~[ for any year of~~  
14 ~~the biennial report]~~, the conservator or limited conservator shall not be  
15 required to render to the court a detailed accounting of the expenditures from  
16 the fund, unless the court, on its own motion or that of any interested  
17 person~~[party or individual]~~, deems it necessary to order the conservator or  
18 limited conservator to provide a detailed biennial accounting, including the  
19 listing of all expenditures for that reporting period.

20 (3) Upon the resignation, removal, or death of a limited conservator or conservator, or  
21 on the termination of the conservatorship, the limited conservator or conservator, or  
22 his or her personal representative, shall ~~[forthwith]~~ submit a final report and  
23 account to the court and to the former person subject to guardianship or  
24 conservatorship~~[ward]~~ and to the successor limited conservator or conservator, or,  
25 if the person subject to guardianship or conservatorship~~[ward]~~ is deceased, to his  
26 or her personal representative, and shall pay over the trust estate to the person  
27 entitled thereto. Upon approval of the report and account, the limited conservator or

1 conservator shall be discharged and his or her surety, if any, released.

2 ➔Section 16. KRS 387.740 is amended to read as follows:

- 3 (1) The court may exercise the powers of a limited guardian or limited conservator or  
4 may appoint an individual or agency to exercise such powers before or during the  
5 pendency of a proceeding for a determination of partial disability or disability or an  
6 appeal therefrom, if it appears that there is danger of serious impairment to the  
7 health or safety of the respondent or damage or dissipation to his or her property if  
8 immediate action is not taken.
- 9 (2) Prior to a hearing on the need for an emergency appointment of a limited guardian  
10 or limited conservator, a petition shall be filed by any person or entity which sets  
11 forth the following:
- 12 (a) The name, age, and address of the respondent;
  - 13 (b) The danger alleged to be imminent;
  - 14 (c) The type of appointment and the protection and assistance requested;
  - 15 (d) The facts and reasons supporting the request;
  - 16 (e) The name, address, and qualifications of the proposed limited guardian or  
17 limited conservator, if any;
  - 18 (f) The name, address, and interest of the petitioner;
  - 19 (g) The names and addresses of the respondent's next of kin, if known;
  - 20 (h) The name and address of the individual or facility, if any, having custody of  
21 the respondent; and
  - 22 (i) The date of filing of the petition for determination of disability or partial  
23 disability.
- 24 (3) (a) The court shall review any and all petitions for an emergency appointment of  
25 a limited guardian or limited conservator without delay and not more than one  
26 (1) week after the petition is filed. The circuit clerk in the county in which the  
27 petition is filed shall accept all petitions and the Commonwealth shall not

1 exclude any petition filed under this section from presentation to the court.  
2 Within one (1) week of the filing of a petition pursuant to this section, the  
3 court shall conduct a hearing at which the respondent shall be entitled to  
4 counsel.

5 (b) Notice of the time and place of the hearing shall be given not less than forty-  
6 eight (48) hours prior to the hearing to all persons named in the petition, the  
7 petitioner, and the Commonwealth unless waived in writing or on the record.

8 (4) The Commonwealth shall present evidence at the hearing. The petitioner shall have  
9 the right to present evidence in support of the petition at the hearing in addition to  
10 any evidence presented by the Commonwealth, and shall have the right to cross-  
11 examine witnesses.

12 (5) The burden shall be on the Commonwealth and the petitioner to prove by clear and  
13 convincing evidence the need for the emergency appointment of a limited guardian  
14 or conservator.

15 (6) If the court exercises the powers of a limited guardian or limited conservator or  
16 appoints another to do so in an emergency situation as set forth in subsection (1) of  
17 this section, the court shall state on the record findings of fact as to the danger  
18 determined to be imminent, the sources relied on in arriving at such determination,  
19 the type of assistance to be provided, and the powers and duties of the emergency  
20 guardian or conservator. The authority of the guardian or conservator shall expire:

21 (a) Upon resolution of the appeal or action;

22 (b) Sixty (60) days after the court's finding under this subsection; or

23 (c) No more than sixty (60) days from the time period described in paragraph

24 (b) of this subsection if the court finds that there is danger of serious

25 impairment to the health or safety of the respondent or damage or

26 dissipation to his or her property if the authority of the guardian or

27 conservator is not extended.

1       ➔Section 17. KRS 387.750 is amended to read as follows:

- 2       (1) On appointment of a limited guardian, guardian, limited conservator, or  
 3       conservator, or at any time thereafter, the court may designate another suitable  
 4       person or entity to assume the powers and duties assigned to the limited guardian,  
 5       guardian, limited conservator, or conservator upon his or her death, resignation,  
 6       removal, or incapacity. Prior to such designation, the individual or entity to be  
 7       designated shall file with the court a written application stating the name, address,  
 8       and qualifications of the applicant and his or her relationship, if any, to the  
 9       respondent.
- 10       (2) The individual so designated shall file an acceptance with the court within ten (10)  
 11       days of the death, resignation, or incapacity of his or her predecessor. Notice shall  
 12       also be given to the person subject to guardianship or conservatorship~~[ward]~~ and  
 13       his or her nearest adult relative. An individual serving on a standby basis may  
 14       exercise all the powers and duties assigned to his or her predecessor upon filing of  
 15       his or her acceptance unless otherwise ordered by the court.
- 16       (3) In an emergency situation and in the absence and unavailability of the initially  
 17       appointed guardian or conservator, the standby guardian or conservator may  
 18       temporarily assume the powers and duties of the initially appointed guardian or  
 19       conservator.

20       ➔Section 18. KRS 387.760 is amended to read as follows:

- 21       (1) ~~[No]~~ Court costs shall not be charged to a respondent or person subject to  
 22       guardianship or conservatorship~~[ward]~~ in any proceeding under KRS 387.500 to  
 23       387.770, if the respondent or person subject to guardianship or  
 24       conservatorship~~[ward]~~ is a poor person as defined in KRS 453.190.
- 25       (2) Limited guardians, guardians, limited conservators, and conservators are entitled to  
 26       reasonable compensation for services rendered and to reimbursement for reasonable  
 27       and necessary expenses incurred in the exercise of their assigned guardianship or

1 conservatorship duties and powers. Such compensation and reimbursement shall be  
2 paid from the financial resources of the person subject to guardianship or  
3 conservatorship~~[ward]~~ and shall not exceed:

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

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

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

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

13 In the absence of an agreement to the contrary, a commission on income shall be  
14 paid out of the income of the estate and a commission on principal shall be paid out  
15 of the principal of the estate.

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