

1 AN ACT relating to de facto custodians.

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

3 ➔Section 1. KRS 403.270 is amended to read as follows:

- 4 (1) (a) As used in this chapter and KRS 405.020, unless the context requires
5 otherwise, "de facto custodian" means a person who has been shown by clear
6 and convincing evidence to have been the primary caregiver for, and financial
7 supporter of, a child who ***within the last two (2) years*** has resided with the
8 person for ***an aggregate***^[a] period of six (6) months or more if the child is
9 under three (3) years of age and for ***an aggregate***^[a] period of one (1) year or
10 more if the child is three (3) years of age or older or has been placed by the
11 Department for Community Based Services. Any period of time after a legal
12 proceeding has been commenced by a parent seeking to regain custody of the
13 child shall not be included in determining whether the child has resided with
14 the person for the required minimum period.
- 15 (b) A person shall not be a de facto custodian until a court determines by clear
16 and convincing evidence that the person meets the definition of de facto
17 custodian established in paragraph (a) of this subsection. Once a court
18 determines that a person meets the definition of de facto custodian, the court
19 shall give the person the same standing in custody matters that is given to each
20 parent under this section and KRS 403.280, 403.340, 403.350, 403.822, and
21 405.020.
- 22 (2) The court shall determine custody in accordance with the best interests of the child
23 and equal consideration shall be given to each parent and to any de facto custodian.
24 Subject to KRS 403.315, there shall be a presumption, rebuttable by a
25 preponderance of evidence, that joint custody and equally shared parenting time is
26 in the best interest of the child. If a deviation from equal parenting time is
27 warranted, the court shall construct a parenting time schedule which maximizes the

- 1 time each parent or de facto custodian has with the child and is consistent with
2 ensuring the child's welfare. The court shall consider all relevant factors including:
- 3 (a) The wishes of the child's parent or parents, and any de facto custodian, as to
4 his or her custody;
 - 5 (b) The wishes of the child as to his or her custodian, with due consideration
6 given to the influence a parent or de facto custodian may have over the child's
7 wishes;
 - 8 (c) The interaction and interrelationship of the child with his or her parent or
9 parents, his or her siblings, and any other person who may significantly affect
10 the child's best interests;
 - 11 (d) The motivation of the adults participating in the custody proceeding;
 - 12 (e) The child's adjustment and continuing proximity to his or her home, school,
13 and community;
 - 14 (f) The mental and physical health of all individuals involved;
 - 15 (g) A finding by the court that domestic violence and abuse, as defined in KRS
16 403.720, has been committed by one (1) of the parties against a child of the
17 parties or against another party. The court shall determine the extent to which
18 the domestic violence and abuse has affected the child and the child's
19 relationship to each party, with due consideration given to efforts made by a
20 party toward the completion of any domestic violence treatment, counseling,
21 or program;
 - 22 (h) The extent to which the child has been cared for, nurtured, and supported by
23 any de facto custodian;
 - 24 (i) The intent of the parent or parents in placing the child with a de facto
25 custodian;
 - 26 (j) The circumstances under which the child was placed or allowed to remain in
27 the custody of a de facto custodian, including whether the parent now seeking

1 custody was previously prevented from doing so as a result of domestic
2 violence as defined in KRS 403.720 and whether the child was placed with a
3 de facto custodian to allow the parent now seeking custody to seek
4 employment, work, or attend school; and

5 (k) The likelihood a party will allow the child frequent, meaningful, and
6 continuing contact with the other parent or de facto custodian, except that the
7 court shall not consider this likelihood if there is a finding that the other
8 parent or de facto custodian engaged in domestic violence and abuse, as
9 defined in KRS 403.720, against the party or a child and that a continuing
10 relationship with the other parent will endanger the health or safety of either
11 that party or the child.

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

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

18 ➔Section 2. KRS 635.020 is amended to read as follows:

19 (1) If, prior to an adjudicatory hearing, there is a reasonable cause to believe that a child
20 before the court has committed a felony other than those described in subsections
21 (2) and (3) of this section, a misdemeanor, or a violation, the court shall initially
22 proceed in accordance with the provisions of this chapter.

23 (2) If a child charged with a capital offense, Class A felony, or Class B felony, had
24 attained age fourteen (14) at the time of the alleged commission of the offense, the
25 court shall, upon motion of the county attorney made prior to adjudication, and after
26 the county attorney has consulted with the Commonwealth's attorney, that the child
27 be proceeded against as a youthful offender, proceed in accordance with the

1 provisions of KRS 640.010.

2 (3) If a child charged with a Class C or Class D felony has on one (1) prior separate
3 occasion been adjudicated a public offender for a felony offense and had attained
4 the age of sixteen (16) at the time of the alleged commission of the offense, the
5 court shall, upon motion of the county attorney made prior to adjudication, and after
6 the county attorney has consulted with the Commonwealth's attorney, that the child
7 be proceeded against as a youthful offender, proceed in accordance with the
8 provisions of KRS 640.010.

