

## CHAPTER 198

( HB 528 )

AN ACT relating to joint custody.

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

➔Section 1. KRS 403.270 is amended to read as follows:

- (1) (a) As used in this chapter and KRS 405.020, unless the context requires otherwise, "de facto custodian" means a person who has been shown by clear and convincing evidence to have been the primary caregiver for, and financial supporter of, a child who has resided with the person for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older or has been placed by the Department for Community Based Services. Any period of time after a legal proceeding has been commenced by a parent seeking to regain custody of the child shall not be included in determining whether the child has resided with the person for the required minimum period.
- (b) A person shall not be a de facto custodian until a court determines by clear and convincing evidence that the person meets the definition of de facto custodian established in paragraph (a) of this subsection. Once a court determines that a person meets the definition of de facto custodian, the court shall give the person the same standing in custody matters that is given to each parent under this section and KRS 403.280, 403.340, 403.350, 403.822, and 405.020.
- (2) The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent and to any de facto custodian. ***Subject to Section 5 of this Act, there shall be a presumption, rebuttable by a preponderance of evidence, that joint custody and equally shared parenting time is in the best interest of the child. 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 has with the child and is consistent with ensuring the child's welfare.*** The court shall consider all relevant factors including:
- (a) The wishes of the child's parent or parents, and any de facto custodian, as to his ***or her*** custody;
- (b) The wishes of the child as to his ***or her*** custodian, ***with due consideration given to the influence a parent or de facto custodian may have over the child's wishes;***
- (c) The interaction and interrelationship of the child with his ***or her*** parent or parents, his ***or her*** siblings, and any other person who may significantly affect the child's best interests;
- (d) ***The motivation of the adults participating in the custody proceeding;***
- (e) The child's adjustment ***and continuing proximity*** to his ***or her*** home, school, and community;
- ~~(f)(e)~~ The mental and physical health of all individuals involved;
- ~~(g)(f)~~ ***A finding by the court that domestic violence and abuse, information, records, and evidence of domestic violence as defined in KRS 403.720, has been committed by one (1) of the parties against a child of the parties or against another party. The court shall determine the extent to which the domestic violence and abuse has affected the child and the child's relationship to each party, with due consideration given to efforts made by a party toward the completion of any domestic violence treatment, counseling, or program;***
- ~~(h)(g)~~ The extent to which the child has been cared for, nurtured, and supported by any de facto custodian;
- ~~(i)(h)~~ The intent of the parent or parents in placing the child with a de facto custodian;~~and~~
- ~~(j)(i)~~ The circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence as defined in KRS 403.720 and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school; ***and***
- (k) ***The likelihood a party will allow the child frequent, meaningful, and continuing contact with the other parent or de facto custodian, except that the court shall not consider this likelihood if there is a finding that the other parent or de facto custodian engaged in domestic violence and abuse, as defined in KRS***

**403.720, against the party or a child and that a continuing relationship with the other parent will endanger the health or safety of either that party or the child..**

- (3) ~~[(The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child. If domestic violence and abuse is alleged, the court shall determine the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parents.~~
- (4) ~~]~~The abandonment of the family residence by a custodial party shall not be considered where said party was physically harmed or was seriously threatened with physical harm by his or her spouse, when such harm or threat of harm was causally related to the abandonment.
- (4)~~(5)~~The court may grant joint custody to the child's parents, or to the child's parents and a de facto custodian, if it is in the best interest of the child.
- (6)~~]~~ If the court grants custody to a de facto custodian, the de facto custodian shall have legal custody under the laws of the Commonwealth.

➔Section 2. 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) **Subject to Section 5 of this Act**, in making an order for temporary custody, there shall be a presumption, rebuttable by preponderance of evidence, that ***it is in the best interest of the child for*** the parents or a de facto custodian joined under subsection (9) of this section ~~to~~~~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) 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) 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.

