

Mentally Ill Persons Subject to the Criminal Justice System

A Support Manual for Family and Friends

Prepared
by
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Advocate (ad-ve-kit), n.
A person who assists, defends, pleads, or prosecutes for another.

Introduction:

This manual is only applicable to Jefferson County, Kentucky and its residents. The legal information in this manual is based on Kentucky Law and the procedural information is specific to Jefferson County, Kentucky district and circuit courts.

Statistics:

You are not alone. Mental illness has played a role in the incarceration of thousands. The Department of Justice reported that 64% of local prisoners, 56% of state prisoners and 45% of federal prisoners had a mental health problem in 2006.¹ “Prisons and jails nationwide have become holding facilities for the mentally ill. There are an estimated 350,000 men and women in prisons and jails with serious mental disorders. Approximately, 4 times as many mentally ill people are in prisons than in mental health hospitals. Prisoners are 2 to 4 times more likely than the general population to be schizophrenic, depressed, bipolar, or suffering from post traumatic disorder.”²

Strategy:

If your loved one is in need of psychiatric treatment and is in jail there are ways that you can help. Recovery is possible and your loved one deserves treatment no matter what criminal charges they face. The goal of this manual is to help you navigate the mental health and criminal justice systems. Hopefully, this manual will inform, enlighten and encourage you on your journey of advocacy.

About the Author:

This manual was originally prepared by Rebekah Cotton as a law student at the University of Louisville, Brandeis School of Law in 2010. Currently, Rebekah is a practicing attorney in Kentucky and a board member with NAMI Louisville. Rebekah is a family member of a mentally ill loved one who faced criminal charges.

Special Thanks:

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PART I: Understanding Roles in the Criminal Justice System

This section introduces you to the different roles of individuals involved in the Criminal Justice System. Even though you may be familiar with these roles, from television or personal experience, it is important to understand how these individuals can affect your mentally ill loved one, if they are charged with a crime. Use the contact information provided to get started on your journey of advocacy, but always write down the specific names and personal phone extensions of persons you communicate with. Keeping track of name and contact information detail is very important during times of crisis.

1. The Advocate

You are the informer. You know the history. You know the truth. Your role is to inform, by making every effort to communicate any information you have concerning your loved one's diagnosis. You will inform all of the following individuals in the system: the defense attorney, the seven counties jail liaison, the prosecutor in the mental inquest division, the police and the jail.

Get organized and ready to tell the story as succinctly as possible. Try to have a time line in front of you with the following important information: date of diagnosis, dates of all prior hospitalizations, doctor information, medication list, prior criminal activity and relation of illness to same, prior mental inquest warrants and any other relevant information. Without your voice it is possible the mental illness could go undetected despite visible symptoms. The Criminal Justice System will ignore bizarre and strange behaviors for many different reasons including belief that the person is faking or abusing drugs.

Be aware that the local jail may be unable to administer any medication. Do not count on the different players to communicate with each other. You are the informer. Your first step should be to contact the defense attorney who is representing your loved one. Remember, defense attorneys carry a heavy case load. Keep detailed notes of your conversations including important things such as court dates, case numbers, names of witnesses, etc. Offer to help them in any way you can. After talking with the defense attorney, you may feel that your loved ones needs will not be met. If so, call the mental inquest division of the county attorney's office.

Remember, without support and information for yourself, you will not be able to advocate for your loved one in moments of mental illness crisis. See below, the role of the Support Organization (NAMI).

2. The National Alliance for the Mentally Ill (NAMI)

NAMI Louisville
Executive Director, Cheryl Hunt
914 E. Broadway, Suite 150
Louisville, KY 40204
(502) 588-2008
(502) 245-5287
namilouisville@netzero.net
www.namilouisville.org

Membership in NAMI will change your life for the better. The Membership provides support through monthly peer and family support groups, an office with an open door policy for crisis calls, local information on the complex mental health system and services, contacts across the nation if your family member needs out of state assistance, free ten week courses with incredible information on mental illness and advocacy.

In addition, membership with NAMI Louisville provides local, state and national NAMI communications; a local monthly newsletter with support group and education program schedules; conferences; training and event information; national news in research, illness protocols, education and legislative action; access to NAMI intra-net for pass-codes to hundreds of useful documents on mental illness research and programs; a VOICE in advocacy to fix an under funded mental health care system; and an annual vote in the decisions made at NAMI national.

On a more personal note, NAMI can help you to face the harsh reality of mental illness and how it has affected you and your family. Taking a class or joining a support group will provide a necessary life-line during your personal family crisis. Before you can advocate you have to accept. Before you can accept you have to gain understanding. Understanding is the foundation of all that NAMI has to offer.

So, Become apart of a team of advocates. Use the resources and support system set in place by NAMI. Take a “Family to Family” course. It will change the way you understand mental illness and the way you respond to crisis. You will be healthier and you will be more effective if you take advantage of everything NAMI has to offer! For free information call the number listed above or visit the website.

3. Judges

The United States Constitution prohibits the conviction of an accused person while he is legally incompetent.³ The trial judge has an affirmative obligation to assure no incompetent defendant is convicted. Therefore, if the trial judge has reasonable grounds to believe that the defendant is incompetent, he must upon his own initiative, postpone the proceedings and resolve the competency issue.⁴ It is important to

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understand that a person is not incompetent to stand trial just because they have a diagnosis of mental illness. *See the discussion on competency in part IV of this manual.*

You can find out more information on the judges and their court dockets at: <http://courts.ky.gov/>.

4. Police and Corrections

If your loved one was arrested, there will be a police report on file. A defense attorney can secure a copy of this report. Also, the prosecutor's office is privy to this information. The police officers that made the arrest will have first hand information that could prove invaluable to your efforts. You can contact the police department with your concerns at any time and make requests to speak with the arresting officers. Remember, you are seeking to inform with information you possess about your loved one. You are not seeking information. Still, keep detailed notes! You can request a copy of a police report from the police department where the crime occurred. Put your request in a letter and state the following: *Please provide this information within the time provided by the Open Records Act, KRS 61.870, et seq.* In your request, make sure to give every detail you know about, so that the police can find the correct report. The police department is required by law to respond within three days of your request. Below I am providing you with the general information for the Metro Louisville Police Department and the Jefferson County Jail. The Jefferson County Jail has a specified section of the jail for inmates suspected of having a mental illness. I am also providing you with the information for KCPC. KCPC is a facility equipped to handle mentally ill inmates and to treat mental illness. If the judge orders a mental competency evaluation, likely it will occur at KCPC. If you go to visit your loved one in jail, keep a detailed record of your interactions, especially if they are exhibiting psychotic behaviors and report all of this information to the defense attorney on the case.

Louisville Metro Police Department
Headquarters
633 West Jefferson Street
Louisville, KY 40202
(502) 574-7660
www.louisvilleky.gov (contact a department/ metro police)

Kentucky Department of Corrections
Health Services Building
275 East Main Street
PO BOX 2400
Frankfort, KY 40602-2400
(502) 564-4726
(502) 564-5037

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Jefferson County Jail
600 West Jefferson Street, Ste B2
Louisville, KY 40202
(502) 574-8463

Kentucky Correctional Psychiatric Center (KCPC)
1612 Dawkins Road
LaGrange, KY 40031
(502) 222-7161

5. Jefferson County Circuit Court Clerk

Clerks can be immensely helpful. They can help to tell you whether documents concerning the case are available or not. They can tell you what charges have been filed and when the court hearings are scheduled for, in the case. They can tell you who is representing the parties and which Judge is presiding. They can tell you where to go for the hearings also. Be polite. Clerks deal with a lot of difficult situations in a single day. It is important to know which clerk to go to:

For misdemeanors, fines and traffic violations:

Louis D. Brandeis, Hall of Justice (the old court house)
600 West Jefferson St.
Louisville, KY 40202
Hours: 8:30-4:30
<http://courts.ky.gov/counties/Jefferson>

District Court Clerk (First floor old court house, rooms: 1127-1146, 24 hours)
(502) 595-4428
Criminal District
(502) 595-3060
(502) 595-3062

For guardianship and mental inquest warrants (3rd floor old court house, room 3177)
(502) 595-4053
fax (502) 595-3629
8:30-3:30 M-F
(to file an MIW after hours go to the district court/criminal/traffic window in old court house, but not for general info)

For felony charges, emergency protective orders, family court:

Circuit Court Clerk
Louis D. Brandeis, Hall of Justice (Second floor new court house, Room 2008)
700 West Jefferson St.
Louisville, KY 40202
Hours: 8:30-4:30
(502) 595-3055, (502) 595-4629
<http://courts.ky.gov/counties/Jefferson>

Circuit Criminal	(502) 595-4039
Circuit Civil	(502) 595-3007
Family Court	(502) 595-3025

6. Criminal Defense Lawyer

The role of the defense attorneys is to represent their clients zealously in defending them from the charges brought against them. Their job is to get the client out of the criminal justice system as quickly as possible, with the best possible outcome, even if that means foregoing treatment for mental illness. In some instances, the defense attorney's hands are tied, from raising issues of competency, because the client refuses.

