

1 AN ACT relating to education stability for children.

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

3 ➔Section 1. KRS 620.060 is amended to read as follows:

4 (1) The court for the county where the child ordinarily resides or will reside or the
5 county where the child is present may issue an ex parte emergency custody order
6 when it appears to the court that removal is in the best interest of the child and that
7 there are reasonable grounds to believe, as supported by affidavit or by recorded
8 sworn testimony, that one (1) or more of the following conditions exist and that the
9 parents or other person exercising custodial control or supervision are unable or
10 unwilling to protect the child:

11 (a) The child is in danger of imminent death or serious physical injury or is being
12 sexually abused;

13 (b) The parent has repeatedly inflicted or allowed to be inflicted by other than
14 accidental means physical injury or emotional injury. This condition shall not
15 include reasonable and ordinary discipline recognized in the community
16 where the child lives, as long as reasonable and ordinary discipline does not
17 result in abuse or neglect as defined in KRS 600.020(1); or

18 (c) The child is in immediate danger due to the parent's failure or refusal to
19 provide for the safety or needs of the child.

20 (2) Custody may be placed with a relative taking into account the wishes of the
21 custodial parent and child or any other appropriate person or agency including the
22 cabinet.

23 (3) An emergency custody order shall be effective no longer than seventy-two (72)
24 hours, exclusive of weekends and holidays, unless there is a temporary removal
25 hearing with oral or other notice to the county attorney and the parent or other
26 person exercising custodial control or supervision of the child, to determine if the
27 child should be held for a longer period. The seventy-two (72) hour period also may

1 be extended or delayed upon the waiver or request of the child's parent or other
2 person exercising custodial control or supervision.

3 (4) *Unless specifically stated in an ex parte emergency custody order, emergency*
4 *orders shall not permit any temporary custodian to change the educational*
5 *enrollment of a protected child.*

6 (5) Any person authorized to serve process shall serve the parent or other person
7 exercising custodial control or supervision with a copy of the emergency custody
8 order. If such person cannot be found, the sheriff shall make a good faith effort to
9 notify the nearest known relative, neighbor, or other person familiar with the child.

10 ~~(6)~~⁽⁵⁾ Within seventy-two (72) hours of the taking of a child into custody without
11 the consent of his parent or other person exercising custodial control or supervision,
12 a petition shall be filed pursuant to this chapter.

13 ~~(7)~~⁽⁶⁾ Nothing herein shall preclude the issuance of arrest warrants pursuant to the
14 Rules of Criminal Procedure.

15 ➔Section 2. KRS 403.730 is amended to read as follows:

16 (1) (a) The court shall review a petition for an order of protection immediately upon
17 its filing. If the review indicates that domestic violence and abuse exists, the
18 court shall summons the parties to an evidentiary hearing not more than
19 fourteen (14) days in the future. If the review indicates that such a basis does
20 not exist, the court may consider an amended petition or dismiss the petition
21 without prejudice.

22 (b) Service of the summons and hearing order under this subsection shall be made
23 upon the adverse party personally and may be made in the manner and by the
24 persons authorized to serve subpoenas under Rule 45.03 of the Rules of Civil
25 Procedure. A summons may be reissued if service has not been made on the
26 adverse party by the fixed court date and time.

27 (2) (a) If the review under this section also indicates the presence of an immediate

1 and present danger of domestic violence and abuse, the court shall, upon
2 proper motion, issue ex parte an emergency protective order that:

- 3 1. Authorizes relief appropriate to the situation utilizing the alternatives set
4 out in KRS 403.740, other than awarding temporary support or
5 counseling;
- 6 2. Expires upon the conclusion of the evidentiary hearing required by this
7 section unless extended or withdrawn by subsequent order of the court;{
8 ~~and~~}
- 9 3. Does not order or refer the parties to mediation unless requested by the
10 petitioner, and the court finds that:
 - 11 a. The petitioner's request is voluntary and not the result of coercion;
12 and
 - 13 b. Mediation is a realistic and viable alternative to or adjunct to the
14 issuance of an order sought by the petitioner; and

15 **4. Does not order any child to change educational enrollment unless the**
16 **court makes a specific finding on the record that such change is in the**
17 **best interest of the child.**

- 18 (b) If an order is not issued under this subsection, the court shall note on the
19 petition, for the record, any action taken or denied and the reason for it.

