

1 AN ACT relating to domestic violence.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO
4 READ AS FOLLOWS:

5 *In any proceeding for child custody under this chapter where the court has made a*
6 *finding that a party has committed domestic violence and abuse as defined in KRS*
7 *403.720 against another party to the proceeding or a child of the parties:*

8 *(1) The court shall not remove custody from or reduce the parenting time of the*
9 *nonoffending party to whom the child is bonded or attached if the court finds that*
10 *the:*

11 *(a) Nonoffending party is competent and not abusive; and*

12 *(b) Removal would be solely for purposes of improving the relationship between*
13 *the child and the offending party; and*

14 *(2) Any order to remediate resistance of a child to contact with a violent or abusive*
15 *parent shall primarily address the behavior of that parent.*

16 ➔Section 2. KRS 403.270 is amended to read as follows:

17 (1) (a) As used in this chapter and KRS 405.020, unless the context requires
18 otherwise, "de facto custodian" means a person who has been shown by clear
19 and convincing evidence to have been the primary caregiver for, and financial
20 supporter of, a child who within the last two (2) years has resided with the
21 person for an aggregate period of six (6) months or more if the child is under
22 three (3) years of age and for an aggregate period of one (1) year or more if
23 the child is three (3) years of age or older or has been placed by the
24 Department for Community Based Services. Any period of time after a legal
25 proceeding has been commenced by a parent seeking to regain custody of the
26 child shall not be included in determining whether the child has resided with
27 the person for the required minimum period.

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

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

17 **(3) In making a determination of custody, the court shall, prior to consideration of**
18 **any other factors enumerated in subsection (4) of this section:**

19 **(a) Consider any allegations of:**

20 **1. Domestic violence and abuse as defined in KRS 403.720; or**

21 **2. An abused or neglected child as defined in KRS 600.020;**

22 **committed by one (1) party against another party or a child of the parties;**

23 **and**

24 **(b) Make written findings on the record as to the impact, if any, of the**
25 **allegations described in subparagraph 1. of this paragraph on the child.**

26 **(4) The court shall then consider all other factors relevant to the determination of**
27 **custody including:**

- 1 (a) The wishes of the child's parent or parents, and any de facto custodian, as to
2 his or her custody;
- 3 (b) The wishes of the child as to his or her custodian, with due consideration
4 given to the influence a parent or de facto custodian may have over the child's
5 wishes;
- 6 (c) The interaction and interrelationship of the child with his or her parent or
7 parents, his or her siblings, and any other person who may significantly affect
8 the child's best interests;
- 9 (d) The motivation of the adults participating in the custody proceeding;
- 10 (e) The child's adjustment and continuing proximity to his or her home, school,
11 and community;
- 12 (f) The mental and physical health of all individuals involved;
- 13 (g) A finding by the court that domestic violence and abuse, as defined in KRS
14 403.720, has been committed by one (1) of the parties against a child of the
15 parties or against another party. The court shall determine the extent to which
16 the domestic violence and abuse has affected the child and the child's
17 relationship to each party, with due consideration given to efforts made by a
18 party toward the completion of any domestic violence treatment, counseling,
19 or program;
- 20 **(h) A finding by the court that a party has maliciously made an intentionally**
21 **false allegation of child abuse which has no basis in fact and which the**
22 **party knew had no basis in fact against another party;**
- 23 ~~(i)(h)~~ The extent to which the child has been cared for, nurtured, and
24 supported by any de facto custodian;
- 25 ~~(i)(i)~~ The intent of the parent or parents in placing the child with a de facto
26 custodian;
- 27 ~~(k)(j)~~ The circumstances under which the child was placed or allowed to

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

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

13 ~~(5)~~~~(3)~~ The abandonment of the family residence by a custodial party shall not be
14 considered where ~~that~~~~said~~ party was physically harmed or was seriously
15 threatened with physical harm by his or her spouse, when ~~the~~~~such~~ harm or threat
16 of harm was causally related to the abandonment.

17 ~~(6)~~~~(4)~~ If the court grants custody to a de facto custodian, the de facto custodian shall
18 have legal custody under the laws of the Commonwealth.

