

#### **431.2135 Procedure for challenging condemned person's sanity.**

This section shall provide the exclusive procedure for challenging a condemned person's sanity, unless the Supreme Court of Kentucky expressly adopts a rule of court providing otherwise.

- (1) A condemned person or the person's attorney may file a motion for stay of execution on the grounds that the condemned person is insane. The motion shall be filed in the Circuit Court of the county where the condemned person is incarcerated, or the county in which the condemned person was convicted, and shall be supported by at least two (2) affidavits. The Attorney General shall file a response within the time ordered by the court.
- (2) Upon receiving a motion under subsection (1) of this section, the court shall order the condemned person to be evaluated by at least two (2) licensed mental health professionals and shall order the mental health professionals to submit their written evaluation to the court within ten (10) days of the evaluation. The court shall then schedule and conduct a hearing as soon as possible to determine whether the condemned person is insane.
- (3) The court shall base its determination of insanity on a preponderance of the evidence. The court's determination may be appealed to the Supreme Court by the condemned person or the Attorney General.
- (4) If the condemned person is determined to be insane, he or she shall be committed to the Kentucky Correctional Psychiatric Center. The treating psychiatrist shall then report, once each month or more frequently if the court orders, to the court and the condemned person's counsel on the progress the condemned person has made and whether there is a substantial probability that the person will become sane. If at any time a psychiatrist treating or evaluating the person determines the person to be sane, the psychiatrist shall immediately report that fact to the court.
- (5) Upon receiving a report that a condemned person has become sane, the court shall schedule an evaluation and conduct a hearing in accordance with subsections (2) and (3) of this section to determine sanity. The court's determination may be appealed to the Supreme Court by the condemned person or the Attorney General.

**Effective:** July 15, 1998

**History:** Created 1998 Ky. Acts ch. 606, sec. 158, effective July 15, 1998.