

1 AN ACT relating to protective orders.

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 period of six (6) months or more if the child is under
9 three (3) years of age and for an aggregate period of one (1) year or more if
10 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
20 each parent under this section and KRS 403.280, 403.340, 403.350, 403.822,
21 and 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~~

- 1 ~~the 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 and abuse as defined in KRS 403.720 and whether the child was
3 placed with a de facto custodian to allow the parent now seeking custody to
4 seek 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
14 with physical harm by his or her spouse, when such harm or threat of harm was
15 causally 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 403.280 is amended to read as follows:

19 (1) A party to a custody proceeding may move for a temporary custody order. The
20 motion must be supported by an affidavit as provided in KRS 403.350. The court
21 may award temporary custody under the standards of KRS 403.270 after a hearing,
22 or, if there is no objection, solely on the basis of the affidavits. If the parents or a de
23 facto custodian joined under subsection ~~(8)~~~~(9)~~ of this section present a temporary
24 custody agreement and mutually agreed plan for parenting time, and the court
25 confirms that the agreement adequately provides for the welfare of the child, the
26 agreement shall become the temporary custody order of the court.

27 (2) ~~Subject to KRS 403.315, in making an order for temporary custody, there shall be~~

1 a presumption, rebuttable by preponderance of evidence, that it is in the best
2 interest of the child for the parents or a de facto custodian joined under subsection
3 (9) of this section to have temporary joint custody and share equally in parenting
4 time.

5 ~~(3)~~ If a deviation from equal parenting time is warranted,]The court shall construct a
6 parenting time schedule which [maximizes the time each parent or de facto
7 eustodian joined under subsection (9) of this section has with the child and]is
8 consistent with ensuring the child's welfare.

9 ~~(3)~~~~(4)~~ Each temporary custody order shall include specific findings of fact and
10 conclusions of law, except when the court confirms the agreement of the parties.

11 ~~(4)~~~~(5)~~ Any temporary custody order shall address the circumstance in which
12 physical possession of the child will be exchanged.

13 ~~(5)~~~~(6)~~ Modification of a temporary custody order may be sought when there is a
14 material and substantial change in the circumstances of the parents, de facto
15 custodian, or child.

16 ~~(6)~~~~(7)~~ If a proceeding for dissolution of marriage or legal separation is dismissed,
17 any temporary custody order is vacated unless a parent or the child's custodian
18 moves that the proceeding continue as a custody proceeding and the court finds,
19 after a hearing, that the circumstances of the parents and the best interests of the
20 child require that a custody decree be issued.

21 ~~(7)~~~~(8)~~ If a custody proceeding commenced in the absence of a petition for
22 dissolution of marriage or legal separation under KRS 403.822(1)(a) or (b) is
23 dismissed, any temporary custody order is vacated.

24 ~~(8)~~~~(9)~~ If a court determines by clear and convincing evidence that a person is a de
25 facto custodian, the court shall join that person in the action, as a party needed for
26 just adjudication under Rule 19 of the Kentucky Rules of Civil Procedure.

27 ➔Section 3. KRS 403.315 is amended to read as follows:

1 When determining or modifying a custody order pursuant to KRS 403.270, 403.280,
2 403.340, or 403.740, the court shall consider the safety and well-being of the parties and
3 of the children. ~~[If a domestic violence order is being or has been entered against a party
4 by another party or on behalf of a child at issue in the custody hearing, the presumption
5 that joint custody and equally shared parenting time is in the best interest of the child
6 shall not apply as to the party against whom the domestic violence order is being or has
7 been entered.]~~The court shall weigh all factors set out in KRS 403.270(2) in determining
8 the best interests~~[interest]~~ of the child.

