

**CHAPTER 94****( HB 109 )**

AN ACT relating to the Uniform Deployed Parents Custody and Visitation Act.

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

➔SECTION 1. KRS CHAPTER 403A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

*This chapter may be cited as the Uniform Deployed Parents Custody and Visitation Act.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*As used in this chapter:*

- (1) *"Adult" means an individual who has attained eighteen (18) years of age or an emancipated minor;*
- (2) *"Caretaking authority" means the right to live with and care for a child on a day-to-day basis. The term includes physical custody, parenting time, right to access, and visitation;*
- (3) *"Child" means:*
  - (a) *An unemancipated individual who has not attained eighteen (18) years of age; or*
  - (b) *An adult son or daughter by birth or adoption, or under law of this state other than this chapter, who is the subject of a court order concerning custodial responsibility;*
- (4) *"Court" means a tribunal authorized under law of this state other than this chapter to make, enforce, or modify a decision regarding custodial responsibility;*
- (5) *"Custodial responsibility" includes all powers and duties relating to caretaking authority and decision-making authority for a child. The term includes physical custody, legal custody, parenting time, right to access, visitation, and authority to grant limited contact with a child;*
- (6) *"Decision-making authority" means the power to make important decisions regarding a child, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel. The term does not include the power to make decisions that necessarily accompany a grant of caretaking authority;*
- (7) *"Deploying parent" means a service member, who is deployed or has been notified of impending deployment and is:*
  - (a) *A parent of a child under law of this state other than this chapter; or*
  - (b) *An individual who has custodial responsibility for a child under law of this state other than this chapter;*
- (8) *"Deployment" means the movement or mobilization of a service member for more than ninety (90) days but less than eighteen (18) months pursuant to uniformed service orders that:*
  - (a) *Are designated as unaccompanied;*
  - (b) *Do not authorize dependent travel; or*
  - (c) *Otherwise do not permit the movement of family members to the location to which the service member is deployed;*
- (9) *"Family member" means a sibling, aunt, uncle, cousin, stepparent, or grandparent of a child or an individual recognized to be in a familial relationship with a child under law of this state other than this chapter;*
- (10) *"Limited contact" means the authority of a nonparent to visit a child for a limited time. The term includes authority to take the child to a place other than the residence of the child;*
- (11) *"Nonparent" means an individual other than a deploying parent or other parent;*
- (12) *"Other parent" means an individual who, in common with a deploying parent, is:*

- (a) *A parent of a child under law of this state other than this chapter; or*
- (b) *An individual who has custodial responsibility for a child under law of this state other than this chapter;*
- (13) *"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;*
- (14) *"Return from deployment" means the conclusion of a service member's deployment as specified in uniformed service orders;*
- (15) *"Service member" means a member of a uniformed service;*
- (16) *"Sign" means, with present intent to authenticate or adopt a record:*
  - (a) *To execute or adopt a tangible symbol; or*
  - (b) *To attach to or logically associate with the record an electronic symbol, sounds, or process;*
- (17) *"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States; and*
- (18) *"Uniformed service" means:*
  - (a) *Active and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States;*
  - (b) *The United States Merchant Marine;*
  - (c) *The commissioned corps of the United States Public Health Service;*
  - (d) *The commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or*
  - (e) *The National Guard of a state.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*In addition to other remedies under law of this state other than this chapter, if a court finds that a party to a proceeding under this chapter has acted in bad faith or intentionally failed to comply with this chapter or a court order issued under this chapter, the court may assess reasonable attorney's fees and costs against the party and order other appropriate relief.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *A court may issue an order regarding custodial responsibility under this chapter only if the court has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act, KRS 403.800 to 403.880.*
- (2) *If a court has issued a temporary order regarding custodial responsibility pursuant to Sections 13 to 23 of this Act, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act during the deployment.*
- (3) *If a court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order temporarily by agreement pursuant to Sections 8 to 12 of this Act, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.*
- (4) *If a court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.*
- (5) *This section does not prevent a court from exercising temporary emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act.*

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

- (1) *Except as otherwise provided in subsection (4) of this section, and subject to subsection (3) of this section, a deploying parent shall notify in a record the other parent of a pending deployment not later than seven (7) days after receiving notice of deployment unless reasonably prevented from doing so by the circumstances of service. If the circumstances of service prevent giving notification within the seven (7) days, the deploying parent shall give the notification as soon as reasonably possible.*