19 ➔Section 3. KRS 403.290 is amended to read as follows:

20 (1) The court may interview the child in chambers to ascertain the child's wishes as to
21 his or her custodian and as to visitation. The court may permit counsel to be present
22 at the interview. The court shall cause a record of the interview to be made and to
23 be part of the record in the case.

24 (2) The court may seek the advice of professional personnel, whether or not employed
25 by the court on a regular basis. The advice given shall be in writing and made
26 available by the court to counsel upon request. Counsel may examine as a witness
27 any professional personnel consulted by the court.

1 (3) (a) Paid visitation supervisors and parenting coordinators in a custody
 2 proceeding under this chapter, whether appointed by the court or engaged
 3 by one (1) or more parties, shall document participation training focused on
 4 the following:

5 1. Early childhood, child, and adolescent development;

6 2. Dynamics of domestic violence;

7 3. Effects of domestic violence on adult and child victims;

8 4. Lethality and risk issues;

9 5. Model protocols for addressing domestic violence;

10 6. Available community resources and victim services; and

11 7. For paid visitation supervisors, the role of the paid supervisor and
 12 ethical principles of supervising visitation.

13 (b) The training described in paragraph (a) of this subsection shall consist of:

14 1. Sixteen (16) hours of initial training before the paid visitation
 15 supervisor or parenting coordinator is eligible to provide services to a
 16 party to a custody proceeding; and

17 2. Eight (8) hours annually thereafter.

18 ➔Section 4. KRS 403.315 is amended to read as follows:

19 (1) When determining or modifying a custody order pursuant to KRS 403.270,
 20 403.280, 403.340, or 403.740, the court shall consider the safety and well-being of
 21 the parties and of the children. If a domestic violence order is being or has been
 22 entered against a party by another party or on behalf of a child at issue in the
 23 custody hearing, the presumption that joint custody and equally shared parenting
 24 time is in the best interests~~[interest]~~ of the child shall not apply as to the party
 25 against whom the domestic violence order is being or has been entered. The court
 26 shall weigh all factors set out in Section 2 of this Act~~[KRS 403.270(2)]~~ in
 27 determining the best interests~~[interest]~~ of the child.

1 (2) There shall be a presumption, rebuttable by a preponderance of the evidence, that
 2 joint custody and equally shared parenting time is not in the best interests of the
 3 child if the court finds that a party has committed two (2) or more acts of
 4 domestic violence and abuse as defined in KRS 403.720 against another party.

5 (3) (a) The court shall not make an award of custody or grant unsupervised
 6 visitation with the child to a party who is found to have committed two (2) or
 7 more acts of domestic violence or abuse as defined in KRS 403.720 against
 8 another party unless that party has:

9 1. Completed:

10 a. A batterer's intervention program provided by a certified
 11 provider pursuant to 920 KAR 5:020;

12 b. Parenting classes; and

13 c. Substance use and mental health assessments and any
 14 recommended corresponding treatments; and

15 2. Participated in supervised visitation.

16 (b) Following a party's completion of the requirements in paragraph (a) of this
 17 subsection, the court shall conduct an evidentiary hearing before ordering
 18 unsupervised visitation to that party and a second or subsequent hearing
 19 before awarding custodial rights to that party.

20 ➔Section 5. KRS 403.727 is amended to read as follows:

21 (1) Any petition filed under KRS 403.725 on behalf of a minor who is alleged to be a
 22 victim of domestic violence and abuse, or in which a minor is named as a
 23 respondent or petitioner, shall comply with the requirements in that section and
 24 shall:

25 (a) Proceed in accordance with the procedural safeguards under KRS 610.070;
 26 and

27 (b) Conform to the confidentiality provisions under KRS 610.340.

1 (2) (a) If the court orders an evidentiary hearing under KRS 403.730(1)(a), a
2 guardian ad litem shall be appointed for any unrepresented minor who is a
3 respondent to the action or a petitioner who is an alleged victim of domestic
4 violence and abuse.

5 (b) The guardian ad litem shall be paid a fee fixed by the court not to exceed five
6 hundred dollars (\$500), which shall be paid by the Finance and
7 Administration Cabinet.

