

1 AN ACT relating to mental capacity.

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

3 ➔Section 1. KRS 311.631 is amended to read as follows:

4 (1) If an adult patient whose physician has determined that he or she does not have
5 decisional capacity has not executed an advance directive, or to the extent the
6 advance directive does not address a decision that must be made, any one (1) of the
7 following responsible parties, in the following order of priority if no individual in a
8 prior class is reasonably available, willing, and competent to act, shall be authorized
9 to make health care decisions on behalf of the patient:

10 (a) The judicially-appointed guardian of the patient, if the guardian has been
11 appointed and if medical decisions are within the scope of the guardianship;

12 (b) The attorney-in-fact named in a durable power of attorney, if the durable
13 power of attorney specifically includes authority for health care decisions;

14 (c) The spouse of the patient;

15 (d) An adult child of the patient, or if the patient has more than one (1) child, the
16 majority of the adult children who are reasonably available for consultation;

17 (e) The parents of the patient;

18 (f) The nearest living relative of the patient, or if more than one (1) relative of the
19 same relation is reasonably available for consultation, a majority of the
20 nearest living relatives; or

21 **(g) An adult friend of the patient who:**

22 **1. Has maintained regular contact with the patient; and**

23 **2. Is familiar with the patient's activities, health, and religious and moral**
24 **beliefs.**

25 (2) In any case in which a health care decision is made under this section, the decision
26 shall be noted in writing in the patient's medical records.

27 (3) An individual authorized to consent for another under this section shall act in good

1 faith, in accordance with any advance directive executed by the individual who
2 lacks decisional capacity, and in the best interest of the individual who does not
3 have decisional capacity.

4 (4) In any case in which a health care decision is made under this section,
5 hospitalization for psychiatric treatment at a general hospital shall not exceed
6 fourteen (14) consecutive days unless a court order is obtained under KRS Chapter
7 202A or 202B. For the purposes of this section, a general hospital is one that is not
8 owned or operated by the Commonwealth of Kentucky.

9 (5) An individual authorized to make a health care decision under this section may
10 authorize the withdrawal or withholding of artificially-provided nutrition and
11 hydration only in the circumstances as set forth in KRS 311.629(3).

12 ➔Section 2. KRS 504.060 is amended to read as follows:

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

14 (1) "Department" means the Department of Corrections;

15 **(2) "Examiner" means a psychologist or psychiatrist who examines, treats, or**
16 **reports on a defendant's mental condition as required by this chapter;**

17 **(3)(2)** "Forensic psychiatric facility" means a mental institution or facility, or part
18 thereof, designated by the secretary~~[of the Cabinet for Health and Family Services]~~
19 for the purpose and function of providing inpatient evaluation, care, and treatment
20 for mentally ill persons or individuals with an intellectual disability who have been
21 charged with or convicted of a felony;

22 **(4)(3)** "Foreseeable future" means not more than three hundred sixty (360) days;

23 **(5)(4)** "Incompetency to stand trial" means, as a result of mental condition, lack of
24 capacity to appreciate the nature and consequences of the proceedings against one
25 or to participate rationally in one's own defense;

26 **(6)(5)** "Insanity" means, as a result of mental condition, lack of substantial capacity
27 either to appreciate the criminality of one's conduct or to conform one's conduct to

1 the requirements of law;

2 ~~(7)~~~~(6)~~ "Mental illness" means substantially impaired capacity to use self-control,
3 judgment, or discretion in the conduct of one's affairs and social relations,
4 associated with maladaptive behavior or recognized emotional symptoms where
5 impaired capacity, maladaptive behavior, or emotional symptoms can be related to
6 physiological, psychological, or social factors;

7 ~~(8)~~~~(7)~~ "Individual with an intellectual disability" means an individual with
8 significantly subaverage general intellectual functioning existing concurrently with
9 deficits in adaptive behavior and manifested during the developmental period and is
10 a condition which may exist concurrently with mental illness or insanity;

11 ~~(9)~~~~(8)~~ "Psychiatrist" means a physician licensed pursuant to KRS Chapter 311 who
12 is certified or eligible to apply for certification by the American Board of
13 Psychiatry and Neurology, Inc.;