- (2) *Except as otherwise provided in subsection (4) of this section, and subject to subsection (3) of this section, each parent shall provide in a record the other parent with a plan for fulfilling that parent's share of custodial responsibility during deployment. Each parent shall provide the plan as soon as reasonably possible after notification of deployment is given under subsection (1) of this section.*
- (3) *If a court order currently in effect prohibits disclosure of the address or contact information of the other parent, notification of deployment under subsection (1) of this section, or notification of a plan for custodial responsibility during deployment under subsection (2) of this section, may be made only to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notification to the other parent. The court shall keep confidential the address or contact information of the other parent.*
- (4) *Notification in a record under subsection (1) or (2) of this section is not required if the parents are living in the same residence and both parents have actual notice of the deployment or plan.*
- (5) *In a proceeding regarding custodial responsibility, a court may consider the reasonableness of a parent's efforts to comply with this section.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (2) of this section, an individual to whom custodial responsibility has been granted during deployment pursuant to Sections 8 to 12 or 13 to 23 of this Act shall notify the deploying parent and any other individual with custodial responsibility of a child of any change of the individual's mailing address or residence until the grant is terminated. The individual shall provide the notice to any court that has issued a custody or child support order concerning the child which is in effect.*
- (2) *If a court order currently in effect prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been granted, a notification under subsection (1) of this section may be made only to the court that issued the order. The court shall keep confidential the mailing address or residence of the individual to whom custodial responsibility has been granted.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*In a proceeding for custodial responsibility of a child of a service member, a court may not consider a parent's past deployment or possible future deployment in itself in determining the best interest of the child but may consider any significant impact on the best interest of the child of the parent's past or possible future deployment.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *The parents of a child may enter into a temporary agreement under Sections 8 to 12 of this Act granting custodial responsibility during deployment.*
- (2) *An agreement under subsection (1) of this section shall be:*
  - (a) *In writing; and*
  - (b) *Signed by both parents and any nonparent to whom custodial responsibility is granted.*
- (3) *Subject to subsection (4) of this section, an agreement under subsection (1) of this section, if feasible, shall:*
  - (a) *Identify the destination, duration, and conditions of the deployment that is the basis for the agreement;*
  - (b) *Specify the allocation of caretaking authority among the deploying parent, the other parent, and any nonparent;*
  - (c) *Specify any decision-making authority that accompanies a grant of caretaking authority;*
  - (d) *Specify any grant of limited contact to a nonparent;*
  - (e) *If under the agreement custodial responsibility is shared by the other parent and a nonparent, or by other nonparents, provide a process to resolve any dispute that may arise;*
  - (f) *Specify the frequency, duration, and means, including electronic means, by which the deploying parent will have contact with the child, any role to be played by the other parent in facilitating the contact, and the allocation of any costs of contact;*

- (g) *Specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available;*
  - (h) *Acknowledge that any party's child-support obligation cannot be modified by the agreement, and that changing the terms of the obligation during the deployment requires modification in the appropriate court;*
  - (i) *Provide that the agreement will terminate according to the procedures under Sections 24 to 27 of this Act after the deploying parent returns from deployment; and*
  - (j) *If the agreement must be filed pursuant to Section 12 of this Act, specify which parent is required to file the agreement.*
- (4) *The omission of any of the items specified in subsection (3) of this section does not invalidate an agreement under this section.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *An agreement under Sections 8 to 12 of this Act is temporary and terminates pursuant to Sections 24 to 27 of this Act after the deploying parent returns from deployment, unless the agreement has been terminated before that time by court order or modification under Section 10 of this Act. The agreement does not create an independent, continuing right to caretaking authority, decision-making authority, or limited contact in an individual to whom custodial responsibility is given.*
- (2) *A nonparent who has caretaking authority, decision-making authority, or limited contact by an agreement under Sections 8 to 12 of this Act has standing to enforce the agreement until it has been terminated by court order, by modification under Section 10 of this Act, or under Sections 24 to 27 of this Act.*

