

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2019 REGULAR SESSION
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Amend printed copy of **SB 205/SCS 1**

On page 22, lines 2 and 3, delete "Finance and Administration" and insert "**Justice and Public Safety**~~[Finance and Administration]~~" in lieu thereof;

On page 22, line 16, delete "Finance and Administration" and insert "**Justice and Public Safety**~~[Finance and Administration]~~" in lieu thereof;

On page 22, line 25, delete "Finance and Administration" and insert "**Justice and Public Safety**~~[Finance and Administration]~~" in lieu thereof;

On page 23, line 8, delete "Finance and Administration" and insert "**Justice and Public Safety**~~[Finance and Administration]~~" in lieu thereof;

On page 24, delete from line 8 through page 28, line 19, and insert the following in lieu thereof:

"(1) (a) A court may appoint a:

1. Guardian ad litem to represent the best interest of a:

a. Minor; or

b. Disabled adult;

in any case before the court. The court shall consider the best interest of the minor or disabled adult in determining whether to appoint a guardian ad litem; and

2. Court-appointed counsel for:

Amendment No. _____

Rep. Sen. Christian McDaniel

Committee Amendment _____

Signed: _____

Floor Amendment _____

LRD Drafter: Comstock, Katie

Adopted: _____

Date: _____

Rejected: _____

Doc. ID: XXXX

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- a. A minor;
 - b. An indigent parent entitled to counsel pursuant to KRS Chapter 31 in accordance with KRS 199.502, 625.0405, or 625.080;
 - c. A parent, de facto custodian, or nonparent who exercises custodial control or supervision and is unable to afford counsel pursuant to KRS Chapter 31 in accordance with KRS 620.100; or
 - d. A disabled adult.
- (b) In all cases where a guardian ad litem or court-appointed counsel is appointed, the court shall make a finding that establishes the necessity of the appointment.
- (2) A guardian ad litem shall represent the best interest of each minor who may become the subject of a petition alleging dependency, neglect, or abuse, from the earlier of the day that:
- (a) The minor is removed from the minor's home by the Cabinet for Health and Family Services; or
 - (b) The petition is filed.
- (3) The child and family advocate shall ensure that each guardian ad litem and court-appointed counsel employed by the office:
- (a) Represents the best interest of each client of the office in all venues;
 - (b) Prior to representing any client before the court, be trained in:
 - 1. Applicable statutory, regulatory, and case law; and
 - 2. Nationally recognized standards for a guardian ad litem and court-appointed counsel;
 - (c) Conducts or supervises an ongoing, independent investigation in order to obtain, first-hand, a clear understanding of the situation and needs of the client;

(d) Personally meets with the client, unless:

1. The client is outside of the Commonwealth; or
2. Meeting with the client would be detrimental to the client;

(e) Personally interviews the client, unless:

1. The client is not old enough to communicate;
2. The client lacks the capacity to participate in a meaningful interview; or
3. The interview would be detrimental to the client;

(f) Personally attends all review hearings pertaining to the client's case;

(g) Participates in all appeals, unless excused by order of the court;

(h) To the extent possible, and unless it would be detrimental to the client, personally or through a trained volunteer, paralegal, or other trained staff, keeps the client advised of:

1. The status of the client's case;
2. All court and administrative proceedings;
3. Discussions with, and proposals made by, other parties;
4. Court action; and
5. The psychiatric, medical, or other treatment or diagnostic services that are to be provided to the client, if any;

(i) Makes all necessary court filings to advance the guardian ad litem's or court-appointed counsel's position regarding the best interest of the client; and

(j) Who represents a minor:

1. Conducts an independent investigation regarding the minor at issue, the minor's family, and what constitutes the best interest of the minor. The guardian ad litem may interview the minor's Cabinet for Health and Family