You have to understand that "institutionalization" in a jail or in a mental health hospital is the most intrusive form of state intervention, second only to capital punishment.⁵ Defense attorneys will not always agree that a competency evaluation ending in an involuntary hospitalization is the best result for their client. Some will be willing to forego treatment and accept a plea bargain, because it is the quickest and most convenient way for their client to regain freedom. This thinking is not always wrong. If quickly released from jail or prison, your loved one can seek treatment from their own medical provider. Whereas, if your loved one is sent for a competency evaluation at a state hospital or prison, they will be seeing a new doctor who is unfamiliar with their case. Many times it is wrong to assume quick release is in the clients best interest, when the client is required to return for later hearings or required to perform some sort of punishment set by the Court. The real problem arises when they fail to do as instructed, due to mental illness, and the charges are increased and a warrant for there arrest made.

Not all criminals have the right to an attorney. A public defender is only appointed when the criminal charges can result in an actual jail sentence. Remember your role is to inform, call and leave the defense attorney detailed messages with important dates and diagnosis information. Always leave messages, because public defenders have incredible caseloads.

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The Public Defender's Office
Advocacy Plaza
717-719 West Jefferson Street
Louisville, KY 40202
(502) 574-3800
(502) 574-4052 fax
www.louisvillemetropublicdefender.com

7. The Prosecutor

You might perceive the prosecutor as an enemy, because your loved one is being charged with a crime. Nevertheless, prosecutors are in a position to advocate for your loved one. Prosecutors are given discretion as to whether to charge someone with a crime. They make this decision based on the evidence provided to them by police, witnesses and recommendations of supervising prosecutors. You are free to call and give them information as a third party that has valuable information concerning the case. Remember your role is to inform, call and leave the prosecutor a detailed message with important dates and diagnosis information. Always leave messages, because prosecutors have heavy caseloads.

Office of the Commonwealth's Attorney (Circuit Court/Felony Cases)
514 West Liberty Street
Louisville, KY 40202-2887
(502) 595-2340
(502) 595-4650
www.louisvilleprosecutor.com

Jefferson County Attorney's Office (District Court/Misdemeanor Cases)
Jefferson Hall of Justice (old court house)
600 West Jefferson Street
Louisville KY 40202
(502) 574-6336
(502) 574-5366 Fax

The Mental Inquest and Disability Division is a non-criminal division of the prosecutor's office designed to deal with civil legal issues concerning the mentally ill. The prosecutor for the criminal case is separate from this division. This division represents the state's interest in securing treatment for a mentally ill person. After, contacting the defense attorney assigned to your particular case and after contacting the Seven Counties Liaison who works within the criminal system daily, call the prosecutor's at the mental inquest office for advice.

If no one else responds to the immediate treatment needs of your loved one, you may need to file an MIW and/or file for guardianship. Constant communication with the jail is key during this process. Your actions alert "the system" of the mental illness issues involved. If your loved one is in jail, the prosecutor's in this office may have access to

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check on their' condition and/or influence in requesting a competency evaluation. The legal community in Jefferson County is small and close knit. Therefore, it is possible these prosecutors are familiar with the lawyers, judges and police involved in the case. There is no fee to consult with these attorneys.

In addition, there are private attorneys who represent mentally ill persons and their families in disability court as a regular part of their practice. Be careful, to request detailed information from the attorney on whether they have represented family/friends in disability court before scheduling a meeting and running up a legal bill.

Jefferson County Attorney
Mental Inquest/Disability Division
600 West Jefferson Street, Room 2086
Louisville, KY 40202
(502) 574-6336
(502) 574-5366 fax
[www.louisvilleky.gov/county attorney](http://www.louisvilleky.gov/county%20attorney)

8. Other Resources

Charlotte Van Meter (Seven Counties District Court Liaison)
Mental Health/ Substance Abuse Treatment
Seven Counties Services
758 South First Street
Louisville, KY 40202
(502) 589-8615 ext.4456
cvanmete@sevencounties.org
www.sevencounties.org
(See Section V in this manual for an in-depth discussion on the mental health courts and seven counties liaison.)

The Legal Aid Society
416 W. Muhammad Ali Blvd.
Louisville, KY 40202
(502) 584-1254 or (800) 292-1862
(502) 584-8014 fax
<http://www.laslou.org/>

Protection and Advocacy
100 Fair Oaks Lane, Third Floor
Frankfort, Kentucky 40601
1-800-372-2988
1-502-564-2967
(502) 564-0848 fax
<http://www.kypa.net/drupal/node>

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Part II: Understanding the Law on Involuntary Hospitalization

Understanding the law on involuntary hospitalization requires a clear explanation of the legal standard “*danger to self or others.*” In order to hospitalize someone against their’ will, this standard must be met. If you feel this standard presents a barrier to helping your loved one, it helps to understand the abuses lawmakers are trying to prevent. Involuntary hospitalization exists because lawmakers recognize “lack of insight” as one of the symptoms of mental illness. Still, the law must balance the civil rights of the individual against the states interest in protecting the public (and the individual) from harm. The right to liberty and self-determination are protected vigorously by our national Constitution. These freedoms were purchased at a great price. That is why it is essential not to take these liberties away without just cause. The way to approach these laws is with respect and empathy toward your loved one, always recognizing this delicate balance.

This explanation is written in a question and answer method. The progression follows the Kentucky statute⁶ and attempts to inform you, so that you can make an educated and timely decision, about whether to pursue an involuntary hospitalization or not.

1. Where can I read the law concerning involuntary hospitalization?

Kentucky law is published in the Kentucky Revised Statutes and can be read on the internet or at a library. *The Kentucky Mental Health Hospitalization Act* is found under title XVII, chapter 202A of the Economic Security and Public Welfare section. There are definitions at the beginning of the chapter used to facilitate interpretation by the courts. Judges apply the law to the particular facts of a case by using the chapter definitions and prior case law decisions. This section of the law only *applies to persons over the age of eighteen.* There is a separate chapter and procedure for juveniles, because a child can be hospitalized against their will with proper parental consent. Remember, this is NOT the only law concerning mental illness. It is just one section concerning involuntary hospitalization.

Ky. Rev. Stat. Ann. § 202A. [definitions at 202A.011, no application to minors 202A.012(Ky. Rev. Stat. Ann. § 645 for hospitalization of minors)] Lexis publishes *Michie’s Kentucky Revised Statutes* and Westlaw publishes *Baldwin’s Kentucky Revised Statutes.* Annotated versions include short references to case law. The statute can be viewed in its entirety at www.lrc.state.ky.us.

Jefferson County Law Library
514 W Liberty Street, Room 240
Louisville, KY 40202-2800
(502) 574-5943
www.lrc.state.ky.us/Law.html

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2. Where do legal actions concerning involuntary hospitalization take place?

Proceedings are *initiated in the district court in the county where the mentally ill person resides or where they are present* when the mental inquest warrant is taken out. It is also possible that a voluntary admission to a hospital will convert into an involuntary hospitalization if the individual is a “danger to self or others.” It is important to understand that even if your loved one is not a resident of Jefferson County, Kentucky, you CAN file a petition here, if they are present in the county when they are a “danger to themselves or others.”

Ky. Rev. Stat. Ann. 202A.014.

3. Is there anyone who can help me through this process?

The *county attorney’s office has a duty* to assist you and to represent the interest of the Commonwealth in a disability determination case. The county attorney will assist the court in its inquiry by the presentation of evidence in all proceedings under this chapter. The county attorney remains a neutral party to the proceeding, because many times, even family members do not agree. Still, the county attorney can be an invaluable source of information for your family based on their past legal knowledge and practical experience.

Ky. Rev. Stat. Ann. § 202A.016.

