

1 AN ACT relating to mentally ill and intellectually disabled defendants.

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

3 ➔Section 1. KRS 504.060 is amended to read as follows:

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

- 5 (1) "Department" means the Department of Corrections;
- 6 (2) "Forensic psychiatric facility" means a mental institution or facility, or part thereof,
7 designated by the secretary of the Cabinet for Health and Family Services for the
8 purpose and function of providing inpatient evaluation, care, and treatment for
9 mentally ill persons or individuals with an intellectual disability who have been
10 charged with or convicted of a *violent offense as listed in KRS*
11 *439.3401(1)*~~[felony]~~;
- 12 (3) "Foreseeable future" means not more than three hundred sixty (360) days;
- 13 (4) "Incompetency to stand trial" means, as a result of mental condition, lack of
14 capacity to appreciate the nature and consequences of the proceedings against one
15 or to participate rationally in one's own defense;
- 16 (5) "Insanity" means, as a result of mental condition, lack of substantial capacity either
17 to appreciate the criminality of one's conduct or to conform one's conduct to the
18 requirements of law;
- 19 (6) "Mental illness" means substantially impaired capacity to use self-control,
20 judgment, or discretion in the conduct of one's affairs and social relations,
21 associated with maladaptive behavior or recognized emotional symptoms where
22 impaired capacity, maladaptive behavior, or emotional symptoms can be related to
23 physiological, psychological, or social factors;
- 24 (7) "Individual with an intellectual disability" means an individual with significantly
25 subaverage general intellectual functioning existing concurrently with deficits in
26 adaptive behavior and manifested during the developmental period and is a
27 condition which may exist concurrently with mental illness or insanity;

- 1 (8) "Psychiatrist" means a physician licensed pursuant to KRS Chapter 311 who is
2 certified or eligible to apply for certification by the American Board of Psychiatry
3 and Neurology, Inc.;
- 4 (9) "Psychologist" means a person licensed at the doctoral level pursuant to KRS
5 Chapter 319 who has been designated by the Kentucky Board of Examiners of
6 Psychology as competent to perform examinations;
- 7 (10) "Treatment" means medication or counseling, therapy, psychotherapy, and other
8 professional services provided by or at the direction of psychologists or
9 psychiatrists. "Treatment" shall not include electroshock therapy or psychosurgery;
10 and
- 11 (11) "Treatment facility" means an institution or part thereof, approved by the Cabinet
12 for Health and Family Services, which provides evaluation, care, and treatment for
13 insane or mentally ill persons or individuals with an intellectual disability on an
14 inpatient or outpatient basis, or both.
- 15 ➔Section 2. KRS 504.080 is amended to read as follows:
- 16 (1) A court may commit a defendant to a treatment facility or forensic psychiatric
17 facility for up to thirty (30) days so that a psychologist or psychiatrist can examine,
18 treat, and report on the defendant's mental condition, except that if the defendant is
19 charged with a *violent offense as listed in KRS 439.3401(1)*~~[felony]~~ and it is
20 determined that inpatient examination or treatment is required, the defendant shall
21 be committed to a forensic psychiatric facility unless the secretary of the Cabinet for
22 Health and Family Services or the secretary's designee determines that the defendant
23 shall be examined and treated in another Cabinet for Health and Family Services
24 facility.
- 25 (2) Reports on a defendant's mental condition prepared under this chapter shall be filed
26 within ten (10) days of the examination.
- 27 (3) The defendant shall be present at any hearing on *the defendant's*~~[his]~~ mental

1 condition unless he or she waives the~~[his]~~ right to be present.

2 (4) The examining psychologist or psychiatrist shall appear at any hearing on
3 defendant's mental condition unless the defendant waives the~~[his]~~ right to have the
4 examining psychologist or psychiatrist~~[him]~~ appear.

5 (5) A psychologist or psychiatrist retained by the defendant shall be permitted to
6 participate in any examination under this chapter.

7 (6) The Cabinet for Health and Family Services, if the cabinet or its agent or employee
8 does not provide the examination, shall pay a reasonable fee to any psychologist or
9 psychiatrist ordered to examine, treat, and report on a defendant's mental condition.

