

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 (7) of this section include a temporary joint custody agreement and mutually agreed plan for sharing parenting time in the affidavits, and the court confirms that the agreement provides for the welfare of the child, that agreement shall become the temporary custody order of the court.***
- (2) ***(a) In making an order for temporary custody, there shall be a presumption that the parents or a de facto custodian joined under subsection (7) of this section shall have temporary joint custody and shall share equally in parenting time.***
 - (b) The presumption of joint custody or equal parenting time may be rebutted by:***
 - 1. Failure to file an opposing affidavit as provided in KRS 403.350; or***
 - 2. A finding of abuse or neglect of the child as evidenced by:***
 - a. At least one (1) formal written report from a government agency that investigated a reported incident and confirmed that abuse or neglect occurred; or***
 - b. A preponderance of the evidence showing that abuse or neglect is likely to occur if temporary joint custody is ordered.***
 - (c) The presumption of equal parenting time may be rebutted by a showing that a parent or de facto custodian lacks suitable residence for habitation by the***

child in which the child has the opportunity to sleep in a bed for a minimum of eight (8) hours per day without disruption and where ample food, clothing, and hygienic resources are available any time the child is present.

(d) If a deviation from equal parenting time is warranted by paragraph (c) of this subsection, the court shall construct a parenting time schedule that maximizes the time each parent or de facto custodian has with the child and is consistent with ensuring the child's welfare.

(3) (a) The temporary custody order shall include the specific facts and findings supporting the court's decision if:

1. An order for sole temporary custody is made;

2. Parenting time or visitation is denied to a parent or de facto custodian joined under subsection (7) of this section; or

3. A joint custody agreement made between the parents or a de facto custodian and included in the affidavit is not adopted.

(b) Any temporary custody order shall include the time, place, and manner in which physical custody of the child will be exchanged.

(4) Subject to KRS 403.320(4) and 403.340(5), modification of a temporary custody order may be sought when there is a change in the developmental stage of the child, a change in the parenting time that the parents or a de facto custodian can provide, or a material and substantial change in the circumstances of the parents or de facto custodian.

(5) 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.

~~(6)~~(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.

(Z)~~(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.