4. Can my loved one be treated if they voluntarily sign in at the hospital?

Sometimes. *An authorized staff physician of a hospital may admit for observation, diagnosis, care and treatment any person who is mentally ill or who has symptoms of mental illness and who applies voluntarily.* Advocates should consider the possibility that their loved one might go willingly to a hospital for treatment. Some effort should be made to secure treatment without police and emergency service involvement. This is a decision that must be made delicately, balancing the stress of an involuntary commitment with the harm of delaying treatment.

Once inside the hospital, the advocate must stress their concern that should this person be released, they believe they would be a danger to themselves or family/friends. It is important to state specifically, what the danger would be. Common concerns include: freezing outside, severe weight loss, possibility of psychotic criminal behavior, walking into on coming traffic with little to no awareness, public exposure, catatonia, any specific threats made by a mentally ill person to hurt or injure someone else. Remember, you are advocating for treatment. No one cares about your loved one more than you do. These statements, if sincere, require the hospital to consider their own liability in releasing the patient too soon. They will be less likely to release someone too soon, if they are on clear notice of the families concerns.

Ky. Rev. Stat. Ann. § 202A.021 (2), (3) and (4).

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5. What is the “criteria” for hospitalizing someone involuntarily?

“The Criteria”

No person shall be involuntarily hospitalized unless such person is a mentally ill person:

- (1) Who presents a danger or threat of danger to self, family, or others as a result of the mental illness;
- (2) Who can reasonably benefit from treatment; and
- (3) For whom hospitalization is the least restrictive alternative mode of treatment presently available.”

Kentucky defines mentally ill person as a person with **substantially** impaired capacity to use self control, judgment, or discretion in the conduct of the person’s affairs and social relations, associated with maladaptive behavior or recognized emotional symptoms where impaired capacity, maladaptive behavior, or emotional symptoms can be related to physiological, psychological or social factors.

“Danger” and “threat of danger to self family or others” means **substantial** physical harm or threat of **substantial** physical harm upon self, family or others, including actions which deprive self, family, or others of the basic means of survival including provision of reasonable shelter, food or clothing. In practice, judges respond to dangers and threats that would result in the loss of human life.

The “least restrictive alternative mode of treatment” means that treatment which will give a mentally ill individual a realistic opportunity to improve the individuals level of functioning consistent with accepted professional practice in the least confining setting available.

Ky. Rev. Stat. Ann. § 202A.026, see definitions at Ky. Rev. Stat. Ann. § 202A.011 (2), (8), (9).

6. Who determines if the individual meets the “criteria”?

Doctors use this “criteria” to decide whether to hold an individual for a 72-hour emergency admission. If a hospital admits a person for treatment they have 24-hours to certify on the record that the individual meets all of the “criteria” in order to hold the individual for the longer 72-hour period. There must be two certifications by two examining qualified mental health professionals, one of which is a doctor. Remember advocate, your duty is to inform. Give them all the information you have so they can make correct decisions. The individual’s personal physician can witness and participate in the examinations.

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Judges use this “criteria” to decide whether circumstances merit issuance of a mental inquest warrant (MIW). See Part III for how to petition for an MIW. A Judge may (not must) order the person hospitalized for a period not to exceed 72-hours, essentially three 24-hour days, excluding weekends and holidays. Once the warrant is issued, the police can execute the warrant. Sometimes, this is not automatic, because the location of the individual is uncertain. The person who executed the warrant should call the police and confirm the warrant was issued and confirm the location of their loved one. In Jefferson County, there is no other way to execute an MIW. An individual who is involuntarily hospitalized, under an MIW, cannot be held in jail pending evaluation and transport to the hospital.

Police officers use this “criteria” if they encounter a mentally ill person. They can (not must) take the person into custody and transport them to the hospital. A police officer must provide written documentation of the behavior of the person. The qualified mental health professionals have 18-hours to certify the person meets the criteria before the individual must be released. The police officer does not need a warrant to take someone to the hospital in this situation. If the person is not admitted and no criminal charges are brought, the officer must take them back to the county where they live to release them. Sadly, most police officers do not get involved with mentally ill persons until there is accusation of criminal activity and generally the police will transport the individual to the county jail rather than to the hospital.

Ky. Rev. Stat. Ann. § 202A (.031), (.041), (.061), (.056), (.301), (.066).

7. What is the time-line for involuntary hospitalization procedures?

First, remember that these time periods in the statute exclude weekends and holidays. Also, remember these are maximum hold times, they are the ceiling not the floor. Doctors can release voluntary admissions and police admissions sooner, if they determine the “criteria” is not met.

“The Time Line”

18-hours	If a police officer takes someone to a mental health facility for evaluation, the hospital has 18-hours after the “initial examination” for two qualified mental health professionals to certify the “criteria” is met or the person free to go.
24-hours	When an authorized staff physician admits a person, present at or presented at a hospital, they have 24-hours to certify the individual meets the “criteria” or the person is free to go.
36 hours	Initial examination must be made to determine “criteria.”
48 hours	Report on initial examination must be entered into the medical record.
72 hours	Two qualified mental health professionals must certify the person meets the “criteria.” If not, the person cannot be held without a court order signed by a Judge.
6 days	A preliminary hearing must be held by the court within six days after the MIW is executed or after the examination which certified the “criteria” was met. The clerk sets the hearing date and time when the MIW petition is taken out. Generally, the hearing is held at the state hospital.
21 days	The final hearing must be held within 21 days of the involuntary hospitalization at the preliminary hearing or from the date of the examination if involuntary hospitalization did not occur. This hearing cannot be waived.
60 days	A Judge can (not must) order someone held at a hospital for 60 days based on the certification of criteria by two mental health professionals and the mental inquest warrant petition.
360 days	The difference between an order for 60 days and 360 days depends on the treating professional and evidence of hospitalization in a forensic psychiatry facility (psychiatric penitentiary) (for a period of thirty (30) days under the provisions of this chapter or KRS 504) within the preceding 6 months.

Ky. Rev. Stat. Ann. § 202A (.028), (.031), (.161).

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8. Where are the hearings held?

Generally, the hearings take place at the hospital where the patient is being treated. Central State Hospital is where most individuals in Jefferson County come on MIW's. The hearings are generally informal. The individual (patient) is permitted to testify, present evidence and cross-examine witnesses. The MIW petitioner is required by law to be present at the hearing. The county attorney's office has attorney's present at the hearings. You can leave messages for these attorneys and get information on the hearings at their downtown offices.

9. Does the mentally ill person have the right to an attorney and to be present at the hearing?

Yes. The Court will provide an attorney called a Guardian *Ad Litem* (GAL) or a private attorney can be hired. The respondent has the right to be present unless they intelligently waive that right or act disruptive and the Court determines to remove them.

Ky. Rev. Stat. Ann. § 202A.121 and .131.

10. Can the Court order community based treatment?

Yes. If a provider accepts a patient for specified outpatient treatment and upon agreement of the parties the Court may (not must) order community based outpatient treatment after the preliminary hearing. The final hearing is then held for 60-days.

An authorized staff physician can also agree to convalescent leave status, where the person can be released but the involuntary hospitalization order remains in place. The order includes the development treatment plan between the hospital and an outpatient facility; which continually monitors the patient's condition. Readmission to the hospital can occur at anytime.

Ky. Rev. Stat. Ann. § 202A.081 and .181.

11. Are the Court records confidential and can they be expunged?

Yes. Court records in these cases are confidential and not open to the general public. You can file a motion for the records to be released to you, but the judge determines if the request is in the best interest of the individual and of the public. The individual can request the records be deleted after discharge or after a failed petition for involuntary hospitalization.

Ky. Rev. Stat. Ann. § 202A.091.

12. Is the communication between my loved one and the mental health professional privileged?

No. The information needed to support the involuntary commitment is not privileged. Qualified mental health professionals are authorized to disclose all communications under the Mental Health Hospitalization Act. Mental health professionals also have a duty to warn an intended identifiable victim of a patient's threat of violence. Still, private health information is protected under HIPPA laws and cannot be disclosed without the patient or their guardians' permission.

Ky. Rev. Stat. Ann. § 202A.096 and .400.

13. Is there a right to representation by an attorney?

Yes. All persons held involuntarily have a right to representation. The Court will appoint a public defender or a private attorney can be hired. There is also a right to be present at the hearing unless the patient intelligently waives that right or acts disruptive and the Court determines to remove them.

Ky. Rev. Stat. Ann. § 202A.131.

14. Can a person who is involuntarily hospitalized question the legality of their detention?

Yes. At any time and without notice, a person detained at a facility, or a relative, friend, guardian or representative, attorney can petition for a release order from a court and to question the cause and legality of the detention.

Ky. Rev. Stat. Ann. § 202A.151.