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *By mutual consent, the parents of a child may modify an agreement regarding custodial responsibility made pursuant to Sections 8 to 12 of this Act.*
- (2) *If an agreement is modified under subsection (1) of this section before deployment of a deploying parent, the modification shall be in writing and signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.*
- (3) *If an agreement is modified under subsection (1) of this section during deployment of a deploying parent, the modification shall be agreed to in a record by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*A deploying parent, by power of attorney, may delegate all or part of custodial responsibility to an adult nonparent for the period of deployment if no other parent possesses custodial responsibility under law of this state other than this chapter, or if a court order currently in effect prohibits contact between the child and the other parent. The deploying parent may revoke the power of attorney by signing a revocation of the power.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*An agreement or power of attorney under Sections 8 to 12 of this Act shall be filed within a reasonable time with any court that has entered an order on custodial responsibility or child support that is in effect concerning the child who is the subject of the agreement or power. The case number and heading of the pending case concerning custodial responsibility or child support shall be provided to the court with the agreement or power.*

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*As used in Sections 13 to 23 of this Act, "close and substantial relationship" means a relationship in which a significant bond exists between a child and a nonparent.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *After a deploying parent receives notice of deployment and until the deployment terminates, a court may issue a temporary order granting custodial responsibility unless prohibited by the Servicemembers Civil Relief Act, 50 U.S.C. Appendix Sections 521 and 522. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.*
- (2) *At any time after a deploying parent receives notice of deployment, either parent may file a motion regarding custodial responsibility of a child during deployment. The motion shall be filed in a pending*

*proceeding for custodial responsibility in a court with jurisdiction under Section 4 of this Act or, if there is no pending proceeding in a court with jurisdiction under Section 4 of this Act, in a new action for granting custodial responsibility during deployment.*

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*If a motion to grant custodial responsibility is filed under subsection (2) of Section 14 of this Act before a deploying parent deploys, the court shall conduct an expedited hearing.*

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*In a proceeding under Sections 13 to 23 of this Act, a party or witness who is not reasonably available to appear personally may appear, provide testimony, and present evidence by electronic means unless the court finds good cause to require a personal appearance.*

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*In a proceeding for a grant of custodial responsibility pursuant to Sections 13 to 23 of this Act, the following rules apply:*

- (1) *A prior judicial order designating custodial responsibility in the event of deployment is binding on the court unless the circumstances meet the requirements of law of this state other than this chapter for modifying a judicial order regarding custodial responsibility; and*
- (2) *The court shall enforce a prior written agreement between the parents for designating custodial responsibility in the event of deployment, including an agreement executed under Sections 8 to 12 of this Act, unless the court finds that the agreement is contrary to the best interest of the child.*

➔SECTION 18. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *On motion of a deploying parent and in accordance with law of this state other than this chapter, if it is in the best interest of the child, a court may grant caretaking authority to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship.*
- (2) *Unless a grant of caretaking authority to a nonparent under subsection (1) of this section is agreed to by the other parent, the grant is limited to an amount of time not greater than:*
  - (a) *The amount of time granted to the deploying parent under a permanent custody order, but the court may add unusual travel time necessary to transport the child; or*
  - (b) *In the absence of a permanent custody order that is currently in effect, the amount of time that the deploying parent habitually cared for the child before being notified of deployment, but the court may add unusual travel time necessary to transport the child.*
- (3) *A court may grant part of a deploying parent's decision-making authority, if the deploying parent is unable to exercise that authority, to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship. If a court grants the authority to a nonparent, the court shall specify the decision-making powers granted, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel.*

➔SECTION 19. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*On motion of a deploying parent, and in accordance with law of this state other than this chapter, unless the court finds that the contact would be contrary to the best interest of the child, a court shall grant limited contact to a nonparent who is a family member of the child or an individual with whom the child has a close and substantial relationship.*

➔SECTION 20. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *A grant of authority under Sections 13 to 23 of this Act is temporary and terminates under Sections 24 to 27 of this Act after the return from deployment of the deploying parent, unless the grant has been terminated before that time by court order. The grant does not create an independent, continuing right to caretaking authority, decision-making authority, or limited contact in an individual to whom it is granted.*
- (2) *A nonparent granted caretaking authority, decision-making authority, or limited contact under Sections 13 to 23 of this Act has standing to enforce the grant until it is terminated by court order or under Sections 24 to 27 of this Act.*