20 ➔Section 3. KRS 403.270 is amended to read as follows:

- 21 (1) (a) As used in this chapter and KRS 405.020, unless the context requires
22 otherwise, "de facto custodian" means a person who has been shown by clear
23 and convincing evidence to have been the primary caregiver for, and financial
24 supporter of, a child who has resided with the person for a period of six (6)
25 months or more if the child is under three (3) years of age and for a period of
26 one (1) year or more if the child is three (3) years of age or older or has been
27 placed by the Department for Community Based Services. Any period of time

1 after a legal proceeding has been commenced by a parent seeking to regain
2 custody of the child shall not be included in determining whether the child has
3 resided with the person for the required minimum period.

4 (b) A person shall not be a de facto custodian until a court determines by clear
5 and convincing evidence that the person meets the definition of de facto
6 custodian established in paragraph (a) of this subsection. Once a court
7 determines that a person meets the definition of de facto custodian, the court
8 shall give the person the same standing in custody matters that is given to each
9 parent under this section and KRS 403.280, 403.340, 403.350, 403.822, and
10 405.020.

11 (2) The court shall determine custody in accordance with the best interests of the child
12 and equal consideration shall be given to each parent and to any de facto custodian.
13 Subject to KRS 403.315, there shall be a presumption, rebuttable by a
14 preponderance of evidence, that joint custody and equally shared parenting time is
15 in the best interest of the child. If a deviation from equal parenting time is
16 warranted, the court shall construct a parenting time schedule which maximizes the
17 time each parent or de facto custodian has with the child and is consistent with
18 ensuring the child's welfare. The court shall consider all relevant factors including:

19 (a) The wishes of the child's parent or parents, and any de facto custodian, as to
20 his or her custody;

21 (b) The wishes of the child as to his or her custodian, with due consideration
22 given to the influence a parent or de facto custodian may have over the child's
23 wishes;

24 (c) The interaction and interrelationship of the child with his or her parent or
25 parents, his or her siblings, and any other person who may significantly affect
26 the child's best interests;

27 (d) The motivation of the adults participating in the custody proceeding;

- 1 (e) The child's adjustment and continuing proximity to his or her home, school,
2 and community, *weighing the promotion of education stability as a primary*
3 *factor. If practicable, the child shall remain enrolled in the school in which*
4 *the child is enrolled at the time of the hearing;*
- 5 (f) The mental and physical health of all individuals involved;
- 6 (g) A finding by the court that domestic violence and abuse, as defined in KRS
7 403.720, has been committed by one (1) of the parties against a child of the
8 parties or against another party. The court shall determine the extent to which
9 the domestic violence and abuse has affected the child and the child's
10 relationship to each party, with due consideration given to efforts made by a
11 party toward the completion of any domestic violence treatment, counseling,
12 or program;
- 13 (h) The extent to which the child has been cared for, nurtured, and supported by
14 any de facto custodian;
- 15 (i) The intent of the parent or parents in placing the child with a de facto
16 custodian;
- 17 (j) The circumstances under which the child was placed or allowed to remain in
18 the custody of a de facto custodian, including whether the parent now seeking
19 custody was previously prevented from doing so as a result of domestic
20 violence as defined in KRS 403.720 and whether the child was placed with a
21 de facto custodian to allow the parent now seeking custody to seek
22 employment, work, or attend school; and
- 23 (k) The likelihood a party will allow the child frequent, meaningful, and
24 continuing contact with the other parent or de facto custodian, except that the
25 court shall not consider this likelihood if there is a finding that the other
26 parent or de facto custodian engaged in domestic violence and abuse, as
27 defined in KRS 403.720, against the party or a child and that a continuing

1 relationship with the other parent will endanger the health or safety of either
2 that party or the child.

3 (3) The abandonment of the family residence by a custodial party shall not be
4 considered where said party was physically harmed or was seriously threatened with
5 physical harm by his or her spouse, when such harm or threat of harm was causally
6 related to the abandonment.

7 (4) If the court grants custody to a de facto custodian, the de facto custodian shall have
8 legal custody under the laws of the Commonwealth.