15. When is discharge from a hospital required?

When the patient no longer meets the criteria. (*See pg. 12*)

UNDERSTAND: It can be difficult to understand that a hospital cannot legally hold a person against their will, no matter how mentally ill they present, unless they meet the criteria. Mental illness does not qualify someone for involuntary commitment unless a person is a danger to themselves or others. Even if there is an Order stating the person is on a (30) or (60) day hold, the hospital must release them if they no longer meet the criteria. The criteria are set in place to protect the civil rights of persons who are not mentally ill and persons who are mentally ill but not a danger to anyone or themselves. Reasonable minds can differ as to what constitutes danger. Institutionalization is the most invasive restraint of civil liberty and is comparable to being imprisoned. The criteria is in place because many people were imprisoned in psychiatric hospitals against their will without cause and without regard to their diagnosis or treatment needs. It is a delicate balance and an advocate cannot be effective without a real appreciation of these civil

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rights. If someone escapes from the hospital the hospital is required to call the police, the prosecutor and anyone who has made a notification request.

Ky. Rev. Stat. Ann. § 202A.171 and § 202A.410.

16. What is a de novo hearing?

A de novo hearing is where the Judge/or Hearing Officer decides whether forced medication/treatment is necessary. A hospital review committee of qualified mental health professionals has 3 days to meet to discuss the refusal. A patient has a right to counsel at this meeting and at the de novo hearing.

The factors considered are whether:

- (1) the treatment is necessary to protect the patient or others from harm;
- (2) the patient is incapable of giving informed consent;
- (3) any less restrictive alternative treatment exists;
- (4) the proposed treatment carries any risk of permanent side effects.

Ky. Rev. Stat. Ann. § 202A.171 and § 202A.196.

17. What are the rights of hospitalized patients?

The right to be adequately informed re: their individual treatment program;

The right to assist in the planning of their treatment program;

The right to refuse treatment subject to *KRS 202A.196*.

The right to maintain, keep and use personal possessions and money;

The right to receive visitors;

The right to receive payment for work performed on behalf of the hospital;

The right to refuse intrusive treatment subject to *KRS 202A.196*;

The right to be free from unreasonable use of seclusion and restraint;

The right to seek relief from participating in their treatment plan.

Ky. Rev. Stat. Ann. § 202A.196, §202A.241, §202A.191.

18. What if my loved one is in jail/prison and they need treatment for a mental illness?

The jail can request a mental health exam if an inmate is so mentally ill they cannot be treated in the current facility. If the exam verifies a mental illness, the staff or the inmate can request a transfer to another facility. In Jefferson Cty. KY, competency exams are done at the KY Correctional Psychiatric Unit (KCPC) and there is an inmate unit at Central State Hospital called the Graham Unit. Medications can be administered in prison and in jail if prescribed by the facilities doctor. Once someone is in the jail system, the prison doctor has complete authority as to what medications are permitted and prescribed. If transfer is required, a guardian or designated family member are entitled to notice of transfer and a right to challenge it, unless it is an emergency and the inmate is an immediate danger to themselves or others. No one can be held in a prison on an involuntary hospitalization petition under KRS 202A unless they are also charged with a crime. An out of state hospital can request a transfer to a KY facility also.

Ky. Rev. Stat. Ann. § 202A.201, §202A.251, § 202A.211.

19. What is an Advance Directive for mental health treatment?

An Advance Directive is an enforceable document in a form consistent with the Americans with Disabilities Act (ADA), made voluntarily by an adult who has the right to make health care decisions. It provides instructions for mental health treatment. The form is taken directly from the KY statute (KRS 202A.426). Mainly it allows for the expression of stated preferences concerning medication administration and emergency interventions used in a mental health treatment facility. It is not necessary for a lawyer to prepare an Advance Directive, but witnesses and the signature of a notary public are required. Advance Directives are revocable at any time, but they can serve as an important step in the complex process of gaining insight into the need for treatment and help many persons to take an ownership role in their treatment. This empowerment takes some of the sting out of the feeling of powerlessness felt by patients in mental health hospitals. Forms are available at <http://www.kypa.net> through the KY Protection and Advocacy Agency and can also be received upon request along with an instructional video by calling 1-800-372-2988.

Ky. Rev. Stat. Ann. § 202A.420, §202A.422, §202A.426, §202A.430.

NOTES:

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Part III: Arrest Prevention

Legal Solutions Outside of the Criminal Justice System

This section of the manual is designed to present you with civil (non-criminal) legal information on laws that provide for intervention on behalf of the mentally ill. These processes are available to any person seeking to secure treatment for a mentally ill person who is a danger or might cause an immediate danger to others as described previously in Part II.

Before acting to advocate you should gain as much information as possible. Although not criminal, these legal options have serious implications and will have long-term consequences for your loved one and for your relationship with them. The decision to take action may be appropriate but should not be made without careful consideration. These legal actions can be useful in preventing someone from entering into the criminal justice system. Timing is very important, because civil remedies are of no use to persons in custody that are already charged with a crime.

Arrest Prevention:

One of the most difficult treatment barriers for those diagnosed with a serious mental disorder is a lack of insight. Lack of insight prevents a person from acknowledging their illness and is part of the diagnostic criteria. It is part of the illness! Further, the stigma associated with mental illness compounds the problem, for fear of exclusion and discrimination.

Classes taught by NAMI emphasize you cannot reason with an illness. You cannot teach an illness by positive attention or negative consequence. There is no way to convince an illness that it needs to see a doctor. At all times remember, the behaviors exhibited by a severely mentally ill person are responses to an illness not a free will choice to do wrong.

1. Contact Local Police:

If your loved one is exhibiting symptoms of mental illness or psychotic, but is not yet a danger to themselves or others, then you should not act to have them committed. The only option for treatment at this point is to persuade them to voluntarily go for an evaluation. Any hospital or treatment facility is fine, what is important is that they are seen by mental health professionals. Pick your battles. Wherever they are willing to go, take them there. Once inside the facility, do your best to convince staff of the persons need for treatment and be sure to state all of your safety concerns. The idea is to let the facility know that they will be responsible for what “might happen” when your loved one leaves their building. By openly conveying your concerns, they are put on notice of that risk.

If your loved one cannot be persuaded to seek treatment, then you can create awareness in the community of their condition. Call local police, stores where they

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frequent, friends and neighbors and give them a description or a photograph and tell them your loved ones diagnosis or history.

Urge police to please take them to the hospital if someone calls to report criminal activity. Give them your contact information and request they notify you if your loved one is found or arrested. Even if the police refuse, your efforts are not in vain because you have succeeded in making them aware of your loved ones medical condition prior to an arrest. Knowledge is key in perception of criminal activity. A police officer that knows the person he is dealing with is mentally ill, will approach the situation differently. It is safer for everyone.

CIT Police Officers

A Crisis Intervention Team (CIT) Police Officer is specially trained to interact safely and effectively with mentally ill persons. Jefferson County offers this training to all police officers, but you should always ask that a certified CIT Officer be sent in all situations dealing with your loved one. Tell all the persons in the community, that if they have to call the police about your loved one, to please request a CIT Officer.

2. Consider Mental Inquest Warrants (MIW):

Kentucky law provides for involuntary hospitalization if there is a reasonable ground to conclude, more than a bare suspicion, that the person is mentally ill AND they are a danger to themselves or others. (See Section II herein re: the law on involuntary hospitalization). An MIW is ineffective in securing treatment for a person who is blatantly mentally ill but not dangerous. *Do not waste time and effort going to the Courthouse for an MIW if there is not real danger, because the MIW will not be issued.* Call the local police, friends, family and neighbors and alert them as suggested above. This interim period can be extremely difficult for family members. If you are not coping well, seek support from NAMI. You should file an MIW petition, if and only if, your' loved one is a danger to themselves or others.

What constitutes “danger” in the real world?

There are no hard and fast rules to the analysis. Each Judge is different. Some examples of “danger” that resulted in an MIW being issued are: walking in and out of traffic, removing clothes in public, urinating in public, weight loss if severe, no access to water/ food, being inappropriately dressed in extremely cold weather or extremely hot weather, trespassing without awareness on private property, starting fires, any physical violence against another person or self inflicted violence. When relaying information about a person for an MIW, be thorough and discuss any and all actions which present a danger to that person or others.