10 (7) The termination of criminal proceedings under this chapter is not a bar to the
11 institution of civil commitment proceedings.

12 ➔Section 3. KRS 504.110 is amended to read as follows:

13 (1) If the court finds the defendant incompetent to stand trial but there is a substantial
14 probability the defendant~~[he]~~ will attain competency in the foreseeable future, it
15 shall commit the defendant to a treatment facility or a forensic psychiatric facility
16 and order the defendant~~[him]~~ to submit to treatment for sixty (60) days or until the
17 treating psychologist or psychiatrist~~[-treating him]~~ finds the defendant~~[him]~~
18 competent, whichever occurs first, except that if the defendant is charged with a
19 violent offense as listed in KRS 439.3401(1)~~[felony]~~, he or she shall be committed
20 to a forensic psychiatric facility unless the secretary of the Cabinet for Health and
21 Family Services or the secretary's designee determines that the defendant shall be
22 treated in another Cabinet for Health and Family Services facility. Within ten (10)
23 days of that time, the court shall hold another hearing to determine whether or not
24 the defendant is competent to stand trial.

25 (2) If the court finds the defendant incompetent to stand trial but there is no substantial
26 probability the defendant~~[he]~~ will attain competency in the foreseeable future, the
27 charges shall be dismissed without prejudice and the court~~[it]~~ shall conduct an

1 involuntary hospitalization proceeding under KRS Chapter 202A or 202B.

2 (3) If the court finds the defendant competent to stand trial, the court shall continue the
3 proceedings against the defendant.

4 ➔Section 4. KRS 202A.011 is amended to read as follows:

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

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

8 (2) "Danger" or "threat of danger to self, family, or others" means substantial physical
9 harm or threat of substantial physical harm upon self, family, or others, including
10 actions which deprive self, family, or others of the basic means of survival
11 including provision for reasonable shelter, food, or clothing;

12 (3) "Cabinet" means the Kentucky Cabinet for Health and Family Services;

13 (4) "Psychiatric facility" means a crisis stabilization unit or any facility licensed by the
14 cabinet and which provides inpatient, outpatient, psychosocial rehabilitation,
15 emergency, and consultation and education services for the diagnosis and treatment
16 of persons who have a mental illness;

17 (5) "Forensic psychiatric facility" means a mental institution or facility, or part thereof,
18 designated by the secretary for the purpose and function of providing inpatient
19 evaluation, care, and treatment for mentally ill persons or individuals with an
20 intellectual disability, who have been charged with or convicted of a **violent offense**
21 **as listed in KRS 439.3401(1)**~~[felony]~~;

22 (6) "Hospital" means:

23 (a) A state mental hospital or institution or other licensed public or private
24 hospital, institution, health-care facility, or part thereof, approved by the
25 Kentucky Cabinet for Health and Family Services as equipped to provide full-
26 time residential care and treatment for mentally ill persons or individuals with
27 an intellectual disability; or

- 1 (b) A hospital, institution, or health-care facility of the government of the United
2 States equipped to provide residential care and treatment for mentally ill
3 persons or individuals with an intellectual disability;
- 4 (7) "Judge" means any judge or justice of the Court of Justice or a trial commissioner of
5 the District Court acting under authority of SCR 5.030;
- 6 (8) "Least restrictive alternative mode of treatment" means that treatment which will
7 give a mentally ill individual a realistic opportunity to improve the individual's level
8 of functioning, consistent with accepted professional practice in the least confining
9 setting available;
- 10 (9) "Mentally ill person" means a person with substantially impaired capacity to use
11 self-control, judgment, or discretion in the conduct of the person's affairs and social
12 relations, associated with maladaptive behavior or recognized emotional symptoms
13 where impaired capacity, maladaptive behavior, or emotional symptoms can be
14 related to physiological, psychological, or social factors;
- 15 (10) "Patient" means a person under observation, care, or treatment in a hospital
16 pursuant to the provisions of this chapter;
- 17 (11) "Petitioner" means a person who institutes a proceeding under this chapter;
- 18 (12) "Qualified mental health professional" means:
- 19 (a) A physician licensed under the laws of Kentucky to practice medicine or
20 osteopathy, or a medical officer of the government of the United States while
21 engaged in the performance of official duties;
- 22 (b) A psychiatrist 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 practice of official duties, who is certified or eligible to apply
25 for certification by the American Board of Psychiatry and Neurology, Inc.;
- 26 (c) A psychologist with the health service provider designation, a psychological
27 practitioner, a certified psychologist, or a psychological associate, licensed