9 ➔Section 4. KRS 403.320 is amended to read as follows:

- 10 (1) A parent not granted custody of the child ~~[and not awarded shared parenting time
11 under the presumption specified in KRS 403.270(2), 403.280(2), or 403.340(5)]~~ is
12 entitled to reasonable visitation rights unless the court finds, after a hearing, that
13 visitation would endanger seriously the child's physical, mental, moral, or
14 emotional health. Upon request of either party, the court shall issue orders which
15 are specific as to the frequency, timing, duration, conditions, and method of
16 scheduling visitation and which reflect the development age of the child.
- 17 (2) If domestic violence and abuse, as defined in KRS 403.720, has been alleged, the
18 court shall, after a hearing, determine the visitation arrangement, if any, which
19 would not endanger seriously the child's or the custodial parent's physical, mental,
20 or emotional health.
- 21 (3) The court may modify an order granting or denying visitation rights whenever
22 modification would serve the best interests of the child; but the court shall not
23 restrict a parent's visitation rights unless it finds that the visitation would endanger
24 seriously the child's physical, mental, moral, or emotional health.
- 25 (4) Under circumstances where the court finds, by clear and convincing evidence, it is
26 in the best interest of the child, any relative, by blood or affinity, that was
27 previously granted temporary custody pursuant to the provisions of KRS 620.090

1 may be granted reasonable noncustodial parental visitation rights by a Circuit Court
2 or Family Court as an intervenor or by original action. Once the relative has been
3 granted visitation pursuant to this subsection, those rights shall not be adversely
4 affected by the termination of custodial or parental rights of an individual who has
5 permanent custody of the child unless the court determines that termination of the
6 visitation rights are in the best interests of the child. The action shall be brought in
7 the county in which the temporary or permanent custody order was entered or
8 where the child resides.

9 ➔Section 5. KRS 403.340 is amended to read as follows:

10 (1) As used in this section, "custody" means sole or joint custody, whether ordered by a
11 court or agreed to by the parties.

12 (2) No motion to modify a custody decree shall be made earlier than two (2) years after
13 its date, unless the court permits it to be made on the basis of affidavits that there is
14 reason to believe that:

15 (a) The child's present environment may endanger seriously his or her physical,
16 mental, moral, or emotional health; or

17 (b) The custodian appointed under the prior decree has placed the child with a de
18 facto custodian.

19 (3) If a court of this state has jurisdiction pursuant to the Uniform Child Custody
20 Jurisdiction Act, the court shall not modify a prior custody decree unless after
21 hearing it finds, upon the basis of facts that have arisen since the prior decree or that
22 were unknown to the court at the time of entry of the prior decree, that a change has
23 occurred in the circumstances of the child or his or her custodian, and that the
24 modification is necessary to serve the best interests of the child. When determining
25 if a change has occurred and whether a modification of custody is in the best
26 interests of the child, the court shall consider the following:

27 (a) Whether the custodian agrees to the modification;

- 1 (b) Whether the child has been integrated into the family of the petitioner with
2 consent of the custodian;
- 3 (c) The factors set forth in KRS 403.270(2) to determine the best interests of the
4 child;
- 5 (d) Whether the child's present environment endangers seriously his or her
6 physical, mental, moral, or emotional health;
- 7 (e) Whether the harm likely to be caused by a change of environment is
8 outweighed by its advantages to him or her; and
- 9 (f) Whether the custodian has placed the child with a de facto custodian.
- 10 (4) In determining whether a child's present environment may endanger seriously his or
11 her physical, mental, moral, or emotional health, the court shall consider all
12 relevant factors, including, but not limited to:
- 13 (a) The interaction and interrelationship of the child with his or her parent or
14 parents, his or her de facto custodian, his or her siblings, and any other
15 person who may significantly affect the child's best interests;
- 16 (b) The mental and physical health of all individuals involved;
- 17 (c) Repeated or substantial failure, without good cause as specified in KRS
18 403.240, of either parent to observe visitation, child support, or other
19 provisions of the decree which affect the child, except that modification of
20 custody orders shall not be made solely on the basis of failure to comply with
21 visitation or child support provisions, or on the basis of which parent is more
22 likely to allow visitation or pay child support;
- 23 (d) If domestic violence and abuse, as defined in KRS 403.720, is found by the
24 court to exist, the extent to which the domestic violence and abuse has
25 affected the child and the child's relationship to both parents.
- 26 (5) ~~Subject to KRS 403.315, if the court orders a modification of a child custody~~
27 ~~decree, there shall be a presumption, rebuttable by a preponderance of evidence,~~

1 ~~that it is in the best interest of the child for the parents to have joint custody and~~
 2 ~~share equally in parenting time. If a deviation from equal parenting time is~~
 3 ~~warranted,]~~The court shall construct a parenting time schedule which ~~[maximizes~~
 4 ~~the time each parent or de facto custodian has with the child and]~~is consistent with
 5 ensuring the child's welfare.