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Should you choose to file an MIW Petition; you will need to:

1. File a signed petition with the MIW Clerk at the Mental Inquest/Guardianship Office in the District Court.
 2. Agree to contact the University of Louisville Hospital (you will receive this info when you file).
 3. Be present at the preliminary hearing, usually held at Central State Hospital, in Louisville, KY.
 4. Sign a form acknowledging that if you filed the petition fraudulently you could be charged with a misdemeanor which is punishable by a \$500.00 fine and up to one year in jail or both.
3. Consider Guardianship

What is Guardianship?

Guardianship is a legal relationship between a capable adult, the guardian and a ward, a person who has been determined by a jury to be unable to make personal or financial decisions or both. When someone files a Petition for Guardianship they are asking a Jury to determine whether someone is legally disabled and unable to care for their own affairs.

The Court will appoint an attorney to represent the person the petition was filed for, if they do not have one. A prosecutor from the County Attorney's Office will assist the person who filed the petition in the trial. After hearing all the evidence a Jury can determine a person to be partially disabled, fully disabled or not disabled at all. If the Jury finds the person is disabled the Judge will appoint a guardian. The person who filed the petition does not have to serve as the guardian, but the Court generally prefers a family member/friend to a state guardian. The Judge will consider all the factors in the case giving preference to the ward's choice of guardian.

Guardianship is a weighty responsibility, similar to parenting. You are agreeing to make personal or financial decisions for a disabled adult. It is important to "count the cost" before agreeing to take on this responsibility. There are also annual reporting requirements to the Court including bank statements, expenses and income, etc. Still, if you can handle this responsibility it is preferable to having a state appointed guardian. State guardians have enormous caseloads, sometimes they are required to serve 75- 100 clients. In some rare cases, the family will prefer a disinterested neutral third party guardian be named in order to preserve the relationship between the ward and their family. Each petitioner must consider all of these issues.

Who needs a guardian?

Ultimately the jury decides this question. It is not your job to answer the question, but to present the facts of the case. The statute says it best in its declaration of legislative purpose:

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It is the intent and purpose of the General Assembly to recognize that disabled persons have varying degrees of disability. Persons who are only partially disabled must be legally protected without a determination of total incompetency and without the attendant deprivation of civil and legal rights that such a determination requires. *To this end, guardianship and conservatorship for disabled persons shall be utilized only as is necessary to promote their well-being, including protection from neglect, exploitation, and abuse; shall be designed to encourage the development of maximum self-reliance and independence in each person; and shall be ordered only to the extent necessitated by each person's actual mental and adaptive limitations.* If the court determines that some form of guardianship or conservatorship is necessary, partial guardianship or partial conservatorship shall be the preferred form of protection and assistance for a disabled person.

Ky. Rev. Stat. Ann. § 387.500.

A report will be filed which contains the evaluations and recommendations of a physician, a psychologist and social worker. One of the members of this team must testify at the hearing. These recommendations are strong evidence for (or against) the need for guardianship. Testimony can be heard from friends and family members also, but you should carefully consider whether or not to participate as the hearing can have a detrimental effect on your relationship with your loved one. These proceedings are difficult and emotional. It is not easy to demonstrate that someone you love is disabled to the point, they must lose their civil rights. An adjudication of disability under this statute takes away a person's right to manage their property, to choose where they live, to choose which doctor they will see. These rights are fundamental and the loss of them, for any reason, is sorrowful.

The Jury will:

First: Inquire into:(a) *the nature and extent of the person's general intellectual functioning*; (b) *the person's capacity to make informed decisions concerning personal affairs and financial resources . . .*

Second: Determine whether the person is *disabled, partially disabled, or has no disability in relation to the management of his (1) financial resources; and (2) personal affairs.*

See also The Criminal Justice Process in Jefferson County chapter of this manual, section 26, for the discussion on the steps of a jury trial.

When, if ever, should you file a petition for guardianship?

The decision to file for guardianship should be carefully considered. You can contact the prosecutor's at the Jefferson County Attorney's office if you have questions.

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Consider the alternatives listed below before proceeding. People have varying opinions on whether or not guardianship is good or bad. In the end, you have to decide for you and your loved one. If your loved one has been in and out of psychiatric hospitals and has no insight into their illness, you might consider guardianship as an alternative to the revolving door system. If your loved one is at risk of entering the criminal justice system because they cannot manage their illness, you might consider filing for guardianship as an alternative to prison. If your loved one faces perpetual homelessness due to a mental illness, you might consider guardianship as a last stitch effort to provide for them. If things are always out of control, guardianship might help to provide some structure and accountability so that recovery can take place. If the alternative to guardianship for your loved one is inevitable numerous repeated involuntary hospitalizations, prison, death or homelessness take steps to explore filing a petition.

Alternatives to Guardianship:

1. Psychiatric Advanced Directive- This document is useful in helping people to take responsibility for their own mental illness. Ky. Rev. Stat. Ann. § 202A.422 and 202A.430 contain information and a form that you can print and fill out. Filling out this form empowers the person and helps them to become involved in their need for treatment. You do not need an attorney to draft an advance directive, but you will need a notary to sign the form. Kentucky Protection and Advocacy has these forms available at <http://www.kypa.net>. You can request a special video prepared by consumers which discusses the importance of the Psychiatric Advance Directive at 1(800) 372-2988.
2. Advance Appointment of a Guardian: This document, which designates someone to become the guardian should the adult later become disabled, as shown by a sworn statement of a physician. This document could help to avoid a difficult guardianship trial.
3. Power of Attorney: This document grants authority to handle financial affairs and is revocable at any time.
4. Durable Power of Attorney: This document will not be revoked at the point the person is disabled.
5. Health Care Surrogate: This document authorizes a designated adult to make medical decisions and is revocable at any time.
6. Check Signature Card: These are used to allow an account to be used by two individuals.
7. Representative Payee: This allows an appointee to manage social security income and income from the veteran's administration for recipients. The payee has no legal authority to make personal decisions. A payee is appointed through the government agency and required no disability determination. This can be a powerful influence in helping a person to recover.
8. Curators: Curators are requested by the aged or infirmed person through the probate court to handle finances. The court requires a bond and reporting on the management of finances. The parties can broaden the scope to include personal decisions subject to the probate court's approval. This option operates as a voluntary guardianship. This process is far less adversarial and is a "voluntary"

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Part IV: The Criminal Justice Process in Jefferson County Kentucky

If your loved one is not dealing with the threat of criminal charges or actual criminal charges, then this section is not relevant for you at this time. This information is designed to give you a working knowledge of the process your loved one is going through or will go through before or after they are charged with a crime. Understanding the system and the process will help you communicate with attorneys and be a more effective advocate.

You need to know: What stage of the proceeding are they in? How serious is the criminal charge? Which court will they appear in?

Try to get information on and advocate for:

- Review of the police report and any notation of mental illness symptoms related to the arrest or charges;
- A competency evaluation;
- A competency hearing;
- An evaluation by the jail/prison doctor;
- Provide medical documentation of diagnosis to defense attorneys as early in the process as possible.

The Two Part Court System

In Jefferson County, our Court system is divided into District Ct. and Circuit Ct. The Court that your loved one is in depends on the charges filed.

Offenses are felonies, misdemeanors, or violations:

- (1) Offenses punishable by death or confinement in the penitentiary, whether or not a fine or other penalty may also be assessed, are felonies.
- (2) Offenses punishable by confinement other than in the penitentiary, whether or not a fine or other penalty may also be assessed, are misdemeanors.
- (3) Offenses punishable by a fine only or by any other penalty not cited herein, whether in combination with a fine or not, are violations.

Ky. Rev. Stat. Ann. § 431.060.

District Ct. is where all misdemeanor offenses and preliminary hearings for felony charges are handled.

Circuit Ct. is exclusively for felony charges and any misdemeanors associated with a felony. Felony charges may originate in District Ct. and later come to Circuit Ct. through a (1) waiver or referral to the Jefferson County Grand Jury. Felony charges can be brought to Circuit Ct. by two other methods: (2) Direct Submission and (3) By Information.