➔SECTION 21. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *An order granting custodial responsibility under this article shall:*
  - (a) *Designate the order as temporary; and*
  - (b) *Identify to the extent feasible the destination, duration, and conditions of the deployment.*
- (2) *If applicable, an order for custodial responsibility under Sections 13 to 23 of this Act shall:*
  - (a) *Specify the allocation of caretaking authority, decision-making authority, or limited contact among the deploying parent, the other parent, and any nonparent;*
  - (b) *If the order divides caretaking or decision-making authority between individuals, or grants caretaking authority to one (1) individual and limited contact to another, provide a process to resolve any dispute that may arise;*
  - (c) *Provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interest of the child, and allocate any costs of communication;*
  - (d) *Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or otherwise available, unless contrary to the best interest of the child;*
  - (e) *Provide for the reasonable contact between the deploying parent and the child after return from deployment until the temporary order is terminated, even if the time of contact exceeds the time the deploying parent spent with the child before entry of the temporary order; and*
  - (f) *Provide that the order will terminate pursuant to Sections 24 to 27 of this Act after the deploying parent returns from deployment.*

➔SECTION 22. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*If a court has issued an order granting caretaking authority under this article, or an agreement granting caretaking authority has been executed under Sections 8 to 12 of this Act, the court may enter a temporary order for child support consistent with law of this state other than this chapter if the court has jurisdiction under the Uniform Interstate Family Support Act, KRS 407.5101 to 407.5902.*

➔SECTION 23. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *Except for an order under Section 17 of this Act, except as otherwise provided in subsection (2) of this section, and consistent with the Servicemembers Civil Relief Act, 50 U.S.C. Appendix Sections 521 and 522, on motion of a deploying or other parent or any nonparent to whom caretaking authority, decision-making authority, or limited contact has been granted, the court may modify or terminate the grant if the modification or termination is consistent with Sections 13 to 23 of this Act and it is in the best interest of the child. A modification is temporary and terminates pursuant to Sections 24 to 27 of this Act after the deploying parent returns from deployment, unless the grant has been terminated before that time by court order.*
- (2) *On motion of a deploying parent, the court shall terminate a grant of limited contact.*

➔SECTION 24. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *At any time after return from deployment, a temporary agreement granting custodial responsibility under Sections 8 to 12 of this Act may be terminated by an agreement to terminate signed by the deploying parent and the other parent.*
- (2) *A temporary agreement under Sections 8 to 12 of this Act granting custodial responsibility terminates:*
  - (a) *If an agreement to terminate under subsection (1) of this section specifies a date for termination, on that date; or*
  - (b) *If the agreement to terminate does not specify a date, on the date the agreement to terminate is signed by the deploying parent and the other parent.*
- (3) *In the absence of an agreement under subsection (1) of this section to terminate, a temporary agreement granting custodial responsibility terminates under Sections 8 to 12 of this Act sixty (60) days after the deploying parent gives notice to the other parent that the deploying parent returned from deployment.*

- (4) *If a temporary agreement granting custodial responsibility was filed with a court pursuant to Section 12 of this Act, an agreement to terminate the temporary agreement also shall be filed with that court within a reasonable time after the signing of the agreement. The case number and heading of the case concerning custodial responsibility or child support shall be provided to the court with the agreement to terminate.*

➔SECTION 25. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*At any time after a deploying parent returns from deployment, the deploying parent and the other parent may file with the court an agreement to terminate a temporary order for custodial responsibility issued under Sections 13 to 23 of this Act. After an agreement has been filed, the court shall issue an order terminating the temporary order effective on the date specified in the agreement. If a date is not specified, the order is effective immediately.*

➔SECTION 26. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*After a deploying parent returns from deployment until a temporary agreement or order for custodial responsibility established under Sections 8 to 12 of this Act or Sections 13 to 23 of this Act is terminated, the court shall issue a temporary order granting the deploying parent reasonable contact with the child unless it is contrary to the best interest of the child, even if the time of contact exceeds the time the deploying parent spent with the child before the deployment.*

➔SECTION 27. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *If an agreement between the parties to terminate a temporary order for custodial responsibility under Sections 13 to 23 of this Act has not been filed, the order terminates sixty (60) days after the deploying parent gives notice to the other parent and any nonparent granted custodial responsibility that the deploying parent has returned from deployment.*
- (2) *A proceeding seeking to prevent termination of a temporary order for custodial responsibility is governed by law of this state other than this chapter.*

➔SECTION 28. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*In applying and construing the Uniform Deployed Parents Custody and Visitation Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.*

➔SECTION 29. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. sec. 7003(b).*

➔SECTION 30. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*This chapter does not affect the validity of a temporary court order concerning custodial responsibility during deployment which was entered before the effective date of this Act.*