6 (6) Attorney fees and costs shall be assessed against a party seeking modification if the
 7 court finds that the modification action is vexatious and constitutes harassment.

8 ➔Section 6. KRS 403.720 is amended to read as follows:

9 As used in KRS 403.715 to 403.785:

10 (1) "Domestic animal" means a dog, cat, or other animal that is domesticated and kept
 11 as a household pet, but does not include animals normally raised for agricultural or
 12 commercial purposes;

13 (2) "Domestic violence and abuse" means:

14 (a) Physical injury, serious physical injury, stalking, sexual assault, strangulation,
 15 assault, or the infliction of fear of imminent physical injury, serious physical
 16 injury, sexual assault, strangulation, or assault between family members or
 17 members of an unmarried couple;~~[or]~~

18 (b) *A pattern of physical, sexual, emotional, economic, psychological, or*
 19 *technological actions or threats of actions between family members or*
 20 *members of an unmarried couple that is used by one (1) person to gain or*
 21 *maintain power and control over another, including intimidation,*
 22 *manipulation, humiliation, isolation, and coercion; or*

23 (c) Any conduct prohibited under~~[by]~~ KRS 525.125, 525.130, 525.135, or
 24 525.137, or the infliction of fear of such imminent conduct, taken against a
 25 domestic animal when used as a method of coercion, control, punishment,
 26 intimidation, or revenge directed against a family member or member of an
 27 unmarried couple who has a close bond of affection to the domestic animal;

- 1 (3) "Family member" means a spouse, including a former spouse, a grandparent, a
2 grandchild, a parent, an adult sibling, a child, a stepchild, or any other person living
3 in the same household as a child if the child is the alleged victim;
- 4 (4) "Foreign protective order" means any judgment, decree, or order of protection
5 which is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 that was
6 issued on the basis of domestic violence and abuse;
- 7 (5) "Global positioning monitoring system" means a system that electronically
8 determines a person's location through a device worn by the person which does not
9 invade his or her bodily integrity and which transmits the person's latitude and
10 longitude data to a monitoring entity;
- 11 (6) "Member of an unmarried couple" means each member of an unmarried couple
12 which allegedly has a child in common, any children of that couple, or a member of
13 an unmarried couple who are living together or have formerly lived together;
- 14 (7) "Order of protection" means an emergency protective order or a domestic violence
15 order and includes a foreign protective order;
- 16 (8) "Sexual assault" refers to conduct prohibited as any degree of rape, sodomy, or
17 sexual abuse under KRS Chapter 510 or incest under KRS 530.020, or a criminal
18 attempt, conspiracy, facilitation, or solicitation to commit rape, sodomy, sexual
19 abuse, or incest;
- 20 (9) **"Stalking" refers to conduct prohibited as stalking under KRS 508.140 or**
21 **508.150, or a criminal attempt, conspiracy, facilitation, or solicitation to commit**
22 **the crime of stalking;**
- 23 **(10)** "Strangulation" refers to conduct prohibited **under**~~by~~ KRS 508.170 **or**~~and~~
24 508.175, or a criminal attempt, conspiracy, facilitation, or solicitation to commit the
25 crime of strangulation; and
- 26 **(11)**~~(10)~~ "Substantial violation" means criminal conduct which involves actual or
27 threatened harm to the person, family, or property, including a domestic animal, of

1 an individual protected by an order of protection.

2 ➔Section 7. KRS 403.725 is amended to read as follows:

3 (1) A petition for an order of protection may be filed by:

4 (a) A victim of domestic violence and abuse; or

5 (b) An adult on behalf of a victim who is a minor otherwise qualifying for relief
6 under this subsection.

7 (2) The petition may be filed in the victim's county of residence or a county where the
8 victim has fled to escape domestic violence and abuse.