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The Criminal Justice Process in Jefferson County Kentucky
(From http://www.louisvilleprosecutor.com/legal_system)

Before Charges are Formally Made:

1. Crime Committed
2. Police Notified
3. Police Investigate: Investigation may include interviewing victim, witnesses, suspects; collecting physical evidence; visiting, viewing, photographing, measuring crime scene; identifying suspects; through line-ups ... etc.
4. Police Make an Arrest (or Request a Warrant): When a crime is committed in a police officer's presence --- or he has probable cause to believe that certain misdemeanors or any felony was committed that he did not see happen --- an officer may arrest a suspect on the spot without an arrest warrant. The officer will later submit a charging/warrant request to the Jefferson District Court and an Assistant Jefferson County Attorney will review the charges to make additions or corrections.
5. Warrant/Charging Request Reviewed by Prosecuting Attorney (District Court - Misdemeanor Level): Most cases begin with a warrant request. This is generally the first time that the prosecuting attorney is involved in a case, unless he or she reviewed a search warrant or visited the crime scene. At this stage, the prosecutor determines whether a person should be charged with a crime and, if so, what the crime should be. The prosecuting attorney must thoroughly review all reports and records concerning the case, including witness statements. The prosecutor also reviews the suspect's prior criminal or traffic record. Occasionally, the reviewing prosecutor sends the case back to the police to conduct additional investigation.
6. Warrant Issued (District Court Level): The prosecutor can issue a charge if he or she reasonably believes that probable cause exists that the suspect committed the offense. But most prosecuting attorneys apply a higher standard --- whether they reasonably believe that they can prove the charge beyond a reasonable doubt at trial with the information known at that time.
7. Suspect Arrested (if not already in custody): The delay between the crime date and the defendant's arrest on an authorized charge can take any length of time (if the defendant's whereabouts are unknown, or if they have left the Commonwealth of Kentucky). If warrant is issued, the issuing agency will log the information in N.C.I.C. (National Crime Information Computer) and that information will be available to virtually every law enforcement agency in the United States. Information is also shared with Interpol, the international law enforcement agency.
8. District Court Arraignment: This is the first court appearance for any misdemeanor or felony. Once arrested and charged with a felony, the suspect appears in district court for arraignment. At arraignment, the defendant is told what the charge(s) is (are) and the maximum penalty if convicted, and is advised of the constitutional rights to a jury or bench trial, appointed attorney and presumption of innocence. The charging document is called a complaint. The conditions and amount of bond are determined. In some cases --- generally based on the nature of the charge --- the Judge imposes conditions on the bond, such as

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"no contact" with the victim. Bond is set in almost every case, but it is up to the defendant's own resources to post the bail money, which allows him or her to be released.

Post Charge Pre-Trial Procedures:

All further pre-trial procedures are determined by whether the defendant is charged with a felony or misdemeanor:

9. **Misdemeanor:** At a misdemeanor arraignment, the defendant will be given a chance to enter a plea to the charge: plead guilty, plead not guilty, or stand mute (i.e., remain silent, which is treated by the court as if the defendant pled not guilty). If a guilty plea is entered, the Judge may sentence the defendant immediately or may reschedule the case for a sentencing date, which will give the probation department time to prepare a pre-sentence report, including background information about the defendant and the crime and a sentencing recommendation. If the defendant stands mute or pleads not guilty, the case will be scheduled for a pre-trial conference.
- **Pretrial Conference:** In traffic and non-traffic misdemeanor cases, this is the defendant's second court appearance. It is a scheduled meeting between an Assistant County Attorney and the defendant (or a defense attorney) to determine whether the case will go to trial or be resolved with a plea of guilty. These meetings focus on resolving the case short of trial. The judge and witnesses are not involved in misdemeanor pre-trial conferences. If a plea bargain is going to be offered by the prosecutor, it is done at this time.
- **Pretrial Proceedings:** Many other events can occur prior to trial. Depending on the nature of the case, there may be pre-trial hearings on constitutional issues (confessions, searches, identification, etc.). The issues are presented to the court through written "motions" (e.g., motion to suppress evidence, etc.). The judge must determine whether evidence will be admitted or suppressed at the defendant's trial, whether there is some legal reason why the defendant should not be tried, or decide other ground rules for trial.

OR

Felony: A felony charge can be brought to circuit court in three ways in Jefferson County: waiver to the Grand Jury from district court as described below; Direct submission to the Grand Jury by the Commonwealth's Attorney's Office; or via an information.

- **District court track for felony prosecution:** At a felony arraignment in district court, the defendant does not plead guilty or not guilty. The defendant has a right to a probable cause hearing within 10 days of the arraignment if the defendant is in custody, or within 20 days if the defendant is out of custody. If the defendant requests a court-appointed attorney, the court will review that request at the time of the arraignment.

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- **Felony Probable Cause Hearing:** This is a contested hearing before a district court judge. The prosecutor presents witnesses to convince the judge that there is probable cause to believe that a crime was committed and that the defendant committed the crime. Because the burden of proof is much less than at a trial, the prosecutor generally does not call all potential witnesses to testify at the "p.c. hearing"; generally, the victim and some eye witnesses or the police witnesses (if there is no victim) testify. The defendant has an attorney; can cross-examine the witnesses; and can present his own evidence (including witnesses). If probable cause is established, the defendant's charges are "referred" to the grand jury. If the judge decides that there is not probable cause that the defendant committed the crime, the charge can be dismissed or reduced to a misdemeanor for trial in district court. Defendants can decide to waive their rights to a probable cause hearing, wherein the charges are referred to the grand jury without any testimony or hearing. Most felonies arrive in circuit court after such a "waiver".
- **Case Screening:** After the case is referred to the grand jury, the case comes to the Commonwealth's Attorney's Office where it is assigned to an Assistant Commonwealth's Attorney. The assigned attorney reviews the case file and the defendant's prior criminal record, interviews witnesses, and determines if the charges are appropriate and should be indicted. At this point the prosecutor can add new charges or add persistent felony offender charges to the final list of recommendations that will go before the grand jury. The prosecutor then submits the charges to the grand jury and subpoenas any relevant prosecution witnesses.
- **Grand Jury Proceeding:** The Grand Jury is composed of twelve citizens (and 6 alternates) from Jefferson County who serve for one month. The hearing before the grand jury is confidential and not open to the public. At the grand jury proceeding, the prosecutor must presents testimony through police or prosecuting witnesses. The burden of proof is identical to that of a probable cause hearing: whether or not there is probable cause to believe that a crime was committed and that the defendant committed the offense. If the grand jury believes that there was probable cause, an indictment is issued and presented twice daily to the grand jury judge. If the grand jurors do not believe there was sufficient probable cause, they can either remand the case to district court to be dealt with as a misdemeanor or return a "no true bill" on those counts that fail for lack of probable cause. A "no true bill" is effectively a dismissal of the charges; however, the Commonwealth could present them again at a later time if new evidence becomes available. Defendants have no right to testify before a grand jury, but may request of the grand jury the opportunity to testify. Any testimony given by the defendant to the grand jury may be used against him in later court appearances.
- **Circuit Court Arraignment:** After an indictment is handed down by the grand jury, the defendant is arraigned (given formal notice of the charges against him or her) in a randomly assigned division of circuit court. The charging document is called an indictment. He or she is again advised of his or her constitutional rights, and enters a plea to the charge (guilty, not guilty or stand mute).
- **Bond Reduction Hearing:** A hearing held before the presiding circuit court judge by motion of the defendant to argue for a decrease in the amount of bond required for release of the defendant pending trial.

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- Pre-Trial Conference: As with district court misdemeanors, the circuit court schedules a meeting between an Assistant Prosecuting Attorney and the defendant's attorney to determine whether the case will go to trial or be resolved with a plea. There may be several pre-trial conferences held to accommodate all discovery requests and disputes.
 - Suppression Hearing: A hearing requested by the defendant to determine if the evidence or statements produced by the prosecution are constitutionally valid (for example, was evidence collected illegally? Were statements of the defendants received as a product of threats or coercion?)
 - Pretrial Proceedings: As with district court misdemeanors, the circuit court judge is called upon to resolve various pre-trial issues, some of which determine whether the case will continue to a trial, be resolved with a plea, or be dismissed.
 - Direct Submission to the Grand Jury by the Office of the Commonwealth's Attorney: The Commonwealth Attorney's Office may submit cases to the grand jury for consideration without proceeding through district court. This proceeding is often used when an ongoing investigation is taking place. The Assistant Commonwealth's Attorney can then request, with good cause, that a bench warrant be issued for the arrest of the defendant. Once an indictment is returned by the grand jury, a letter is issued by the grand jury notifying the defendant of the time, date, and location of their arraignment in circuit court--generally the following Monday
 - Proceeding by Information: When a felony charge is originally brought through district court, a defendant may elect to proceed to circuit court via an Information. With an Information, the defendant waives his rights to a probable cause hearing in district court, agrees to waive the case to the grand jury and agrees to waive the grand jury proceeding. In essence, this is an expedited method by which a defendant can get the case from district court to circuit court for a speedy resolution. Virtually every case that proceeds by information does so for the purposes of entering into a speedy plea agreement at the circuit court level. In some cases where the guilt of the defendant is certain to be proved, this form of proceeding can be very beneficial to the defendant and the justice system as it greatly reduces the amount of time that it takes to proceed through the system (including local jail facilities).
10. Trial (Jury or Bench): A trial is a fact-finding, adversarial proceeding in which the prosecutor must present evidence to prove the defendant's guilt beyond a reasonable doubt. The defendant is not required to prove his or her innocence or to present any evidence, but has the right to challenge the accuracy of the prosecutor's evidence and to cross-examine witnesses. Both the defendant and the prosecutor (representing the people of the Commonwealth of Kentucky) have the right to a trial by a jury. Sometimes, both sides agree to let a judge hear the evidence and decide the case without a jury; this is called a "bench trial". In a jury trial, the jury is the "trier of fact"; in a bench trial, the judge is the "trier of fact." After the evidence is presented, the judge or a jury will determine whether the evidence proved that the defendant committed the crime.

