

1 AN ACT relating to court-ordered outpatient mental health treatment and making
2 an appropriation therefor.

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

4 ➔Section 1. KRS 202A.261 is amended to read as follows:

5 No public or private hospital, other than a state-operated or contracted mental hospital or
6 institution, shall be required to provide services under KRS 202A.008, 202A.011,
7 202A.028, 202A.041, 202A.051, 202A.071, **Sections 3 to 13 of this Act**, 202A.081,
8 202A.101, 202A.141, 202A.241, 202A.251, 202A.261, 202A.271, 202B.170, 202B.200,
9 387.540, 504.085, 600.020, 645.020, 645.120, and 645.280 unless the hospital agrees to
10 provide the services. Any hospital shall make every reasonable attempt to cooperate with
11 the implementation of KRS 202A.008, 202A.011, 202A.028, 202A.041, 202A.051,
12 202A.071, 202A.081, 202A.101, 202A.141, 202A.241, 202A.251, 202A.261, 202A.271,
13 202B.170, 202B.200, 387.540, 504.085, 600.020, 645.020, 645.120, and 645.280.

14 ➔Section 2. KRS 202A.271 is amended to read as follows:

15 Each public or private hospital, other than a state-operated or contracted mental hospital
16 or institution, which provides services under KRS 202A.008, 202A.011, 202A.028,
17 202A.041, 202A.051, 202A.071, **Sections 3 to 13 of this Act**, 202A.081, 202A.101,
18 202A.141, 202A.241, 202A.251, 202A.261, 202A.271, 202B.170, 202B.200, 387.540,
19 504.085, 600.020, 645.020, 645.120, and 645.280 shall be paid for the services at the
20 same rates the hospital negotiates with the Department for Behavioral Health,
21 Developmental and Intellectual Disabilities or the regional community program for
22 mental health and for individuals with an intellectual disability.

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

25 **(1) Proceedings for court-ordered assisted outpatient treatment of a person shall be**
26 **initiated by the filing of a verified petition for that purpose in District Court.**

27 **(2) The petition and all subsequent court documents shall be entitled: "In the**

1 interest of (name of respondent)."

2 (3) The petition shall be filed by a qualified mental health professional; peace
3 officer; county attorney; Commonwealth's attorney; spouse, relative, friend, or
4 guardian of the person concerning whom the petition is filed; or any other
5 interested person.

6 (4) The petition shall set forth:

7 (a) Petitioner's relationship to the respondent;

8 (b) Respondent's name, residence, and current location, if known;

9 (c) Petitioner's belief, including the factual basis therefor, that the respondent
10 meets the criteria for court-ordered assisted outpatient treatment as set forth
11 in Section 6 of this Act; and

12 (d) Whether, within five (5) days prior to the filing of the petition, the
13 respondent has been examined by a qualified mental health professional to
14 determine whether the respondent meets the criteria for court-ordered
15 assisted outpatient treatment pursuant to Section 5 of this Act.

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

19 (6) If, after reviewing the allegations contained in the petition and examining the
20 petitioner under oath, it appears to the court that there is probable cause to
21 believe the respondent should be court-ordered to assisted outpatient treatment,
22 the court shall:

23 (a) Order the respondent to be examined without unnecessary delay by a
24 qualified mental health professional to determine whether the respondent
25 meets the criteria for court-ordered assisted outpatient treatment set forth in
26 Section 5 of this Act, unless the court has already received the certified
27 findings of such an examination conducted no earlier than five (5) days

1 prior to the filing of the petition. The qualified mental health professional
2 shall certify his or her findings within seventy-two (72) hours, excluding
3 weekends and holidays; and

4 (b) Set a date for a hearing within six (6) days from the date of the examination
5 under the provisions of this section, excluding weekends and holidays, to
6 determine if the respondent should be court-ordered to assisted outpatient
7 treatment.

8 (7) If the court finds there is no probable cause to believe the respondent should be
9 court-ordered to assisted outpatient treatment, the proceedings against the
10 respondent shall be dismissed.

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

13 (1) The court may order that the sheriff of the county or a peace officer transport the
14 respondent to a hospital or site designated by the cabinet so that the respondent
15 shall be examined without unnecessary delay by a qualified mental health
16 professional. The sheriff or peace officer may authorize, upon agreement of a
17 person authorized by the peace officer, the cabinet, a private agency on contract
18 with the cabinet, or an ambulance service designated by the cabinet to transport
19 the person to a hospital or site designated by the cabinet.