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

- 1 (g) A professional counselor credentialed under the provisions of KRS Chapter
2 335.500 to 335.599 with three (3) years of inpatient or outpatient clinical
3 experience in psychiatric mental health practice and currently employed by a
4 hospital or forensic facility licensed by the Commonwealth, a psychiatric unit
5 of a general hospital, a private agency or company engaged in providing
6 mental health services, or a regional community program for mental health
7 and individuals with an intellectual disability; or
- 8 (h) A physician assistant licensed under KRS 311.840 to 311.862, who meets one
9 (1) of the following requirements:
- 10 1. Provides documentation that he or she has completed a psychiatric
11 residency program for physician assistants;
 - 12 2. Has completed at least one thousand (1,000) hours of clinical experience
13 under a supervising physician, as defined by KRS 311.840, who is a
14 psychiatrist and is certified or eligible for certification by the American
15 Board of Psychiatry and Neurology, Inc.;
 - 16 3. Holds a master's degree from a physician assistant program accredited
17 by the Accreditation Review Commission on Education for the
18 Physician Assistant or its predecessor or successor agencies, is
19 practicing under a supervising physician as defined by KRS 311.840,
20 and:
 - 21 a. Has two (2) years of clinical experience in the assessment,
22 evaluation, and treatment of mental disorders; or
 - 23 b. Has been employed by a hospital or forensic psychiatric facility
24 licensed by the Commonwealth or a psychiatric unit of a general
25 hospital or a private agency or company engaged in the provision
26 of mental health services or a regional community program for
27 mental health and individuals with an intellectual disability for at

- 1 least two (2) years; or
- 2 4. Holds a bachelor's degree, possesses a current physician assistant
- 3 certificate issued by the board prior to July 15, 2002, is practicing under
- 4 a supervising physician as defined by KRS 311.840, and:
- 5 a. Has three (3) years of clinical experience in the assessment,
- 6 evaluation, and treatment of mental disorders; or
- 7 b. Has been employed by a hospital or forensic psychiatric facility
- 8 licensed by the Commonwealth or a psychiatric unit of a general
- 9 hospital or a private agency or company engaged in the provision
- 10 of mental health services or a regional community program for
- 11 mental health and individuals with an intellectual disability for at
- 12 least three (3) years;

13 (13) "Residence" means legal residence as determined by applicable principles

14 governing conflicts of law;

15 (14) "Respondent" means a person alleged in a hearing under this chapter to be a

16 mentally ill person or an individual with an intellectual disability; and

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

18 ➔Section 5. KRS 202B.010 is amended to read as follows:

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

20 (1) "Authorized staff physician" means a person who is employed as a physician of an

21 ICF/ID;

22 (2) "Interdisciplinary team" means the group of persons responsible for the diagnosis,

23 evaluation, and individualized program planning and service implementation for the

24 resident. The team is composed of a physician, a psychologist, a registered nurse, a

25 social worker, and other professionals, at least one (1) of whom is a qualified

26 professional in the area of intellectual disabilities, and may include the resident, the

27 resident's family, or the guardian;