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- Services caseworker but may not:
- a. Rely exclusively on the conclusions and findings of the Cabinet for Health and Family Services; or
 - b. Except as provided in subsection (5) of this section, conduct a visit with the client in conjunction with the visit of a Cabinet for Health and Family Services caseworker;
2. If the minor is placed in an out-of-home placement, or is being considered for placement in an out-of-home placement, unless it would be detrimental to the minor:
- a. To the extent possible, determines the minor's goals and concerns regarding placement; and
 - b. Personally assesses or supervises an assessment of the appropriateness and safety of the minor's environment in each placement;
3. Is familiar with local experts who can provide consultation and testimony regarding the reasonableness and appropriateness of efforts made by the Cabinet for Health and Family Services to:
- a. Maintain a minor in the minor's home; or
 - b. Reunify a minor with the minor's parent; and
4. In cases where a plan for reunification is required, personally or through a trained volunteer, paralegal, or other trained staff, monitors implementation of a minor's plan for reunification and any dispositional orders to determine whether services ordered by the court:
- a. Are actually provided;
 - b. Are provided in a timely manner; and

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c. Are accomplishing the intended goal of the services, to the extent an assessment can be made.

(4) (a) A guardian ad litem and court-appointed counsel shall represent the best interest of the client.

(b) If the client's wishes differ from the guardian ad litem's or court-appointed counsel's determination of the client's best interest, the guardian ad litem or the court-appointed counsel shall communicate the client's wishes to the court in addition to presenting his or her determination of the client's best interest.

(c) A difference between the client's wishes and the guardian ad litem's or the court-appointed counsel's determination of best interest may not be considered a conflict of interest for the attorney.

(d) The guardian ad litem or court-appointed counsel shall disclose the wishes of the client unless the client:

1. Instructs the guardian ad litem to not disclose the client's wishes; or

2. Has not expressed any wishes.

(e) The court may appoint one (1) guardian ad litem or court-appointed counsel to represent the best interests of more than one (1) child of the same parents.

(f) In every hearing where the guardian ad litem or court-appointed counsel makes a recommendation regarding the best interest of the client, the court shall require the guardian ad litem or court-appointed counsel to disclose the factors that form the basis of the recommendation.

(5) A guardian ad litem or court-appointed counsel may meet with a client during a team meeting, court hearing, or similar venue when a Cabinet for Health and Family Services caseworker is present for a purpose other than the guardian ad litem's or court-

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appointed counsel's visit with the client.

(6) A guardian ad litem or court-appointed counsel shall be provided access to all Cabinet for Health and Family Service records regarding the client at issue and the client's family.

(7) A guardian ad litem or court-appointed counsel shall:

(a) Continue to represent the client until released from that duty by the court; and

(b) Maintain current and accurate records regarding:

1. The number of times the attorney has had contact with the client; and

2. The actions the attorney has taken in representation of the client."

On page 32, after line 8, insert the following:

"➔Section 13. KRS 199.502 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 199.500(1), an adoption may be granted without the consent of the biological living parents of a child if it is pleaded and proved as part of the adoption proceeding that any of the following conditions exist with respect to the child:
- (a) That the parent has abandoned the child for a period of not less than ninety (90) days;
 - (b) That the parent had inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;
 - (c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;
 - (d) That the parent has been convicted of a felony that involved the infliction of serious physical injury to a child named in the present adoption proceeding;
 - (e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child, and that there is no

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reasonable expectation of improvement in parental care and protection, considering the age of the child;

- (f) That the parent has caused or allowed the child to be sexually abused or exploited;
- (g) That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child;
- (h) That:
 - 1. The parent's parental rights to another child have been involuntarily terminated;
 - 2. The child named in the present adoption proceeding was born subsequent to or during the pendency of the previous termination; and
 - 3. The condition or factor which was the basis for the previous termination finding has not been corrected;
- (i) That the parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical or sexual abuse or neglect; or
- (j) That the parent is a putative father, as defined in KRS 199.503, who fails to register as the minor's putative father with the putative father registry established under KRS 199.503 or the court finds, after proper service of notice and hearing, that:
 - 1. The putative father is not the father of the minor;
 - 2. The putative father has willfully abandoned or willfully failed to care for and support the minor; or
 - 3. The putative father has willfully abandoned the mother of the minor during her

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pregnancy and up to the time of her surrender of the minor, or the minor's placement in the home of the petitioner, whichever occurs first.

