

CHAPTER 163

(HB 492)

AN ACT relating to temporary custody orders.

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

➔Section 1. KRS 403.280 is amended to read as follows:

- (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in KRS 403.350. The court may award temporary custody under the standards of KRS 403.270 after a hearing, or, if there is no objection, solely on the basis of the affidavits. ***If the parents or a de facto custodian joined under subsection (9) of this section present a temporary custody agreement and mutually agreed plan for parenting time, and the court confirms that the agreement adequately provides for the welfare of the child, the agreement shall become the temporary custody order of the court.***
- (2) ***In making an order for temporary custody, there shall be a presumption, rebuttable by preponderance of evidence, that the parents or a de facto custodian joined under subsection (9) of this section shall have temporary joint custody and shall share equally in parenting time.***
- (3) ***If a deviation from equal parenting time is warranted, the court shall construct a parenting time schedule which maximizes the time each parent or de facto custodian joined under subsection (9) of this section has with the child and is consistent with ensuring the child's welfare.***
- (4) ***Each temporary custody order shall include specific findings of fact and conclusions of law, except when the court confirms the agreement of the parties.***
- (5) ***Any temporary custody order shall address the circumstance in which physical possession of the child will be exchanged.***
- (6) ***Subject to KRS 403.320(4) and 403.340(5), modification of a temporary custody order may be sought when there is a material and substantial change in the circumstances of the parents, de facto custodian, or child.***
- (7) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interests of the child require that a custody decree be issued.
- (8)~~(3)~~ If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation under KRS 403.822(1)(a) or (b) is dismissed, any temporary custody order is vacated.
- (9)~~(4)~~ If a court determines by clear and convincing evidence that a person is a de facto custodian, the court shall join that person in the action, as a party needed for just adjudication under Rule 19 of the Kentucky Rules of Civil Procedure.

Signed by Governor April 10, 2017.