➔Section 3. KRS 403.320 is amended to read as follows:

- (1) A parent not granted custody of the child ***and not awarded shared parenting time under the presumption specified in subsection (2) of Section 1 of this Act, subsection (2) of Section 2 of this Act, or subsection (6) of Section 4 of this Act*** is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health. Upon request of either party, the court shall issue orders which are specific as to the frequency, timing, duration, conditions, and method of scheduling visitation and which reflect the development age of the child.

- (2) If domestic violence and abuse, as defined in KRS 403.720, has been alleged, the court shall, after a hearing, determine the visitation arrangement, if any, which would not endanger seriously the child's or the custodial parent's physical, mental, or emotional health.
- (3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health.
- (4) (a) Except as provided in paragraph (b) of this subsection, any court-ordered modification of a child visitation decree, based in whole or in part on:
1. The active duty of a parent or a de facto custodian as a regular member of the United States Armed Forces deployed outside the United States; or
  2. Any federal active duty of a parent or a de facto custodian as a member of a state National Guard or a Reserve component;
- shall be temporary and shall revert back to the previous child visitation decree at the end of the deployment outside the United States or the federal active duty, as appropriate.
- (b) A parent or de facto custodian identified in paragraph (a) of this subsection may consent to a modification of a child visitation decree that continues past the end of the deployment outside the United States or the federal active duty, as appropriate.
- (5) Under circumstances where the court finds, by clear and convincing evidence, it is in the best interest of the child, any relative, by blood or affinity, that was previously granted temporary custody pursuant to the provisions of KRS 620.090 may be granted reasonable noncustodial parental visitation rights by a Circuit Court or Family Court as an intervenor or by original action. Once the relative has been granted visitation pursuant to this subsection, those rights shall not be adversely affected by the termination of custodial or parental rights of an individual who has permanent custody of the child unless the court determines that termination of the visitation rights are in the best interests of the child. The action shall be brought in the county in which the temporary or permanent custody order was entered or where the child resides.

➔Section 4. KRS 403.340 is amended to read as follows:

- (1) As used in this section, "custody" means sole or joint custody, whether ordered by a court or agreed to by the parties.
- (2) No motion to modify a custody decree shall be made earlier than two (2) years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe that:
- (a) The child's present environment may endanger seriously his physical, mental, moral, or emotional health; or
  - (b) The custodian appointed under the prior decree has placed the child with a de facto custodian.
- (3) If a court of this state has jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act, the court shall not modify a prior custody decree unless after hearing it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian, and that the modification is necessary to serve the best interests of the child. When determining if a change has occurred and whether a modification of custody is in the best interests of the child, the court shall consider the following:
- (a) Whether the custodian agrees to the modification;
  - (b) Whether the child has been integrated into the family of the petitioner with consent of the custodian;
  - (c) The factors set forth in KRS 403.270(2) to determine the best interests of the child;
  - (d) Whether the child's present environment endangers seriously his physical, mental, moral, or emotional health;
  - (e) Whether the harm likely to be caused by a change of environment is outweighed by its advantages to him; and
  - (f) Whether the custodian has placed the child with a de facto custodian.