9 (3) The petition shall be verified and contain:

10 (a) The name, age, address, occupation, residence, and school or postsecondary
11 institution of the petitioner;

12 (b) The name, age, address, occupation, residence, and school or postsecondary
13 institution of the person or persons who have engaged in the alleged act or
14 acts complained of in the petition;

15 (c) The facts and circumstances which constitute the basis for the petition;

16 (d) The date and place of the marriage of the parties, if applicable; and

17 (e) The names, ages, and addresses of the petitioner's minor children, if
18 applicable.

19 (4) The petition shall be filed on forms prescribed by the Administrative Office of the
20 Courts and provided to the person seeking relief by the circuit clerk or by another
21 individual authorized by the court to provide and verify petitions in emergency
22 situations, such as law enforcement officers, Commonwealth's or county attorneys,
23 and regional rape crisis centers or domestic violence shelters.

24 (5) All petitions requested, completed, and signed by persons seeking protection under
25 this chapter shall be accepted and filed with the court.

26 (6) (a) Jurisdiction over petitions filed under this chapter shall be concurrent between
27 the District Court and Circuit Court and a petition may be filed by a petitioner

1 in either court, except that a petition shall be filed in a family court if one has
2 been established in the county where the petition is filed.

3 (b) The Court of Justice shall provide a protocol for twenty-four (24) hour access
4 to orders of protection in each county with any protocol, whether statewide or
5 local, being subject to Supreme Court review and approval of the initial
6 protocol and any subsequent amendments. This protocol may allow for
7 petitions to be filed in or transferred to a court other than those specified in
8 paragraph (a) of this subsection.

9 (c) The Court of Justice may authorize by rule that petitions in a specific county
10 be filed in accordance with a supplemental jurisdictional protocol adopted for
11 that county. This protocol may provide for petitions to be filed in or
12 transferred to a court other than those specified in paragraph (a) of this
13 subsection.

14 (d) 1. In addition to the protocols for twenty-four (24) hour access established
15 under paragraphs (b) and (c) of this subsection, ~~before January 1, 2019,~~
16 ~~the~~ Court of Justice shall provide protocols for filing, including
17 electronic filing, of petitions for orders of protection:

18 a. At those regional rape crisis centers designated under KRS
19 211.600, or regional domestic violence shelters designated under
20 KRS 209A.045, that elect to participate in any county's twenty-
21 four (24) hour access protocol; and

22 b. *By law enforcement officers.*

23 2. These protocols shall be subject to Supreme Court review for approval
24 of the initial protocol and any subsequent amendments.

25 (7) Any judge to whom a petition is referred under subsection (6) of this section shall
26 have full authority to review and hear a petition and subsequently grant and enforce
27 an order of protection.

1 (8) If the judge of a court in which there is a pending request for modification or
2 enforcement of an existing order of protection is unavailable or unable to act within
3 a reasonable time, the proceedings may be conducted by any judge of the county in
4 accordance with court rules.

5 ➔Section 8. KRS 456.010 is amended to read as follows:

6 As used in this chapter:

7 (1) "Dating relationship" means a relationship between individuals who have or have
8 had a relationship of a romantic or intimate nature. It does not include a casual
9 acquaintanceship or ordinary fraternization in a business or social context. The
10 following factors may be considered in addition to any other relevant factors in
11 determining whether the relationship is or was of a romantic or intimate nature:

- 12 (a) Declarations of romantic interest;
- 13 (b) The relationship was characterized by the expectation of affection;
- 14 (c) Attendance at social outings together as a couple;
- 15 (d) The frequency and type of interaction between the persons, including whether
16 the persons have been involved together over time and on a continuous basis
17 during the course of the relationship;
- 18 (e) The length and recency of the relationship; and
- 19 (f) Other indications of a substantial connection that would lead a reasonable
20 person to understand that a dating relationship existed;

21 (2) "Dating violence and abuse" means:

- 22 (a) Physical injury, serious physical injury, stalking, sexual assault, strangulation,
23 or the infliction of fear of imminent physical injury, serious physical injury,
24 sexual abuse, strangulation, or assault occurring between persons who are or
25 have been in a dating relationship;~~[-or]~~

26 (b) *A pattern of physical, sexual, emotional, economic, psychological, or*
27 *technological actions or threats of actions between persons who are or have*

1 *been in a dating relationship that is used by one (1) person to gain or*
2 *maintain power and control over another, including intimidation,*
3 *manipulation, humiliation, isolation, and coercion; or*