- (2) Upon the conclusion of proof and argument of counsel, the Circuit Court shall enter findings of fact, conclusions of law, and a decision either:
- (a) Granting the adoption without the biological parent's consent; or
 - (b) Dismissing the adoption petition, and stating whether the child shall be returned to the biological parent or the child's custody granted to the state, another agency, or the petitioner.
- (3) A biological living parent has the right to legal representation in an adoption wherein he or she does not consent. The Circuit Court shall determine if a biological living parent is indigent and, therefore, entitled to counsel pursuant KRS Chapter 31. If the Circuit Court so finds, the Circuit Court shall inform the indigent parent; and, upon request, if it appears reasonably necessary in the interest of justice, the Circuit Court shall appoint an attorney to represent the biological living parent pursuant to Sections 1 to 3 and 8 of this Act ~~KRS Chapter 31~~ to be provided or paid for by:
- (a) The petitioner, a fee to be set by the court and not to exceed five hundred dollars (\$500); or
 - (b) The Finance and Administration Cabinet if the petitioner is a blood relative or fictive kin as established in KRS 199.470(4)(a), a fee to be set by the court and not to exceed five hundred dollars (\$500).";

Renumber subsequent section accordingly;

On page 32, delete from line 18 to page 33, line 3 and insert the following in lieu thereof:

"➔Section 15. KRS 202B.210 is amended to read as follows:

Upon the filing of a petition for involuntary admission pursuant to KRS 202B.045, the court shall

appoint an attorney to represent the respondent *pursuant to Sections 1 to 3 and 8 of this Act* with the appointment and representation to continue unless the respondent retains private counsel. The appointed attorney shall be forthwith notified by the clerk of the allegations in the petition and the date and purpose of the preliminary hearing. ~~When it is necessary to appoint counsel, the District Court shall endeavor to appoint private counsel, if available, to represent respondents, from a list of attorneys who have volunteered to represent such respondents. The list shall be maintained by the District Court clerk. Private counsel appointed by the court shall be compensated in the manner set forth in KRS 620.100. If no other method of appointing counsel for the respondent is available, the respondent shall be represented by the public advocate pursuant to KRS Chapter 31.~~

➔Section 16. KRS 202B.250 is amended to read as follows:

- (1) No less than once in every five (5) years following the initial order for involuntary admission of a resident to an ICF/ID, or an order authorizing continued care and treatment following review pursuant to this section, the court shall hold a hearing to review the status of the resident and necessity for continued care and treatment in the ICF/ID. Notice at least twenty (20) days in advance of the hearing shall be provided by the court to the ICF/ID, county attorney, guardian or limited guardian of the resident, if any, or, if none, an immediate family member as listed on the last interdisciplinary report filed by the ICF/ID. The court shall appoint an attorney *pursuant to Sections 1 to 3 and 8 of this Act* to represent the resident at the review hearing.
- (2) The review hearing may be informal and held in open court, in chambers, or at the ICF/ID. The hearing shall be held without a jury and the resident shall be entitled to present documentary evidence and witnesses and cross-examine witnesses against the resident.
- (3) At the conclusion of the review hearing, the court shall make written findings of fact

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concerning whether the criteria for involuntary admission set forth in KRS 202B.040 continue to be satisfied based upon clear and convincing evidence. If the court finds that the involuntary admission criteria continue to be satisfied, the court shall enter an order authorizing the continued care and treatment of the resident at the ICF/ID and shall establish the period within which the next review shall be held. Otherwise, the court shall enter an order requiring the resident to be discharged from the ICF/ID.