- (4) In determining whether a child's present environment may endanger seriously his physical, mental, moral, or emotional health, the court shall consider all relevant factors, including, but not limited to:
- (a) The interaction and interrelationship of the child with his parent or parents, his de facto custodian, his siblings, and any other person who may significantly affect the child's best interests;
  - (b) The mental and physical health of all individuals involved;
  - (c) Repeated or substantial failure, without good cause as specified in KRS 403.240, of either parent to observe visitation, child support, or other provisions of the decree which affect the child, except that modification of custody orders shall not be made solely on the basis of failure to comply with visitation or child support provisions, or on the basis of which parent is more likely to allow visitation or pay child support;
  - (d) If domestic violence and abuse, as defined in KRS 403.720, is found by the court to exist, the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parents.
- (5) (a) Except as provided in paragraph (b) of this subsection, any court-ordered modification of a child custody decree, based in whole or in part on:
1. The active duty of a parent or a de facto custodian as a regular member of the United States Armed Forces deployed outside the United States; or
  2. Any federal active duty of a parent or a de facto custodian as a member of a state National Guard or a Reserve component;
- shall be temporary and shall revert back to the previous child custody decree at the end of the deployment outside the United States or the federal active duty, as appropriate.
- (b) A parent or de facto custodian identified in paragraph (a) of this subsection may consent to a modification of a child custody decree that continues past the end of the deployment outside the United States or the federal active duty, as appropriate.
- (6) ***Subject to Section 5 of this Act, if the court orders a modification of a child custody decree, there shall be a presumption, rebuttable by a preponderance of evidence, that it is in the best interest of the child for the parents to have joint custody and share equally in parenting time. 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 has with the child and is consistent with ensuring the child's welfare.***
- (7) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

***When determining or modifying a custody order pursuant to Section 1, 2, 4, or 6 of this Act, the court shall consider the safety and well-being of the parties and of the children. If a domestic violence order is being or has been entered against a party by another party or on behalf of a child at issue in the custody hearing, the presumption that joint custody and equally shared parenting time is in the best interest of the child shall not apply as to the party against whom the domestic violence order is being or has been entered. The court shall weigh all factors set out in subsection (2) of Section 1 of this Act in determining the best interest of the child.***

➔Section 6. KRS 403.740 is amended to read as follows:

- (1) Following a hearing ordered under KRS 403.730, if a court finds by a preponderance of the evidence that domestic violence and abuse has occurred and may again occur, the court may issue a domestic violence order:
- (a) Restraining the adverse party from:
    1. Committing further acts of domestic violence and abuse;
    2. Any unauthorized contact or communication with the petitioner or other person specified by the court;
    3. Approaching the petitioner or other person specified by the court within a distance specified in the order, not to exceed five hundred (500) feet;
    4. Going to or within a specified distance of a specifically described residence, school, or place of employment or area where such a place is located; and

5. Disposing of or damaging any of the property of the parties;
  - (b) Directing or prohibiting any other actions that the court believes will be of assistance in eliminating future acts of domestic violence and abuse, except that the court shall not order the petitioner to take any affirmative action;
  - (c) Directing that either or both of the parties receive counseling services available in the community in domestic violence and abuse cases; and
  - (d) Additionally, if applicable:
    1. Directing the adverse party to vacate a residence shared by the parties to the action;
    2. Utilizing the criteria set forth in KRS 403.270, 403.320, and 403.822, grant temporary custody, *subject to Section 5 of this Act*; and
    3. Utilizing the criteria set forth in KRS 403.211, 403.212, and 403.213, award temporary child support.
- (2) In imposing a location restriction described in subsection (1)(a)4. of this section, the court shall:
- (a) Afford the petitioner and respondent, if present, an opportunity to testify on the issue of the locations and areas from which the respondent should or should not be excluded;
  - (b) Only impose a location restriction where there is a specific, demonstrable danger to the petitioner or other person protected by the order;
  - (c) Specifically describe in the order the locations or areas prohibited to the respondent; and
  - (d) Consider structuring a restriction so as to allow the respondent transit through an area if the respondent does not interrupt his or her travel to harass, harm, or attempt to harass or harm the petitioner.
- (3) When temporary child support is granted under this section, the court shall enter an order detailing how the child support is to be paid and collected. Child support ordered under this section may be enforced utilizing the same procedures as any other child support order.
- (4) A domestic violence order shall be effective for a period of time fixed by the court, not to exceed three (3) years, and may be reissued upon expiration for subsequent periods of up to three (3) years each. The fact that an order has not been violated since its issuance may be considered by a court in hearing a request for a reissuance of the order.

**Signed by Governor April 26, 2018.**