4 (c) Any conduct prohibited under~~by~~ KRS 525.125, 525.130, 525.135, or
5 525.137, or the infliction of fear of such imminent conduct, taken against a
6 domestic animal when used as a method of coercion, control, punishment,
7 intimidation, or revenge directed against a person with whom the perpetrator
8 is or has been in a dating relationship, when that person has a close bond of
9 affection to the domestic animal;

10 (3) "Domestic animal" means a dog, cat, or other animal that is domesticated and kept
11 as a household pet, but does not include animals normally raised for agricultural or
12 commercial purposes;

13 (4) "Foreign protective order" means any judgment, decree, or order of protection
14 which is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 which was
15 not issued on the basis of domestic violence and abuse;

16 (5) "Global positioning monitoring system" means a system that electronically
17 determines a person's location through a device worn by the person which does not
18 invade his or her bodily integrity and which transmits the person's latitude and
19 longitude data to a monitoring entity;

20 (6) "Order of protection" means any interpersonal protective order, including those
21 issued on a temporary basis, and includes a foreign protective order;

22 (7) "Sexual assault" refers to conduct prohibited as any degree of rape, sodomy, or
23 sexual abuse under KRS Chapter 510 or a criminal attempt, conspiracy, facilitation,
24 or solicitation to commit any degree of rape, sodomy, or sexual abuse, or incest
25 under KRS 530.020;

26 (8) "Stalking" refers to conduct prohibited as stalking under KRS 508.140 or 508.150,
27 or a criminal attempt, conspiracy, facilitation, or solicitation to commit the crime of

1 stalking;

2 (9) "Strangulation" refers to conduct prohibited ~~under~~^{by} KRS 508.170 ~~or~~^{and}
3 508.175, or a criminal attempt, conspiracy, facilitation, or solicitation to commit the
4 crime of strangulation; and

5 (10) "Substantial violation" means criminal conduct which involves actual or threatened
6 harm to the person, family, or property, including a domestic animal, of an
7 individual protected by an order of protection.

8 ➔Section 9. KRS 456.030 is amended to read as follows:

9 (1) A petition for an interpersonal protective order may be filed by:

10 (a) A victim of dating violence and abuse;

11 (b) A victim of stalking;

12 (c) A victim of sexual assault; or

13 (d) An adult on behalf of a victim who is a minor otherwise qualifying for relief
14 under this subsection.

15 (2) The petition may be filed in the victim's county of residence or a county where the
16 victim has fled to escape dating violence and abuse, stalking, or sexual assault.

17 (3) The petition shall be verified and contain:

18 (a) The name, age, address, occupation, residence, and school or postsecondary
19 institution of the petitioner;

20 (b) The name, age, address, occupation, residence, and school or postsecondary
21 institution of the person or persons who have engaged in the alleged act or
22 acts complained of in the petition;

23 (c) The facts and circumstances which constitute the basis for the petition; and

24 (d) The names, ages, and addresses of the petitioner's minor children, if
25 applicable.

26 (4) The petition shall be filed on forms prescribed by the Administrative Office of the
27 Courts and provided to the person seeking relief by the circuit clerk or by another

1 individual authorized by the court to provide and verify petitions in emergency
2 situations, such as law enforcement officers, Commonwealth's or county attorneys,
3 and regional rape crisis centers or domestic violence shelters.

4 (5) All petitions requested, completed, and signed by persons seeking protection under
5 this chapter shall be accepted and filed with the court.

6 (6) (a) Jurisdiction over petitions filed under this chapter shall be concurrent between
7 the District Court and Circuit Court.

8 (b) The Court of Justice shall provide a protocol for twenty-four (24) hour access
9 to interpersonal protective orders in each county with any protocol, whether
10 statewide or local, being subject to Supreme Court review and approval of the
11 initial protocol and any subsequent amendments. This protocol may allow for
12 petitions to be filed in or transferred to a court other than those specified in
13 paragraph (a) of this subsection.

14 (c) The Court of Justice may authorize by rule that petitions in a specific county
15 be filed in accordance with a supplemental jurisdictional protocol adopted for
16 that county. This protocol may provide for petitions to be filed in or
17 transferred to a court other than those specified in paragraph (a) of this
18 subsection.

