



# GENERAL ASSEMBLY COMMONWEALTH OF KENTUCKY

## 2017 REGULAR SESSION

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SENATE BILL NO. 91

AS ENACTED, VETOED, AND OVERRIDEN

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WEDNESDAY, MARCH 29, 2017

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The following bill was reported to the House from the Senate and ordered to be printed.

RECEIVED AND FILED  
DATE March 30, 2017  
11:02 AM

ALISON UNDERGANG GRIMES  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY R. Adler

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

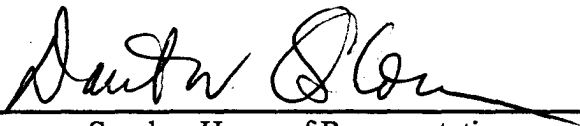
1 *private resources.*


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.*

  
\_\_\_\_\_  
President of Senate

  
\_\_\_\_\_  
Speaker-House of Representatives

Attest:   
\_\_\_\_\_  
Chief Clerk of Senate

Approved   
\_\_\_\_\_  
Secretary of State

Date March 30, 2017