

AN ACT relating to temporary removal hearings.

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

➔Section 1. KRS 620.100 is amended to read as follows:

- (1) **Prior to a temporary removal hearing,**~~[If the court determines, as a result of a temporary removal hearing, that further proceedings are required,]~~ the court shall advise the child and his **or her** parent or other person exercising custodial control or supervision of their right to appointment of separate counsel **as follows:**
- (a) The court shall appoint counsel for the child to be paid for by the Finance and Administration Cabinet. Counsel shall document participation in training on the role of counsel that includes training in early childhood, child, and adolescent development **and participation in training concerning the dynamics of domestic violence, effects of domestic violence on adult and child victims, legal remedies for protection, lethality and risk issues, model protocols for addressing domestic violence, available community resources and victims services, and reporting requirements.** The clerk of the court shall arrange for service on all parties, including the local representative of the Cabinet for Health and Family Services, of the order appointing counsel. The fee to be fixed by the court shall not exceed five hundred dollars (\$500); however, if the action has final disposition in the District Court, the fee shall not exceed two hundred fifty dollars (\$250);
- (b) The court shall appoint separate counsel for the parent who exercises custodial control or supervision if the parent is **a poor person as defined in**~~[unable to afford counsel pursuant to]~~ KRS **453.190**~~[Chapter 31]~~. **Counsel shall document participation in training on the role of counsel that includes training in early childhood, child, and adolescent development and participation in training concerning the dynamics of domestic violence, effects of domestic violence on adult and child victims, legal remedies for**

protection, lethality and risk issues, model protocols for addressing domestic violence, available community resources and victims services, and reporting requirements. The clerk of the court shall arrange for service on all parties, including the local representative of the Cabinet for Health and Family Services, of the order appointing counsel. The parent's counsel shall be provided or paid for by the Finance and Administration Cabinet. The fee to be fixed by the court shall not exceed five hundred dollars (\$500); however, if the action has final disposition in the District Court, the fee shall not exceed two hundred fifty dollars (\$250). **If counsel is not available at the temporary removal hearing and the person does not waive his or her right to counsel, the court shall grant a continuance. If a continuance is granted to provide for counsel, the court may extend the effective period of the emergency custody order for seventy-two (72) hours, excluding weekends and holidays;**

- (c) The court may, in the interest of justice, appoint separate counsel for a nonparent who exercises custodial control or supervision of the child, if the person is **a poor person as defined in** ~~unable to afford counsel, pursuant to~~ KRS ~~453.190~~ ~~[Chapter 31]~~. **Counsel shall document participation in training on the role of counsel that includes training in early childhood, child, and adolescent development and participation in training concerning the dynamics of domestic violence, effects of domestic violence on adult and child victims, legal remedies for protection, lethality and risk issues, model protocols for addressing domestic violence, available community resources and victims services, and reporting requirements.** The clerk of the court shall arrange for service on all parties, including the local representative of the Cabinet for Health and Family Services, of the order appointing counsel. Counsel for the person shall be provided or paid for by the Finance and Administration Cabinet. The fee to be fixed by the court shall not exceed five

hundred dollars (\$500); however, if the action has final disposition in the District Court, the fee shall not exceed two hundred fifty dollars (\$250); and

- (d) The court may, in the interest of justice, appoint a court-appointed special advocate volunteer to represent the best interests of the child pursuant to KRS 620.500 to 620.550. The clerk of the court shall arrange for service on all parties, including the local representative of the cabinet, of the order appointing the court-appointed special advocate volunteer.
- (2) ***Prior to a temporary removal hearing***~~[If the court determines that further proceedings are required]~~, the court also shall advise the child and his ***or her*** parent or other person exercising custodial control or supervision that they have a right to not incriminate themselves, and a right to a full adjudicatory hearing at which they may confront and cross-examine all adverse witnesses, present evidence on their own behalf and to an appeal.
- (3) The adjudication shall determine the truth or falsity of the allegations in the complaint. The burden of proof shall be upon the complainant, and a determination of dependency, neglect, and abuse shall be made by a preponderance of the evidence. The Kentucky Rules of Civil Procedure shall apply.
- (4) The disposition shall determine the action to be taken by the court on behalf of the child and his parent or other person exercising custodial control or supervision.
- (5) Foster parents, preadoptive parents, or relatives providing care for the child shall receive notice of, and shall have a right to be heard in, any proceeding held with respect to the child. This subsection shall not be construed to require that a foster parent, preadoptive parent, or relative caring for the child be made a party to a proceeding solely on the basis of the notice and right to be heard.
- ➔Section 2. KRS 620.080 is amended to read as follows:
- (1) Unless waived by the child and his parent or other person exercising custodial control or supervision, a temporary removal hearing shall be held:

- (a) Within seventy-two (72) hours, excluding weekends and holidays, of the time when an emergency custody order is issued or when a child is taken into custody without the consent of his parent or other person exercising custodial control or supervision; and
 - (b) In cases commenced by the filing of a petition, within ten (10) days of the date of filing.
- (2) **Prior to a temporary removal hearing, the court shall advise the child and his or her parent or other person exercising custodial control or supervision that they have a right to not incriminate themselves, and that the parent or other person exercising custodial control or supervision has a right to testify and otherwise present evidence at the temporary removal hearing if they choose to do so. The court shall consider that evidence in making the determination required in subsection (3) of this section.**
- (3) At a temporary removal hearing, the court shall determine whether there are reasonable grounds to believe that the child would be dependent, neglected or abused if returned to or left in the custody of his parent or other person exercising custodial control or supervision even though it is not proved conclusively who has perpetrated the dependency, neglect or abuse. For good cause, the court may allow hearsay evidence. The Commonwealth shall bear the burden of proof by a preponderance of the evidence and if the Commonwealth should fail to establish same, the child shall be released to or retained in the custody of his parent or other person exercising custodial control or supervision.