19 (d) 1. In addition to the protocols for twenty-four (24) hour access established
20 under paragraphs (b) and (c) of this subsection, ~~before January 1, 2019,~~
21 the Court of Justice shall provide protocols for filing, including
22 electronic filing, of petitions for orders of protection:

23 a. At those regional rape crisis centers designated under KRS
24 211.600, or regional domestic violence shelters designated under
25 KRS 209A.045, that elect to participate in any county's twenty-
26 four (24) hour access protocol; and

27 b. *By law enforcement officers.*

1 2. These protocols shall be subject to Supreme Court review for approval
2 of the initial protocol and any subsequent amendments.

3 (7) Any judge to whom a petition is referred under subsection (6) of this section shall
4 have full authority to review and hear a petition and subsequently grant and enforce
5 an interpersonal protective order.

6 (8) If the judge of a court in which there is a pending request for modification or
7 enforcement of an existing order of protection is unavailable or unable to act within
8 a reasonable time, the proceedings may be conducted by any judge of the county in
9 accordance with court rules.

10 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO
11 READ AS FOLLOWS:

12 *As used in Sections 10 to 15 of this Act:*

13 *(1) "Abusive civil action" means a civil action in which:*

14 *(a) The plaintiff and defendant share a civil action party relationship;*

15 *(b) The party who is filing, initiating, advancing, or continuing the litigation*
16 *has been found by a court to have abused, stalked, strangled or sexually*
17 *assaulted the other party, pursuant to:*

18 *1. A protective order entered pursuant to KRS Chapter 403 or 456;*

19 *2. A foreign protective order, as defined in KRS 403.720 or 456.010;*

20 *3. A final order for child support or child custody, entered pursuant to*
21 *KRS Chapter 403;*

22 *4. A criminal conviction or a guilty plea, in this state or any other*
23 *jurisdiction, for a sex offense, assault, strangulation, or stalking;*

24 *5. A pending criminal charge, in this state or any other jurisdiction, of*
25 *domestic violence, wherein the court has imposed criminal conditions*
26 *of release pertaining to the safety of the victim; or*

27 *6. A signed affidavit from a domestic violence or sexual assault advocate*

1 or counselor working on behalf of an agency that assists victims of
2 domestic violence and sexual assault; and

3 (c) The primary purpose of the litigation is to abuse, harass, intimidate,
4 threaten, or maliciously injure the other party, or to maintain contact with
5 the other party;

6 (2) "Civil action" means the same as in Rule 2 of the Kentucky Rules of Civil
7 Procedure;

8 (3) "Civil action party relationship" means the plaintiff commencing a civil action
9 and the defendant fall within one (1) or more of the following categories:

10 (a) Adults who are current or former spouses;

11 (b) Adults who live together or who have lived together;

12 (c) Adults who are dating or who have dated, or who have or had a sexual
13 relationship;

14 (d) Adults related by blood or adoption;

15 (e) Adults who are related, or were formerly related, by marriage;

16 (f) Adult children of a person in a relationship that is described in paragraphs
17 (a) to (e) of this subsection; or

18 (g) A court has found one (1) of the parties liable for an act of strangulation,
19 stalking, or sexual assault against the other party;

20 (4) "Filing restriction" means an abusive civil action plaintiff is unable to file a civil
21 action against the civil action defendant for the period of time set by the court
22 pursuant to Section 14 of this Act; and

23 (5) "Harass or maliciously injure" means the civil action was filed with the intent to:

24 (a) Exhaust, deplete, impair, or adversely impact the defendant's financial
25 resources, unless:

26 1. Punitive damages are requested and appropriate; or

27 2. A change in the circumstances of the parties provides a good-faith

1 basis to seek a change to spousal maintenance, child support, or
2 disposition of property;

3 **(b) Prevent or interfere with the ability of the defendant to raise a child or**
4 **children for whom the defendant has legal custody unless the plaintiff has a**
5 **lawful right to interfere and a good-faith basis for doing so;**

6 **(c) Force, coerce, or attempt to force or coerce the defendant to agree to or**
7 **make adverse concessions concerning financial, custodial, support, or other**
8 **issues when the issues in question have previously been litigated and**
9 **decided in favor of the defendant;**