9 (4) ~~[Any other provision of KRS Chapters 610 to 645 to the contrary notwithstanding,~~
10 ~~]If a child charged with a felony in which a firearm, whether functional or not, was~~
11 ~~used ***by the child*** in the commission of the offense had attained the age of fourteen~~
12 ~~(14) years at the time of the commission of the alleged offense, ***the court shall,***~~
13 ~~***upon motion of the county attorney made prior to adjudication, and after the***~~
14 ~~***county attorney has consulted with the Commonwealth's attorney, that the child***~~
15 ~~***be proceeded against as a youthful offender, proceed in accordance with the***~~
16 ~~***provisions of Section 3 of this Act***[he shall be transferred to the Circuit Court for~~
17 ~~trial as an adult if, following a preliminary hearing, the District Court finds probable~~
18 ~~cause to believe that the child committed a felony, that a firearm was used in the~~
19 ~~commission of that felony, and that the child was fourteen (14) years of age or older~~
20 ~~at the time of the commission of the alleged felony. If convicted in the Circuit~~
21 ~~Court, he shall be subject to the same penalties as an adult offender, except that~~
22 ~~until he reaches the age of eighteen (18) years, he shall be confined in a facility or~~
23 ~~program for juveniles or for youthful offenders, unless the provisions of KRS~~
24 ~~635.025 apply or unless he is released pursuant to expiration of sentence or parole,~~
25 ~~and at age eighteen (18) he shall be returned to the sentencing Circuit Court for~~
26 ~~proceedings consistent with KRS 640.030(2)].~~

27 (5) If a child previously convicted as a youthful offender under the provisions of KRS

1 Chapter 640 is charged with a felony allegedly committed prior to his eighteenth
 2 birthday, the court shall, upon motion of the county attorney made prior to
 3 adjudication, and after the county attorney has consulted with the Commonwealth's
 4 attorney, that the child be proceeded against as a youthful offender, proceed in
 5 accordance with the provisions of KRS 640.010.

6 (6) A child who is charged as is provided in subsection (2) of this section and is also
 7 charged with a Class C or D felony, a misdemeanor, or a violation arising from the
 8 same course of conduct shall have all charges included in the same proceedings; and
 9 the court shall, upon motion of the county attorney made prior to adjudication, and
 10 after the county attorney has consulted with the Commonwealth's attorney, that the
 11 child be proceeded against as a youthful offender, proceed in accordance with the
 12 provisions of KRS 640.010.

13 (7) If a person who is eighteen (18) or older and before the court is charged with a
 14 felony that occurred prior to his eighteenth birthday, the court shall, upon motion of
 15 the county attorney made prior to adjudication, and after the county attorney has
 16 consulted with the Commonwealth's attorney, that the child be proceeded against as
 17 a youthful offender, proceed in accordance with the provisions of KRS 640.010.

18 (8) All offenses arising out of the same course of conduct shall be tried with the felony
 19 arising from that course of conduct, whether the charges are adjudicated under this
 20 chapter or under KRS Chapter 640 and transferred to Circuit Court.

21 ➔Section 3. KRS 640.010 is amended to read as follows:

22 (1) For children who are alleged to be youthful offenders by falling in the purview of
 23 KRS 635.020(2) ~~to~~[(3), (5), (6), (7), or] (8), the court shall at arraignment ensure~~[~~
 24 ~~assure]~~ that the child's rights as specified in KRS 610.060 have been explained and
 25 followed.

26 (2) (a) In the case of a child alleged to be a youthful offender by falling within the
 27 purview of KRS 635.020(2) ~~to~~[(3), (5), (6), (7), or] (8), the District Court

1 shall, upon motion by the county attorney to proceed under this chapter, and
2 after the county attorney has consulted with the Commonwealth's attorney,
3 conduct a preliminary hearing to determine if the child should be transferred
4 to Circuit Court as a youthful offender. The preliminary hearing shall be
5 conducted in accordance with the Rules of Criminal Procedure.

6 ~~(b)(a)~~ At the preliminary hearing, the court shall determine if there is probable
7 cause to believe that an offense was committed, that the child committed the
8 offense, and that the child is of sufficient age and has the requisite number of
9 prior adjudications, if any, necessary to fall within the purview of KRS
10 635.020.

11 ~~(c)(b)~~ If the District Court determines probable cause exists, the court shall
12 consider the following factors before determining whether the child's case
13 shall be transferred to the Circuit Court:

- 14 1. The seriousness of the alleged offense;
- 15 2. Whether the offense was against persons or property, with greater
16 weight being given to offenses against persons;
- 17 3. The maturity of the child as determined by his environment;
- 18 4. The child's prior record;
- 19 5. The best interest of the child and community;
- 20 6. The prospects of adequate protection of the public;
- 21 7. The likelihood of reasonable rehabilitation of the child by the use of
22 procedures, services, and facilities currently available to the juvenile
23 justice system;~~and~~
- 24 8. Evidence of a child's participation in a gang;

25 **9. Whether the child is a defendant with a serious intellectual disability**
26 **in accordance with KRS 532.130; and**

27 **10. Whether the child used a firearm in the commission of the offense.**

1 ~~(d)~~~~(e)~~ If, following the completion of the preliminary hearing, the District
2 Court finds, after considering the factors enumerated in paragraph (b) of this
3 subsection, that two (2) or more of the factors specified in paragraph (b) of
4 this subsection are determined to favor transfer, the child may be transferred
5 to Circuit Court, and if the child is transferred the District Court shall issue an
6 order transferring the child as a youthful offender and shall state on the record
7 the reasons for the transfer. The child shall then be proceeded against in the
8 Circuit Court as an adult, except as otherwise provided in this chapter.

9 ~~(e)~~~~(d)~~ If, following completion of the preliminary hearing, the District Court is
10 of the opinion, after considering the factors enumerated in paragraph (b) of
11 this subsection, that the child shall not be transferred to the Circuit Court, the
12 case shall be dealt with as provided in KRS Chapter 635.

13 (3) If the child is transferred to Circuit Court under this section and the grand jury does
14 not find that there is probable cause to indict the child as a youthful offender, as
15 defined in KRS 635.020(2) ~~to~~~~(3), (5), (6), (7), and~~ (8) , but does find that there is
16 probable cause to indict the child for another criminal offense, the child shall not be
17 tried as a youthful offender in Circuit Court but shall be returned to District Court to
18 be dealt with as provided in KRS Chapter 635.