20 (2) (a) When the court is authorized to issue an order that the respondent be
21 transported to a hospital or site designated by the cabinet for examination,
22 the court may issue a summons.

23 (b) A summons so issued shall be directed to the respondent and shall
24 command the respondent to appear at a time and place specified in the
25 summons, where the respondent shall be examined by a qualified mental
26 health professional.

27 (c) If a respondent who has been summoned fails to appear for the

1 examination, the court may order that the sheriff of the county or a peace
 2 officer transport the respondent to a hospital or site designated by the
 3 cabinet for the purpose of an examination.

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

6 No person shall be court-ordered to assisted outpatient mental health treatment unless
 7 the person:

8 (1) Has been involuntarily hospitalized pursuant to KRS 202A.051(11) at least two

9 (2) times in the past twelve (12) months;

10 (2) Is diagnosed with a serious mental illness;

11 (3) Is unlikely to adequately adhere to outpatient treatment on a voluntary basis
 12 based on a qualified mental health professional's:

13 (a) Clinical observation;

14 (b) Review of treatment history, including the person's prior history of repeated
 15 treatment nonadherence; and

16 (c) Identification of specific characteristics of the person's clinical condition
 17 described as anosognosia, or failure to recognize his or her diagnosis of
 18 serious mental illness; and

19 (4) Is in need of court-ordered assisted outpatient treatment as the least restrictive
 20 alternative mode of treatment presently available and appropriate.

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

23 No later than the date of the hearing held pursuant to Section 3 of this Act, the
 24 qualified mental health professional who examined the respondent pursuant to Section
 25 3 of this Act shall provide to the court and the respondent a proposed written treatment
 26 plan for the respondent for court-ordered assisted outpatient treatment, which shall
 27 have the goal of recovery. In developing a treatment plan, a qualified mental health

1 professional shall:

2 (1) Provide reasonable opportunities for the respondent to actively participate in the
3 development of the treatment plan and any modifications thereafter, and involve
4 any other persons whom the respondent requests to have participate;

5 (2) Follow any advanced directive for mental health treatment executed by the
6 respondent; and

7 (3) Include in the treatment plan:

8 (a) A proactive crisis plan that includes access to emergency or crisis services
9 twenty-four (24) hours a day and the contact information to access such
10 crisis services; and

11 (b) Evidence-based practices. As used in this paragraph, "evidence-based
12 practices" means intervention programs, policies, procedures, and practices
13 that have been rigorously tested; are proven by scientific research; have
14 yielded consistent, replicable results; and have proven safe, beneficial, and
15 effective for most people diagnosed with mental illness when implemented
16 competently. Evidence-based practices may include but are not limited to
17 psychotropic medications, psychosocial rehabilitation, recovery-oriented
18 therapies, assertive community treatment, supported employment, supported
19 housing, and peer support services.

20 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO
21 READ AS FOLLOWS:

22 (1) At a hearing and at all stages of a proceeding for court-ordered assisted
23 outpatient treatment, the respondent shall be:

24 (a) Represented by counsel;

25 (b) Accompanied by a peer support specialist or other person in a support
26 relationship, if requested by the respondent; and

27 (c) Afforded an opportunity to present evidence, call witnesses on his or her

- 1 behalf, and cross-examine adverse witnesses.
- 2 (2) If a respondent does not appear at the hearing, and appropriate attempts to elicit
3 the respondent's appearance have failed, the court may conduct the hearing in
4 the respondent's absence.
- 5 (3) A qualified mental health professional who recommends court-ordered assisted
6 outpatient treatment for the respondent shall:
- 7 (a) Testify at the hearing, in person or via electronic means;
- 8 (b) State the facts and clinical determinations which support the allegation that
9 the respondent meets the criteria stated in Section 5 of this Act; and
- 10 (c) Testify in support of the treatment plan provided pursuant to Section 6 of
11 this Act, and for each category of proposed evidence-based treatment, he or
12 she shall state the specific recommendation and the clinical basis for his or
13 her belief that such treatment is essential to the maintenance of the
14 respondent's health or safety.
- 15 (4) If after hearing all relevant evidence, the court does not find by clear and
16 convincing evidence that the respondent meets the criteria stated in Section 5 of
17 this Act, the court shall deny the petition and the proceedings against the
18 respondent shall be dismissed.
- 19 (5) If after hearing all relevant evidence, the court finds by clear and convincing
20 evidence that the respondent meets the criteria stated in Section 5 of this Act, the
21 court may order the respondent to receive assisted outpatient treatment for a
22 period of time not to exceed three hundred sixty (360) days. The court's order
23 shall incorporate a treatment plan, which shall be limited in scope to the
24 recommendations included in the treatment plan provided by the qualified mental
25 health professional pursuant to Section 6 of this Act.
- 26 (6) The court shall report every order for assisted outpatient treatment issued under
27 this section to the Kentucky Commission on Services and Supports for