14 ~~(10)~~~~(9)~~ "Psychologist" means a person licensed at the doctoral level pursuant to KRS
15 Chapter 319 who has been designated by the Kentucky Board of Examiners of
16 Psychology as competent to perform examinations;

17 **(11) "Secretary" means the secretary of the Cabinet for Health and Family Services;**

18 ~~(12)~~~~(10)~~ "Treatment" means medication or counseling, therapy, psychotherapy, and
19 other professional services provided by or at the direction of psychologists or
20 psychiatrists. "Treatment" shall not include electroshock therapy or psychosurgery;
21 and

22 ~~(13)~~~~(11)~~ "Treatment facility" means an institution or part thereof, approved by the
23 Cabinet for Health and Family Services, which provides evaluation, care, and
24 treatment for insane or mentally ill persons or individuals with an intellectual
25 disability on an inpatient or outpatient basis~~, or both~~.

26 ➔Section 3. KRS 504.070 is amended to read as follows:

27 (1) A defendant who intends to introduce evidence of his **or her**:

1 (a) Mental illness *or intellectual disability bearing on the issue of guilt,*
2 *punishment, or both;* or

3 (a) Insanity at the time of the offense;

4 shall file written notice of his *or her* intention at least *ninety (90)*~~twenty (20)~~ days
5 before trial.

6 (2) The prosecution shall be granted reasonable time to move for examination of the
7 defendant, or the court may order an examination on its own motion.

8 (3) If the court orders an examination, *the defendant*~~[it]~~ shall *be examined and his or*
9 *her mental condition reported, as provided in Section 4 of this Act*~~[appoint at least~~
10 ~~one (1) psychologist or psychiatrist to examine, treat and report on the defendant's~~
11 ~~mental condition]~~. If it appears the examination will not be completed before the
12 trial date, the court may, on its own motion or on motion of either party, postpone
13 the trial date until after the examination.

14 (4) No less than ten (10) days before trial, the prosecution shall file the names and
15 addresses of witnesses it proposes to offer in rebuttal along with reports prepared by
16 its witnesses.

17 ➔ Section 4. KRS 504.080 is amended to read as follows:

18 (1) *(a) The court may order a defendant to be examined on an outpatient basis*
19 *when the defendant:*

20 *1. Is believed to be incompetent to stand trial;*

21 *2. Intends to assert a defense of insanity at the time of the commission of*
22 *the offense; or*

23 *3. Intends to introduce evidence of mental illness or intellectual disability*
24 *bearing on the issue of guilt, punishment, or both.*

25 *(b) The examination shall be done by an examiner from a treatment facility*
26 *designated by the secretary to perform evaluations required by this chapter.*

27 *(c) If the examiner concludes that inpatient examination is needed, the court*

1 may order the defendant be:

2 1. Committed to a forensic psychiatric facility or its designee for no more
3 than thirty (30) days for further examination; and

4 2. Treated for his or her mental condition subject to the availability of
5 the facility, if necessary~~[A court may commit a defendant to a treatment~~
6 ~~facility or forensic psychiatric facility for up to thirty (30) days so that a~~
7 ~~psychologist or psychiatrist can examine, treat, and report on the~~
8 ~~defendant's mental condition, except that if the defendant is charged~~
9 ~~with a felony and it is determined that inpatient examination or~~
10 ~~treatment is required, the defendant shall be committed to a forensic~~
11 ~~psychiatric facility unless the secretary of the Cabinet for Health and~~
12 ~~Family Services or the secretary's designee determines that the~~
13 ~~defendant shall be examined and treated in another Cabinet for Health~~
14 ~~and Family Services facility].~~

15 (2) (a) ~~[Reports on a defendant's mental condition prepared under this chapter shall~~
16 ~~be filed]~~No later than~~[Within] ten (10) days~~ after~~[of] the examination,~~ the
17 examiner shall issue and deliver a report prepared under this chapter
18 consistent with the terms of the referring court order.

19 (b) The court shall order the report be filed under seal, with notice of filing to
20 all parties, and shall schedule the case for a status conference or hearing no
21 more than thirty (30) days after the filing of the report.

22 (3) The defendant shall be present at any hearing on his or her mental condition unless
23 he or she waives the~~[his]~~ right to be present.