➔Section 31. 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 KRS 403.315, 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 have temporary joint custody and 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 32. 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 KRS 403.270(2), 403.280(2), or 403.340(5)~~((6))~~ 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 33. 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 KRS 403.315, 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.
- ~~(6)(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 34. KRS 403.352 is amended to read as follows:

- (1) A parent or legal guardian of a child, by a properly executed power of attorney, as established in this section and KRS 403.353, may temporarily delegate to another person, named in the instrument as the attorney-in-fact, for a period not to exceed one (1) year any of the traditional parental rights and responsibilities regarding care and custody of the child except the following authorities:
  - (a) Consent for the child to marry;
  - (b) Consent for an abortion or inducement of an abortion to be performed on or for the child; or
  - (c) The termination of parental rights to the child.
- (2) A temporary delegation of rights and responsibilities under this section shall not:
  - (a) Operate to change or modify any parental or legal rights, obligations, or authority established by an existing court order; or
  - (b) Deprive the parent or legal custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of the child.
- (3) The parent or legal custodian of the child shall have the authority to revoke or withdraw the power of attorney authorized by this section at any time.
- (4) Upon the termination, withdrawal, expiration, or revocation of the power of attorney established by this section, the child shall be returned to the custody of the parent or legal guardian as soon as reasonably possible.
- (5) The attorney-in-fact named in the instrument as established by this section shall not be compensated for serving as the attorney-in-fact pursuant to this section.
- (6) Unless the power of attorney established by this section is terminated, revoked, or withdrawn, the attorney-in-fact named in the instrument shall exercise parental or legal authority on a continuous basis for the duration of the power of attorney established by this section.
- (7)
  - (a) An attorney-in-fact properly appointed pursuant to this section and in compliance with this section shall not be subject to any statutes dealing with the licensing or regulation of foster care homes or other child-care facility licensing statutes, and the appointment of an attorney-in-fact pursuant to this section and KRS 403.353 shall not constitute an out-of-home child placement.
  - (b) The child or children subject to the power of attorney established in this section shall not be considered placed in foster care, and the parties involved in the power of attorney established in this section shall not be subject to any requirements, monitoring, or other regulation for foster care or community care solely because of the execution of an instrument authorized pursuant to this section or KRS 403.353.
- (8) Except as otherwise provided pursuant to the Kentucky Revised Statutes, the execution of a power of attorney as established pursuant to this section by a parent or legal guardian shall not by itself constitute evidence of abandonment, abuse, or neglect, unless the parent or legal guardian fails to take custody of the child or execute a new power of attorney after the one (1) year time limit has elapsed. Nothing in this subsection shall be interpreted to prevent an investigation of abuse, neglect, abandonment, other mistreatment of a child, or other crime.
- (9)
  - (a) A parent or legal guardian shall not execute a power of attorney pursuant to this section or KRS 403.353 with the intention of permanently avoiding or divesting himself or herself of parental or legal responsibility for the care of the child or for any other illegal or fraudulent purpose.
  - (b) An attorney-in-fact or prospective attorney-in-fact designated or potentially designated pursuant to this section or KRS 403.353 shall not demand or request that a parent or guardian enter into an instrument established pursuant to this section or KRS 403.353 as a result of any person's financial or other debt or obligation, or for any other illegal or fraudulent purpose.
  - (c) A power of attorney established pursuant to this section and KRS 403.353 shall not be used solely for the purpose of establishing residency for school attendance purposes unless the child actually resides with the attorney-in-fact in the school district where the enrollment is sought, or the child otherwise resides in the district.
  - (d) Violation of this section shall be punishable under Kentucky law.

- (10) If a parent or legal guardian of a child chooses to delegate powers pursuant to this section regarding the care and custody of the child to a person or persons other than a grandparent, aunt, uncle, or adult sibling of the child, a full criminal history and child abuse and neglect background check shall be conducted on the person or persons prior to the execution of the power of attorney authorized by this section. The results of the background check shall be kept with the instrument establishing the power of attorney pursuant to this section. A child shall not be placed with an individual whose background check indicates that he or she has a criminal history of child abuse and neglect.
- (11) ~~{A parent who is a member of the Armed Forces of the United States, including any reserve component thereof, or the commissioned corps of the National Oceanic and Atmospheric Administration, or the Public Health Service of the United States Department of Health and Human Services detailed by proper authority for duty with the Armed Forces of the United States, or a parent who is otherwise required to enter or serve in the active military service of the United States under a call or order of the President of the United States or to serve on state active duty, may delegate his or her traditional parental rights and responsibilities via a power of attorney established in this section for a period longer than one (1) year while on active duty service. The term of delegation permitted by this subsection shall not exceed the term of active duty service plus thirty (30) days.~~
- ~~(12) Any period of time during which a child resides with an attorney-in-fact under an unexpired and valid power of attorney properly executed pursuant to this section and KRS 403.353, shall not be included in determining whether the child has resided with the attorney-in-fact for the minimum period required to be designated a de facto custodian pursuant to KRS 403.270(1).~~