8 (3) A victim advocate as defined in KRS 421.570:

9 (a) Shall be permitted to attend the evidentiary hearing to offer advocacy
10 services pursuant to KRS 421.575 to the minor petitioner or the adult who
11 has filed the petition on behalf of the minor; and

12 (b) Shall not be excluded from the evidentiary hearing unless the:

13 1. Minor petitioner or adult who has filed the petition on behalf of the
14 minor declines the services offered; or

15 2. Court, upon motion and for good cause shown, determines that the
16 exclusion is in the best interests of the minor petitioner.

17 ~~(4)(3)~~ Violation of the terms or conditions of an order of protection issued under
18 KRS 403.740 after the person has been served or given notice of the order shall
19 constitute contempt of court and may constitute a criminal offense pursuant to KRS
20 403.763 if the offender is an adult or a public offense under KRS 600.020(51) if the
21 offender is a juvenile. Once a juvenile action or contempt proceeding has been
22 initiated, the other shall not be undertaken regardless of the outcome of the original
23 proceeding.

24 ~~(5)(4)~~ Nothing in subsection ~~(4)(3)~~ of this section shall preclude the
25 Commonwealth from proceeding, or the petitioner from pursuing charges, against
26 the minor respondent for offenses other than a violation of an order of protection.
27 Proceedings against a minor respondent for offenses other than a violation of an

1 order of protection shall proceed:

2 (a) In the juvenile session of District Court; and

3 (b) In accordance with the procedural and statutory provisions established for the
4 juvenile session of District Court.

5 ➔Section 6. KRS 456.035 is amended to read as follows:

6 (1) Any petition filed under KRS 456.030 on behalf of a minor who is an alleged
7 victim of dating violence and abuse, sexual assault, or stalking, or in which a minor
8 is named as a respondent or petitioner, shall comply with the requirements in that
9 section and shall:

10 (a) Proceed in accordance with the procedural safeguards under KRS 610.070;
11 and

12 (b) Conform to the confidentiality provisions under KRS 610.340.

13 (2) (a) If the court orders an evidentiary hearing under KRS 456.040(1)(a), a
14 guardian ad litem shall be appointed for any unrepresented minor who is a
15 respondent to the action or a petitioner who is an alleged victim of dating
16 violence and abuse, sexual assault, or stalking.

17 (b) The guardian ad litem shall be paid a fee fixed by the court not to exceed five
18 hundred dollars (\$500), which shall be paid by the Finance and
19 Administration Cabinet.

20 (3) *A victim advocate as defined in KRS 421.570:*

21 (a) *Shall be permitted to attend the evidentiary hearing to offer advocacy*
22 *services pursuant to KRS 421.575 to the minor petitioner or the adult who*
23 *has filed the petition on behalf of the minor; and*

24 (b) *Shall not be excluded from the evidentiary hearing unless the:*

25 1. *Minor petitioner or adult who has filed the petition on behalf of the*
26 *minor declines the services offered; or*

27 2. *Court, upon motion and for good cause shown, determines that the*

1 *exclusion is in the best interests of the minor petitioner.*

2 ~~(4)~~~~(3)~~ Violation of the terms or conditions of an order of protection issued under
3 KRS 456.060 after the person has been served or given notice of the order shall
4 constitute contempt of court and may constitute a criminal offense pursuant to KRS
5 456.180 if the offender is an adult or a public offense under KRS 600.020(51) if the
6 offender is a juvenile. Once a juvenile action or contempt proceeding has been
7 initiated, the other shall not be undertaken regardless of the outcome of the original
8 proceeding.

9 ~~(5)~~~~(4)~~ Nothing in subsection ~~(4)~~~~(3)~~ of this section shall preclude the
10 Commonwealth from proceeding, or the petitioner from pursuing charges, against
11 the minor respondent for offenses other than a violation of an order of protection.
12 Proceedings against a minor respondent for offenses other than a violation of an
13 order of protection shall proceed:

- 14 (a) In the juvenile session of District Court; and
15 (b) In accordance with the procedural and statutory provisions established for the
16 juvenile session of District Court.