- 1 (3) "Cabinet" means the Kentucky Cabinet for Health and Family Services;
- 2 (4) "Danger" or "threat of danger to self, family, or others" means substantial physical
3 harm or threat of substantial physical harm upon self, family, or others, including
4 actions which deprive self, family, or others of the basic means of survival
5 including provision for reasonable shelter, food, or clothing;
- 6 (5) "Forensic psychiatric facility" means a mental institution or facility, or part thereof,
7 designated by the secretary for the purpose and function of providing inpatient
8 evaluation, care, and treatment for mentally ill persons or individuals with an
9 intellectual disability who have been charged with or convicted of a **violent offense**
10 **as listed in KRS 439.3401(1)**~~[felony]~~;
- 11 (6) "Hospital" means:
- 12 (a) A state mental hospital or institution or other licensed public or private
13 hospital, institution, health-care facility, or part thereof, approved by the
14 Kentucky Cabinet for Health and Family Services as equipped to provide full-
15 time residential care and treatment for mentally ill persons or individuals with
16 an intellectual disability;
- 17 (b) A hospital, institution, or health-care facility of the government of the United
18 States equipped to provide residential care and treatment for mentally ill
19 persons or individuals with an intellectual disability;
- 20 (7) "Judge" means any judge or justice of the Court of Justice or a trial commissioner of
21 the District Court acting under authority of SCR 5.030;
- 22 (8) "Least restrictive alternative mode of treatment" means that treatment given in the
23 least confining setting which will provide an individual with an intellectual
24 disability appropriate treatment or care consistent with accepted professional
25 practice. For purposes of this section, least restrictive alternative mode of treatment
26 may include an institutional placement;
- 27 (9) "Individual with an intellectual disability" means a person with significantly

1 subaverage general intellectual functioning existing concurrently with deficits in
2 adaptive behavior and manifested during the developmental period;

3 (10) "ICF/ID" means an intermediate-care facility approved by the cabinet for the
4 evaluation, care, and treatment of individuals with an intellectual disability;

5 (11) "Petitioner" means a person who institutes a proceeding under this chapter;

6 (12) "Qualified professional in the area of intellectual disabilities" means:

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

10 (b) A psychologist with the health service provider designation, a psychological
11 practitioner, a certified psychologist, or a psychological associate licensed
12 under the provisions of KRS Chapter 319;

13 (c) A licensed registered nurse with a master's degree in psychiatric nursing from
14 an accredited institution and two (2) years of clinical experience of which one
15 (1) year is with individuals with an intellectual disability; or a licensed
16 registered nurse, with a bachelor's degree in nursing from an accredited
17 institution, who has three (3) years of inpatient or outpatient clinical
18 experience of which one (1) year is in the field of individuals with an
19 intellectual disability and is currently employed by an ICF/ID licensed by the
20 cabinet, a hospital, a regional community program for mental health or
21 individuals with an intellectual disability, or a private agency or company
22 engaged in the provision of services to individuals with an intellectual
23 disability;

24 (d) A licensed clinical social worker licensed under the provisions of KRS
25 335.100, or a certified social worker licensed under the provisions of KRS
26 335.080 with two (2) years of inpatient or outpatient clinical experience in
27 social work of which one (1) year shall be in the field of individuals with an

- 1 intellectual disability and is currently employed by an ICF/ID licensed by the
2 cabinet, a hospital, a regional community program for mental health or
3 individuals with an intellectual disability, or a private agency or company
4 engaged in the provision of services to individuals with an intellectual
5 disability;
- 6 (e) A marriage and family therapist licensed under the provisions of KRS 335.300
7 to 335.399 with three (3) years of inpatient or outpatient clinical experience in
8 psychiatric mental health practice and currently employed by a hospital or
9 forensic facility licensed by the Commonwealth, a psychiatric unit of a general
10 hospital, a private agency or company engaged in providing mental health
11 services, or a regional community program for mental health or individuals
12 with an intellectual disability; or
- 13 (f) A professional counselor credentialed under the provisions of KRS 335.500 to
14 335.599 with three (3) years of inpatient or outpatient clinical experience in
15 psychiatric mental health practice and currently employed by a hospital or
16 forensic facility licensed by the Commonwealth, a psychiatric unit of a general
17 hospital, a private agency or company engaged in providing mental health
18 services, or a regional community program for mental health or individuals
19 with an intellectual disability;
- 20 (13) "Residence" means legal residence as determined by applicable principles
21 governing conflicts of law;
- 22 (14) "Resident" means a person under care or treatment in an ICF/ID pursuant to the
23 provisions of this chapter;
- 24 (15) "Respondent" means a person alleged in a hearing under this chapter to be an
25 individual with an intellectual disability; and
- 26 (16) "Secretary" shall mean the secretary of the Cabinet for Health and Family Services.