

## **202A.201 Mentally ill inmates.**

- (1) When an inmate of any penal and correctional institution is reported by the staff of that institution to the Department of Corrections as being so mentally ill that he cannot be properly treated with the facilities at the disposal of the staff, the Department of Corrections shall have an examination conducted on the inmate by a mental health professional.
- (2) If this examination reveals that the inmate is mentally ill and appropriate treatment cannot be properly carried out in the institution in which he is incarcerated or within the facilities at the disposal of the Department of Corrections, the commissioner of the Department of Corrections may then request of the secretary of the Cabinet for Health and Family Services the inmate's transfer to a hospital or forensic psychiatric facility. If the secretary of the Cabinet for Health and Family Services agrees that a transfer is necessary, the person shall be transferred to a Cabinet for Health and Family Services facility designated by the secretary of the Cabinet for Health and Family Services, where the person shall remain until the staff of the facility which received him advises the commissioner of the Department of Corrections that the person's condition is such that he may be returned to the institution from which he came. No transfer shall be made to a correctional facility located on the grounds of a state mental hospital. The commissioner of the Department of Corrections shall then authorize his return. If the prisoner's sentence expires during his stay in the facility and he is still in need of involuntary hospitalization, the staff of the facility shall petition the applicable District Court for further involuntary hospitalization of the patient under provisions of this chapter.
- (3) Prior to the issuance of an order of transfer and unless the prisoner voluntarily agrees to the transfer, the commissioner shall:
  - (a) Send written notice to the prisoner that a transfer to a hospital or forensic psychiatric facility is being considered in sufficient time to permit the prisoner to prepare for the hearing;
  - (b) Hold a hearing at which time the prisoner is made aware of the evidence being relied upon for the transfer and at which an opportunity to be heard in person and to present documentary evidence is given;
  - (c) Provide an opportunity at the hearing to the prisoner to present testimony of witnesses and to confront and cross-examine witnesses called by the Department of Corrections, except upon a finding, not arbitrarily made, of good cause for not permitting the presentation;
  - (d) Provide an independent decision maker who has not participated in the request for transfer to a hospital or forensic psychiatric facility;
  - (e) Issue a written statement by the fact finder as to the evidence relied on and the reasons for transferring the prisoner; and
  - (f) Provide effective and timely notice of all the foregoing rights.
- (4) During the time of the prisoner's stay in a facility, his legal status as a prisoner shall remain unchanged until the termination of his sentence. The facility staff shall have no authority to parole, grant permission to visit relatives or friends outside the facility, or discharge the individual unless otherwise agreed to by the Department of Corrections. The time the prisoner spends in the facility shall

be counted as a part of the prisoner's sentence.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 99, sec. 213, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 178, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 418, sec. 7, effective July 15, 1994. Amended 1992 Ky. Acts ch. 211, sec. 72, effective July 14, 1992. -- Amended 1988 Ky. Acts ch. 139, sec. 13, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 331, sec. 33, effective July 15, 1986; and ch. 428, sec. 6, effective July 15, 1986. -- Created 1982 Ky. Acts ch. 445, sec. 29, effective July 1, 1982.

**Legislative Research Commission Note.** This section was enacted in 1982 Acts, ch. 445, which contains the following language in sec. 45 of that Act: "This Act shall become effective on July 1, 1982." The Ky. Constitution, in Section 55, requires that a reason be set forth for the emergency. However, no reason is set forth in this Act. The effective date for 1982 Acts with no emergency provision is July 15, 1982.