10 **(d) Force, coerce, or attempt to force or coerce the defendant to alter, engage**
11 **in, or refrain from engaging in conduct when the conduct is lawful and is**
12 **conduct in which the defendant has the right to engage;**

13 **(e) Impair or attempt to impair the health or well-being of the defendant or a**
14 **dependent of the defendant;**

15 **(f) Prevent, interfere, or adversely impact the ability of the defendant to pursue**
16 **or maintain a livelihood or lifestyle at the same or better standard as the**
17 **defendant enjoyed prior to the filing of the civil action; or**

18 **(g) Impair, diminish, or tarnish the defendant's reputation in the community or**
19 **alienate the defendant's friends, colleagues, attorneys, or professional**
20 **associates by subjecting parties without knowledge of or not reasonably**
21 **relevant to the civil action to unreasonably or unnecessarily complex,**
22 **lengthy, or intrusive interrogatories or depositions.**

23 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO
24 READ AS FOLLOWS:

25 **(1) If a civil action is filed and the defendant to the action believes that it is an**
26 **abusive civil action, the claim may be raised by the defendant by petitioning the**
27 **court to restrict abusive litigation;**

1 (a) In the answer to the civil action; or

2 (b) By motion made at any time during the civil action.

3 (2) The court may, on its own motion, conduct a hearing pursuant to Section 12 of
4 this Act to determine whether the civil action is an abusive civil action.

5 (3) The Administrative Office of the Courts shall establish a form application to be
6 used in filing a petition for an order restricting abusive litigation.

7 ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO
8 READ AS FOLLOWS:

9 (1) If the defendant to a civil action alleges, either by answer to the civil action or by
10 motion made at any time the action is pending, that the action constitutes an
11 abusive civil action, the court shall conduct a hearing to determine the merits of
12 the defendant's allegations.

13 (2) At the time set for the hearing on the alleged abusive civil action, the court shall
14 hear all relevant testimony and may require any affidavits, documentary
15 evidence, or other records the court deems necessary.

16 (3) Upon the filing of a motion under Section 11 of this Act, the court may order a
17 stay of discovery until entry of an order ruling on the motion.

18 ➔SECTION 13. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO
19 READ AS FOLLOWS:

20 At the hearing conducted pursuant to Section 12 of this Act, any of the following
21 evidence creates a rebuttable presumption that the civil action is an abusive civil
22 action:

23 (1) The same or substantially similar issues between the same or substantially similar
24 civil action parties that are the subject of the alleged abusive civil action have
25 been litigated against the defendant within the past five (5) years in the current
26 judicial district or another judicial district, and the actions were dismissed on the
27 merits or with prejudice against the plaintiff;

- 1 (2) The alleged abusive civil action plaintiff has used the same or substantially
2 similar issues that are the subject of the current civil action as the basis for an
3 adverse complaint against the defendant to an administrative board, and the
4 administrative board dismissed the complaint after a hearing in compliance with
5 KRS Chapter 13B; or
- 6 (3) The alleged abusive civil action plaintiff has been sanctioned under Rule 11 of
7 the Kentucky Rules of Civil Procedure or a similar rule or law in another state or
8 the federal government for filing one (1) or more frivolous or abusive civil
9 actions within the past ten (10) years of filing the current civil action alleged to be
10 abusive and the previous frivolous or abusive civil actions involved the same or
11 substantially similar issues between the same or substantially similar civil action
12 parties.

13 ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO
14 READ AS FOLLOWS:

- 15 (1) If the court finds by a preponderance of the evidence that a person filing a civil
16 action is an abusive civil action plaintiff, and that the civil action is an abusive
17 civil action, the civil action shall be dismissed.
- 18 (2) In addition to dismissal of any pending abusive civil action within the jurisdiction
19 of the court, the court shall:
- 20 (a) Tax all costs of any abusive civil action pending in the court at the time of
21 the court's finding pursuant to subsection (1) of this section against the
22 abusive civil action plaintiff;
- 23 (b) Award the civil action defendant reasonable attorney's fees and all
24 reasonable costs of defending the abusive civil action; and
- 25 (c) Impose filing restrictions upon the abusive civil action plaintiff for a period
26 of no less than forty-eight (48) months and no more than seventy-two (72)
27 months.