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- **Steps in a Jury Trial:** residents of Jefferson County are randomly selected from a list of licensed drivers and registered voters, and are summoned to the court as potential jurors; a blind draw selects 30 or more people from that group for questioning relevant to the specific case; the judge, prosecutor and defense attorney question the jurors about their backgrounds and beliefs (see voir dire); the attorneys are permitted a limited number of "peremptory" challenges to various jurors (or an unlimited number of challenges for "good cause"); after twelve (for felonies) or six (for misdemeanors) acceptable jurors remain, the judge administers an oath to the jury and reads basic instructions about the trial process. The court may include alternate jurors if the trial is expected to be of some substantial duration. This begins the "Guilt Phase" of a trial; the prosecutor gives an opening statement to outline his case and evidence to the jury; the defense may give a similar opening statement, or wait until later in the trial; the prosecutor calls his witnesses and the defense may cross examine the witnesses; the Commonwealth closes its proofs; the defense may call witnesses, if it wants, and the prosecutor may cross-examine them; the defense rests; the prosecutor may present "rebuttal" witnesses or evidence to challenge evidence presented by the defendant during his proofs; the prosecutor rests; the judge gives the jury detailed legal instructions about the charged crimes and the deliberation process; the defense attorney presents a closing argument to the jury; the prosecutor presents a closing argument to the jury; the jury deliberates and returns a verdict. This ends the "Guilt Phase" of the trial. If the defendant is found guilty, the Sentencing Phase begins next. The court will inform the jury of the basic instructions about the sentencing phase of the trial. The prosecutor gives an opening statement to outline the proof he intends to enter about the defendant's prior criminal background and information about probation and parole. The defense attorney gives an opening statement. The prosecutor calls witnesses to put evidence before the jury; the defense attorney may cross-examine these witnesses. The defense attorney calls witnesses to put evidence before the jury; the prosecuting attorney may cross-examine these witnesses. The judge instructs the jury concerning the range of penalties. The defense attorney presents a closing argument. The prosecuting attorney presents a closing argument. The jury deliberates and returns a verdict, consisting of incarceration, a fine or both.
11. **Pre-Sentence Investigation:** The court's probation department prepares a report for the judge summarizing the crime, and the defendant's personal and criminal backgrounds. Generally, the victim is contacted for a Victim Impact Statement. The probation officer concludes the report with a recommended sentence.
 12. **Sentence:** Sentencing in Kentucky varies with the crime and can be a very confusing part of the criminal process. Most often, sentences are at the judge's discretion. At the time of sentencing, the judge will consider the information in the pre-sentence report before determining the sentence. The parties may correct factual errors in the pre-sentence report and offer additional evidence relevant to the judge's sentencing decision. The judge may consider different alternatives, such as a fine, probation, community service, a sentence to jail or prison, or a combination. The judge must also order the defendant to make restitution to any victims who have suffered financial harm.

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Part V: The Criminal Justice Mental Health Diversion Program

The Court Liaison

According to the terms of the existing contract between Seven Counties Services and the Louisville Metro Government, the court liaison provides court monitoring and reporting services regarding Serious and Persistent Mentally Ill clients. Specifically, persons diagnosed with schizophrenia, bi-polar disorder and major depression who are involved in the criminal justice system. This includes assessment, linkage to needed treatment and reporting compliance to the court system. Charlotte Van Meter, LCSW currently holds this position.

Seven Counties is represented daily by the court liaison, or another member of the criminal justice team, in all four divisions of Jefferson County criminal courts. Advocacy is provided upon request of the warrant, traffic, bad check and district courts and in the 16 criminal court divisions.

The court liaison appears daily in district and circuit court. The primary responsibility of the court liaison is to provide information to court personnel, testify as needed and advocate for clients. The court liaison conferences cases with the defense bar, prosecution, judge, detectives, family and any other interested party. The majority of cases are resolved at the district court level with many court orders for treatment issued. Some cases are ordered to circuit court and many orders are carried over from the previous year.

If a person is diverted into one of the programs, the court liaison monitors the person's compliance and communicates the information back to the court. For cases where non-compliance is an issue, the court liaison facilitates the re-docket of the case.

The Program:

This program is funded by Louisville Metro Corrections and addresses the needs of persons diagnosed with serious and persistent mental illness (SPMI) involved in the criminal justice system. A primary function is the identification and diversion of these persons out of the court system into more appropriate community based services. The Criminal Justice/Jail Diversion program focuses on identifying potential clients post jail booking at the pre-trial stage of the proceeding. Because of the need to address competency, inmates often spend more time in jail on the average while waiting for the process to unfold. If clients can be engaged in treatment and avoid future contact with the criminal justice system, the potential savings of time, money and quality of life (un-interrupted entitlements, stable housing) are immense.

Court orders are divided in three categories: (1) general court orders, (2) mental health diversion and (3) enhanced supervision.

1. **General Court Orders:** Clients in this category plead guilty and receive reduced sentences or probated time on the condition of compliance with mental health treatment.

The Community Treatment Alternatives Program (CTAP) identifies clients for this program. The liaison will screen for these clients by reviewing prior treatment history, visual screening inside the jail, daily review of the names on the arraignment docket, review of the mental health unit census in the jail. The liaison also receives referrals from the Seven Counties clinicians, jail staff and court personnel. Potential clients are screened utilizing a mental health status exam that focuses on current mental health symptoms and level of psychosocial functioning. Any available collateral medical records are reviewed. Verification of a mental health diagnosis is extremely important.

2. **Mental Health Diversion:** The community board reviews clients in this category and if accepted, their cases are continued for six months to a year.

Mental Health Diversion offers persons with serious and persistent mental illness involved in the criminal justice system an opportunity to receive intensive outpatient treatment. By agreeing to this level of treatment and monitoring they avoid entering a plea of guilty to a criminal offense. This incentive has many positive benefits for clients who have had minimal past involvement in the justice system. This increases their options in the area of future housing and employment.

Persons with less than five criminal offenses are encouraged to agree to come to court bi-weekly and to follow the treatment program designed for them which can include doctor appointments, group therapy and medications. Their charges are dropped when they enter into the program, as long as they complete the program requirements.

This diversion program is voluntary and must be agreed to by the person facing criminal charges.

3. **Enhanced Supervision Docket:** Clients in this category plead guilty upon entering the program. Participation in the program can last from six months to two years; upon successful completion of the program, charges are dismissed.

This program is a pilot program to develop mental health courts and examine the efficacy of judicial supervision for those clients with serious or persistent mental health disorders. The main focus of the program is early identification, assessment, diversion and treatment of offenders with mental health needs. It represents a partnership between the Jefferson County Attorney's Office,

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Part VI: Understanding Legal Competency to Stand Trial:

If at any time during criminal proceedings there are reasonable grounds to believe that the defendant is incompetent to stand trial, the proceedings shall be postponed and the issue of the defendant's capacity resolved.

The Test: The test for determining competency to stand trial is whether the defendant lacks capacity to appreciate the nature and consequences of the proceedings against him or to participate rationally in his defense.

The Law: The due process clause of the United States Constitution prohibits the conviction of an accused person while he is legally incompetent. This constitutional rule is also noted in Kentucky law which provides that, "No defendant who is incompetent to stand trial shall be tried, convicted or sentenced so long as the incompetence continues."