➔Section 35. KRS 403.353 is amended to read as follows:

- (1) A power of attorney established pursuant to this section, ~~and~~ KRS 403.352, **and KRS Chapter 403A** shall be substantially in the following form, and may include other specific directions which are in accordance with accepted legal practice and not specifically prohibited by any other statute. If any other specific directions are held by a court of appropriate jurisdiction to be invalid, that invalidity shall not affect the power of attorney or other provisions established in this section, ~~and~~ KRS 403.352, **and KRS Chapter 403A**.

"Power of Attorney for Temporary Delegation  
of Parental or Legal Custody and Care

1. I certify that I am the parent or legal guardian of:

(Full name of minor child)	(Date of birth)
(Full name of minor child)	(Date of birth)
(Full name of minor child)	(Date of birth)

2. I designate \_\_\_\_\_ (Full name of Attorney-in-fact),

\_\_\_\_\_  
(Street address, city, state, and zip code of Attorney-in-fact)

\_\_\_\_\_  
(Home phone of Attorney-in-fact) \_\_\_\_\_

\_\_\_\_\_  
(Work phone of Attorney-in-fact) \_\_\_\_\_

as the Attorney-in-fact of each minor child named above.

3. I delegate to the Attorney-in-fact all of my power and authority regarding the care, custody, and property of each minor child named above, including but not limited to the right to enroll the child in school, inspect and obtain copies of education records and other records concerning the child, the right to attend school activities and other functions concerning the child, and the right to give or withhold any consent or waiver with respect to school activities, medical and dental treatment, and any other activity, function, or treatment that may concern the child. This

delegation shall not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child.

OR

In the event that Section 4 is completed, Section 3 does not apply.

4. I delegate to the Attorney-in-fact the following specific powers and responsibilities (write in):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This delegation shall not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child.

5. This power of attorney is effective for a period not to exceed one (1) year, beginning \_\_\_\_\_, 20\_\_, and ending \_\_\_\_\_, 20\_\_.

I reserve the right to revoke this authority at any time.

OR

In the event Section 6 is completed and valid, Section 5 does not apply.

6. I am a parent or legal guardian on active duty as governed by KRS **Chapter 403A**~~[403.352(10)]~~. My active duty service is scheduled to begin on \_\_\_\_\_, 20\_\_, and is estimated to end on \_\_\_\_\_, 20\_\_. I acknowledge that in no event may this delegation of power last more than one (1) year or the term of my active duty plus thirty (30) days, whichever is longer.

7. BY: \_\_\_\_\_

(Parent/Legal Guardian signature)

8. I hereby accept my designation as Attorney-in-fact for the minor child or children specified in this power of attorney.

\_\_\_\_\_

(Attorney-in-fact signature)

County of \_\_\_\_\_

ACKNOWLEDGMENT

Before me, the undersigned, a Notary Public, in and for said County and State on this \_\_\_\_day of \_\_\_\_\_, 20\_\_, personally appeared

\_\_\_\_\_

(Name of Parent/Legal Guardian)

\_\_\_\_\_

(Name of Attorney-in-fact),

to me known to be the identical persons who executed this instrument and acknowledged to me that each executed the same as his or her free and voluntary act and deed for the uses and purposes set forth in the instrument.

Witness my hand and official seal the day and year above written.

\_\_\_\_\_

(Signature of notary public)

My commission expires: \_\_\_\_\_."

(2) The power of attorney is legally sufficient under this section,~~and~~ KRS 403.352, **and KRS Chapter 403A** if the wording of the form complies substantially with subsection (1) of this section, the form is properly completed and signed, and the form or parties are not otherwise invalid pursuant to KRS 403.352.

**Signed by Governor March 23, 2021.**