1 *Individuals with Mental Illness, Alcohol and Other Drug Abuse Disorders, and*
2 *Dual Diagnoses established pursuant to KRS 210.502.*

3 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO
4 READ AS FOLLOWS:

5 *If the court orders assisted outpatient mental health treatment pursuant to Section 7 of*
6 *this Act, the court shall appoint an outpatient provider agency recognized by the*
7 *cabinet which shall assemble a multi-disciplinary team. The multi-disciplinary team*
8 *shall regularly monitor the person's adherence to the conditions of the order and*
9 *regularly report this information to the court that ordered the person's release. Reports*
10 *may be provided in written format, in person, or via electronic means, at the court's*
11 *discretion.*

12 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO
13 READ AS FOLLOWS:

14 *A person's substantial failure to comply with a court order for assisted outpatient*
15 *treatment may constitute presumptive grounds for an authorized staff physician to*
16 *order a seventy-two (72) hour emergency admission pursuant to KRS 202A.031.*
17 *Failure to comply with an order for assisted outpatient treatment shall not be grounds*
18 *to find the person in contempt of court.*

19 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 202A IS CREATED
20 TO READ AS FOLLOWS:

21 *(1) At any time during the period of an order for court-ordered assisted outpatient*
22 *treatment, the person subject to the order may move the court to stay, vacate, or*
23 *modify the order.*

24 *(2) (a) As used in this subsection, "material change" means an addition or*
25 *deletion of a category of services to or from a treatment plan.*

26 *(b) If a treating qualified mental health professional proposes a material*
27 *change to the court-ordered treatment plan, he or she shall apply to the*

1 court for approval of the proposed change. Not later than five (5) days after
 2 receiving the application, excluding weekends and holidays, the court shall
 3 hold a hearing. If the person under order informs the court that he or she
 4 agrees to the proposed material change, the court may approve such change
 5 without a hearing.

6 (3) Within thirty (30) days of the expiration of an order for assisted outpatient
 7 treatment, the original petitioner may petition the court for an additional period
 8 of court-ordered assisted outpatient treatment. The procedures for the
 9 consideration of the petition shall be identical to the procedures provided in
 10 Sections 3 to 13 of this Act, except that the parties may mutually agree to waive
 11 the requirement of a new hearing. The person under order shall be represented
 12 by an attorney in responding to the petition for an additional period of court-
 13 ordered assisted outpatient treatment.

14 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 202A IS CREATED
 15 TO READ AS FOLLOWS:

16 For persons who are Medicaid-eligible, assisted outpatient mental health treatment
 17 services identified under Sections 3 to 13 of this Act shall be authorized by the
 18 Department for Medicaid Services and its contractors as Medicaid-eligible services and
 19 shall be subject to the same medical necessity criteria and reimbursement methodology
 20 as for all other covered behavioral health services.

21 ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 202A IS CREATED
 22 TO READ AS FOLLOWS:

23 Implementation of Sections 3 to 13 of this Act is contingent upon adequate funding by
 24 any unit of state or local government or divisions thereof, special purpose
 25 governmental entity, or any other entity able to utilize funds for the purposes set forth
 26 in Sections 3 to 13 of this Act. Funding may be provided through the appropriation of
 27 federal, state, or local resources or from donations, grants, gifts, or pledges from

1 *private resources.*

2 ➔SECTION 13. A NEW SECTION OF KRS CHAPTER 202A IS CREATED
3 TO READ AS FOLLOWS:

4 *Sections 3 to 13 of this Act may be cited as Tim's Law.*