- (4) If at any point during the resident's placement at an ICF/ID it appears that the resident no longer meets the criteria for involuntary admission set forth in KRS 202B.040, the resident, the resident's parent, guardian or limited guardian, immediate family member, or attorney may request a review pursuant to this section.";

Renumber subsequent sections accordingly;

On page 36, delete lines 1 to 3 and insert the following in lieu thereof:

"pursuant to Sections 1 to 3 and 8 of this Act. The court shall advise her that she has a right to court-appointed counsel **pursuant to Sections 1 to 3 and 8 of this Act** and shall provide her with such counsel upon her request;"

On page 44, lines 23 and 24, delete "Finance and Administration" and insert "**Justice and Public Safety**[Finance and Administration]" in lieu thereof;

On page 45, line 6, after "supervision", insert "**pursuant to Sections 1 to 3 and 8 of this Act,**";

On page 45, line 10, delete "Finance and Administration" and insert "**Justice and Public Safety**[Finance and Administration]" in lieu thereof;

On page 45, line 15, after "403.270,", insert "**pursuant to Sections 1 to 3 and 8 of this Act,**";

On page 45, line 19, delete "Finance and Administration" and insert "**Justice and Public**

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Safety~~[Finance and Administration]~~" in lieu thereof;

On page 45, line 24, after "child", insert "**pursuant to Sections 1 to 3 and 8 of this Act**";

On page 46, line 2, delete "Finance and Administration" and insert "**Justice and Public**

Safety~~[Finance and Administration]~~" in lieu thereof;

On page 46, after line 26, insert the following:

"➔Section 29. KRS 625.0405 is amended to read as follows:

- (1) A parent desiring the termination of his or her parental rights and a transfer of the parental rights to a person, persons, the cabinet, or a child-placing agency licensed by the cabinet for the purpose of adoption may prior to or upon the filing of the petition request the Circuit Court to appoint an attorney to represent the parent and provide legal representation in the termination action. If the court determines pursuant to KRS Chapter 31 that the requesting parent is indigent, the court shall appoint an attorney (within forty-eight (48) hours) **pursuant to Sections 1 to 3 and 8 of this Act** to represent the indigent parent. The attorney for the indigent parent shall receive a fee to be fixed by the court, not to exceed five hundred dollars (\$500) and assessed as costs, and the court may order the costs to be paid by the proposed adoptive parent, parents, or agency before the entry of a judgment of termination, except the attorney's fee shall be paid by the **Justice and Public Safety**~~[Finance and Administration]~~ Cabinet if termination is not granted, or if custody of the child is placed with the cabinet.
- (2) (a) In every voluntary termination proceeding, the expenses paid, including but not limited to any fees for legal services, placement services, and expenses of the biological parent or parents, by the prospective adoptive parent for any purpose related to a termination of parental rights shall be submitted to the court, supported by an affidavit, setting forth in detail a listing of the expenses for the court's approval or

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modification.

- (b) In the event the court modifies the expense request as it relates to legal fees and legal expenses only, the attorney for the prospective adoptive parents shall not have any claim against the prospective adoptive parents for the amount not approved.
- (3) Any person who violates subsection (2) of this section shall be guilty of a Class A misdemeanor.";

Renumber subsequent sections accordingly;

On page 47, line 9, delete "Finance and Administration" and insert "**Justice and Public Safety**~~[Finance and Administration]~~" in lieu thereof;

On page 48, line 3, delete "Finance and Administration" and insert "**Justice and Public Safety**~~[Finance and Administration]~~" in lieu thereof;

On page 48, line 16, delete "pursuant to KRS Chapter 31" and insert "pursuant to **Sections 1 to 3 and 8 of this Act**~~[KRS Chapter 31]~~" in lieu thereof;

On page 48, lines 16 and 17, delete "Finance and Administration" and insert "**Justice and Public Safety**~~[Finance and Administration]~~" in lieu thereof;

On page 48, line 24, delete "28" and insert "31" in lieu thereof; and

On page 49, line 1, delete "28" and insert "31" in lieu thereof.