1 (3) If a defendant alleges that a claim is an abusive civil action and the court finds by
2 a preponderance of the evidence that the action was not an abusive civil action,
3 the court may:

4 (a) Grant to the plaintiff such remedies as may be just, including granting
5 judgment in favor of the plaintiff, granting partial judgment in favor of the
6 plaintiff, or allowing factual interpretations in favor of the plaintiff;

7 (b) Tax all costs related to litigating the issue of whether the action is an
8 abusive civil action or whether the plaintiff is an abusive civil action
9 plaintiff, against the defendant who made the claim; and

10 (c) Award the civil action plaintiff reasonable attorney's fees and all reasonable
11 costs of defending the claim that the action was an abusive civil action.

12 ➔SECTION 15. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO
13 READ AS FOLLOWS:

14 (1) An abusive civil action plaintiff may seek permission to file a civil action against
15 a civil action defendant using the procedure set out in subsection (2) of this
16 section.

17 (2) (a) An abusive civil action plaintiff who wishes to institute a civil action in a
18 court of record during the time the abusive civil action plaintiff is under
19 filing restrictions shall first appear before the court that imposed the filing
20 restrictions to make application for permission to institute the civil action.

21 (b) The court may examine witnesses, including the abusive civil action
22 plaintiff and the civil action defendant, to determine whether the proposed
23 civil action is or is not an abusive civil action and whether there are
24 reasonable and legitimate grounds upon which the complaint is based.

25 (c) 1. If the court that imposed the filing restrictions believes that the civil
26 action the abusive civil action plaintiff is making application to file
27 will be an abusive civil action, the application shall be denied.

1 2. If the court reasonably finds that the civil action the abusive civil
2 action plaintiff is making application to file will not be an abusive civil
3 action, the court may grant the application and issue an order
4 permitting the filing of the civil action. The order shall be attached to
5 the front of the complaint when the abusive civil action plaintiff files
6 the civil action with the clerk. The defendant to the action shall be
7 served with a copy of the order at the same time the complaint is
8 served.

9 (d) The findings of the court shall be reduced to writing and made a part of the
10 record in the matter. If the abusive civil action plaintiff disputes the finding
11 of the court, the abusive civil action plaintiff may appeal.

12 (3) If the application for the filing of a civil action is granted pursuant to this section,
13 the period of time commencing with the filing of the application requesting
14 permission to file the action and ending with the issuance of an order permitting
15 filing of the action shall not be computed as a part of an applicable period of
16 limitations within which the civil action must be instituted.

17 (4) If after an abusive civil action plaintiff has made application and been granted
18 permission to file a civil action pursuant to this section, the court with
19 jurisdiction over the action determines that the person is attempting to add
20 parties, amend the complaint, or is otherwise attempting to alter the parties and
21 issues involved in the civil action in a manner that the court reasonably believes
22 would make the action an abusive civil action, the court may order a continuance
23 or dismissal of the action.

24 (5) (a) If a civil action defendant is served with a complaint from an abusive civil
25 action plaintiff who filed a civil action in a judicial district in which the
26 person has not been determined to be an abusive civil action plaintiff, and
27 the complaint does not have an attached order from the judge who imposed

1 the filing restrictions, the civil action defendant shall obtain a certified copy
2 of the order finding the person to be an abusive civil action plaintiff in
3 another jurisdiction and send it to the court where the new civil action was
4 filed and to the court that imposed the filing restrictions.

5 **(b) If it is brought to the attention of the court, or on the court's own motion,**
6 **that an abusive civil action plaintiff has filed a civil action or continued a**
7 **legal proceeding in the sanctioning court's judicial district or in another**
8 **judicial district without application to do so being granted by the**
9 **sanctioning court pursuant to this section, or the abusive civil action**
10 **plaintiff has attempted to file an abusive civil action through another party,**
11 **the court in which the civil action is pending shall dismiss the action or**
12 **revoke the continuance. The sanctioning court may take whatever action**
13 **against the abusive civil action plaintiff deemed necessary for a violation of**
14 **the court's order.**