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

27 (5) An examiner~~[A psychologist or psychiatrist]~~ retained by the defendant shall be

1 permitted to participate in any examination under this chapter.

2 (6) The Cabinet for Health and Family Services, if the cabinet or its agent or employee
3 does not provide the examination, shall pay a reasonable fee to any
4 examiner~~[psychologist or psychiatrist]~~ ordered to examine, treat, or~~and~~ report on
5 a defendant's mental condition.

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

8 ➔Section 5. KRS 504.100 is amended to read as follows:

9 (1) If upon arraignment, or during any stage of the proceedings, the court has
10 reasonable grounds to believe the defendant is incompetent to stand trial, the court
11 shall order the defendant to be examined and his or her mental condition
12 reported, as provided in Section 4 of this Act~~[appoint at least one (1) psychologist~~
13 ~~or psychiatrist to examine, treat and report on the defendant's mental condition].~~

14 (2) The report of the examiner~~[psychologist or psychiatrist]~~ shall state whether or not
15 he or she finds the defendant incompetent to stand trial. If the examiner~~he~~ finds
16 the defendant is incompetent, the report shall state:

17 (a) Whether there is a substantial probability of the defendant~~his~~ attaining
18 competency in the foreseeable future; and

19 (b) What type treatment the examiner recommends, including whether it should
20 be provided by a~~and what type~~ treatment facility or forensic psychiatric
21 facility~~[the examiner recommends]~~.

22 (3) ~~[After the filing of a report (or reports),]~~In accordance with subsection (2) of
23 Section 4 of this Act, the court shall schedule the case for a status conference
24 or~~hold~~ a hearing no more than thirty (30) days after the filing of the report~~to~~
25 ~~determine whether or not the defendant is competent to stand trial].~~

26 ➔Section 6. KRS 504.110 is amended to read as follows:

27 (1) If the court finds the defendant incompetent to stand trial but there is a substantial

1 probability the defendant will attain competency in the foreseeable future, it shall
2 commit the defendant to a treatment facility or a forensic psychiatric facility and
3 order the defendant to submit to treatment for sixty (60) days or until the
4 psychologist or psychiatrist treating him or her finds the defendant competent to
5 stand trial, whichever occurs first, except that if the defendant is charged with a
6 felony, he or she shall be committed to a forensic psychiatric facility unless the
7 secretary~~[of the Cabinet for Health and Family Services]~~ or the secretary's designee
8 determines that the defendant shall be treated in another Cabinet for Health and
9 Family Services facility. Within ten (10) days of that time, the court shall hold
10 another hearing to determine whether or not the defendant is competent to stand
11 trial.

12 (2) If the court finds the defendant incompetent to stand trial and there is no substantial
13 probability he or she will attain competency in the foreseeable future:

14 (a) The Commonwealth's attorney's office serving the county of criminal
15 prosecution shall immediately petition the Circuit Court that found the
16 defendant incompetent to stand trial or, if the finding was by a District Court,
17 the Circuit Court in the county of criminal prosecution, to initiate an
18 involuntary commitment proceeding under KRS 202C.010, 202C.020,
19 202C.030, 202C.040, and 202C.050 if the defendant is charged with a capital
20 offense, a Class A felony, a Class B felony resulting in death or serious
21 physical injury, or a violation of KRS 510.040 or 510.070; or

22 (b) The court shall conduct an involuntary hospitalization proceeding under KRS
23 Chapter 202A or 202B if the defendant is charged with an offense not listed in
24 paragraph (a) of this subsection.

25 (3) A defendant who is the subject of an involuntary commitment proceeding under
26 KRS 202C.010, 202C.020, 202C.030, 202C.040, and 202C.050 shall be committed
27 to a forensic psychiatric facility unless the secretary~~[of the Cabinet for Health and~~

- 1 ~~Family Services~~ or the secretary's designee determines that the defendant shall be
2 treated in another Cabinet for Health and Family Services facility, during the
3 pendency of the proceeding.
- 4 (4) If the court finds the defendant competent to stand trial, the court shall continue the
5 proceedings against the defendant.
- 6 ➔Section 7. This Act may be cited as Seth's Law.