Ky. Rev. Stat. Ann. § 504.090. *Drope v. Missouri*, 420 U.S. 162 (1975), *Pate v. Robinson*, 383 U.S. 375 (1966), *Hayden v. Com.*, 563 S.W.2d 720 (Ky. 1978), *Thompson v. Com.*, 56 S.W.3d 406 (Ky. 2001), *Gilbert v. Com.*, 575 S.W.2d 455 (Ky.), *Conley v. Com.*, 569 S.W.2d 682 (Ky. App. 1978), *Dye v. Com.*, 477 S.W.2d 805 (Ky. 1972), *Hopewell v. Com.*, 641 S.W.2d 744 (Ky. 1982), *Harston v. Com.*, 638 S.W.2d 700 (Ky. 1982).

How it Works:

1. **Questioning:** If, after questioning the defendant, the court is unsure of the defendant's competence to stand trial, it may have the defendant examined by a psychologist or psychiatrist. If they find the defendant competent, the court need not conduct an evidentiary hearing. Ky. Rev. Stat. Ann. § 504.100.
2. **Evidentiary Hearing:** The trial court has broad discretion in determining whether to conduct an evidentiary hearing. Once the Court has conducted an evidentiary hearing on the issue, the court is not obligated to conduct a second one unless new evidence is offered. It is important to note that all evidentiary competency hearings are conducted in conformity with the requirements of due process. This means that the defendant has a right to be present, to be heard, to be given adequate notice, to counsel, to call witnesses and to cross examine witnesses.
3. **Examination:** Before conducting the competency hearing, the court shall appoint at least one psychologist or psychiatrist to examine, treat and report on the defendant's mental condition.
4. **The Report:** The report of the psychologist or psychiatrist shall state whether they find the defendant competent to stand trial. If they find the defendant incompetent, the report shall state whether there is a substantial probability of gaining competence in the foreseeable future. Foreseeable future is defined as one year. The report shall also outline the type of treatment that the examiner

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recommends for the defendant, if any. Only after the report is filed shall the court conduct an evidentiary hearing. The report has to be filed within ten days of the exam. The expenses of the exam are covered by the Department of Human Resources.

A trial court is required to order a psychological evaluation whenever reasonable grounds exist to believe that a defendant is incompetent to stand trial. However, the court also has power to order such an exam at its discretion absent a belief of reasonable grounds of incompetence. One example is a Court's order for a defendant to submit to a psychiatric evaluation and observation for a period not to exceed sixty days before sentencing.

5. Treatment: The court may also commit a defendant to a treatment facility for up to 60 days so that the psychologist or psychiatrist can examine and report on the defendant's mental condition.

If the court finds the defendant competent to stand trial, the proceedings are not interrupted.

6. Possible Findings:

Incompetent but Likely to Regain: If the court finds the defendant incompetent to stand trial but there is a substantial probability they will regain competency in the foreseeable future (within one year), it shall commit the defendant to a treatment facility or a forensic psychiatric facility and order him to submit to treatment for sixty (60) days or until he is competent, whichever occurs first. A trial judge has authority to require the defendant to ingest medications for schizophrenia over the objection of the defendant, prior to trial.

Incompetent: If the court finds the defendant incompetent to stand trial and there is no substantial probability that he will obtain competency in the foreseeable future (one year), the court shall conduct an involuntary hospitalization proceeding under KRS 202A or KRS 202B.

Competent: If an expert evaluates and finds a defendant competent, hospitalization is not required under the statute. If found competent, the trial continues. Still, the trial court is required to order a psychological evaluation whenever reasonable grounds exist to believe that a defendant is incompetent, even if the grounds do not present themselves until a later stage in the proceeding.

NOTES:

Part VII: Self Care for the Advocate

(Information in part from the NAMI Family to Family Course Materials.)

The National Alliance for the Mentally Ill (NAMI) is a grassroots nationwide self-help, support, education and advocacy organization dedicated to improving the lives of all those affected by serious mental illness including those diagnosed with a mental illness, their family members and friends and mental health professionals.

Millions of Americans, involving an estimated one in five families, are living with mental illness. Most NAMI members are either a consumer or family member whose life was personally touched by a severe brain disorder such as: Schizophrenia, Bi-polar disorder, Major depressive disorder, Severe anxiety disorders, including panic disorder and obsessive-compulsive disorder.

Following please find some advice from the author of this manual. These bullet point tips have been found to be invaluable in my journey of advocacy:

Know the Truth

Mental Illnesses are biological brain disorders that interfere with the normal brain chemistry. Genetic factors may create a predisposition in some people and life stresses may trigger the onset symptoms. Mental Illnesses are treatable and recovery is possible. Mental Illnesses are not anyone's fault. Mental illness is not caused by poor parenting or weak character. It is not preventable or curable....yet.

Be a Historian

Keep a record of everything. List names of doctors, hospitals, symptoms, dates of treatment, known medications. Keep a journal or file on the computer of events and lists for easy reference. Keep all legal papers, mail, etc. regarding the care of your loved one. Do this, even if you are one of the unfortunate advocates who are excluded from the treatment of a loved one who denies having a mental illness and has no insight into their need for help.

Keep conversations short and to the point. Ask for specific information. Ask your relative for permission to know information and to review documentation.

Be Empathetic

Empathy is defined as the intimate comprehension of another person's thoughts and feelings, without imposing our own judgment or expectations. As a friend or family member of a mentally ill person we must remember that our suffering and stress are minimal compared to the actual experience of mental illness our loved one faces. Having a brain disorder is so daunting that many never acknowledge their own illness. Empathy helps us to compassionately advocate. A broader understanding of the experience of mental illness builds our capacity to empathize. NAMI's family-to-family course

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dedicates an entire class to help advocates master this skill.

Take Care of Yourself

Recognize your own mental health needs. You cannot be an advocate for a mentally ill person if you are not in a healthy state of mind yourself. It is important to take stock of your own emotions, mental and physical health on a regular basis. Make sure you are taking time to refresh yourself during and after times of crisis. Do not go it alone. Seek out information and encouragement from knowledgeable resources. The help of close friends, co-workers and religious groups may be limited as many have never had a personal experience with a person who is mentally ill. You might find yourself frustrated trying to explain or embarrassed about what your family is going through. Stigma extends to family members and friends who are many times blamed for the person's behaviors and symptoms. Statistics regarding divorce and family division are discouraging. Support groups are available through NAMI and should be sought out in times of crisis. Members of these groups can relate personally to the struggle you are facing. If you are experiencing extreme distress seeking personal counseling from someone you trust is highly encouraged.

Never Stop Learning

If you have never taken a Family-to-Family course then you should definitely sign up for the next available class in your area. If you know the diagnosis of your loved one, do some research on the particular brain disorder so that you can have a basic understanding about the illness. Knowledge frees us from guilt, anger and despair and opens our eyes to the truth of the situation and our role in it.

Team Work

Build an advocacy team. Many immediate family members have a difficult time accepting that their family member has a mental illness. This process can take years for some. Only after every other possible explanation has been eliminated do they accept this difficult truth. Start with immediate family members and then those closest to the situation that recognize the illness. When building your team, try to discuss observations and seek information and observation from others. As the illness progresses, and more experiences occur involving other people, try to discuss and relate with others who see what you are seeing. Be careful to set boundaries with people who do not recognize the illness and who blame or shame the family. Remember, no one can be responsible for what they do not know or understand. Ignorance can be cured over time. Teamwork is invaluable and helps the advocate to maintain perspective and balance.

Advocate to Empower

When you reach the end of all you can do for your personal situation, sometimes the best that you can do is to advocate for systemic change. Even if your loved one is estranged or hospitalized or missing, you can be part of the bigger picture fighting for the rights of

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the mentally ill, for their political representation, for their equal treatment and against stigma. I hope that you find this manual a useful tool in your endeavors.

¹ Doris J. James and Lauren E. Glaze, Mental Health Problems of Prison and Jail Inmates, Bureau of Justice Statistics Special Report, September 6, 2006.

² Senator Jim Webb of Virginia, National Criminal Justice Commission Act of 2009, Introduced in Spring Session of the 111th U.S. Congress, March 26, 2009.

³ *Dusky v. United States*, 362 U.S. 402 (1960); *Drope v. Missouri*, 420 U.S. 162 (1975); *Pate v. Robinson*, 383 U.S. 375 (1966); *Thompson v. Com.*, 56 S.W.3d 406 (Ky. 2001).

⁴ *Via v. Commw.*, 522 S.W.2d 848 (Ky. 1975), Ky. R. of Civ. Proc. 8.06.

⁵ See www.namilouisville.org

⁶ Ky. Rev. Stat. Ann. § 202A.

All Kentucky Statutes can be viewed in their entirety at www.lrc.state.ky.us/Law.html.