

1           AN ACT relating to custody.

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 ~~that~~said party was physically harmed or was seriously  
14 threatened with physical harm by his or her spouse, when such harm or threat of  
15 harm was 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 custodian 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 interest of the child.

9 ➤Section 4. 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;

(b) Whether the child has been integrated into the family of the petitioner with consent of the custodian;

(c) The factors set forth in KRS 403.270(2) to determine the best interests of the child;

(d) Whether the child's present environment endangers seriously his or her physical, mental, moral, or emotional health;

(e) Whether the harm likely to be caused by a change of environment is outweighed by its advantages to him or her; and

(f) Whether the custodian has placed the child with a de facto custodian.

(4) In determining whether a child's present environment may endanger seriously his or her physical, mental, moral, or emotional health, the court shall consider all relevant factors, including~~[,]~~ but not limited to:

(a) The interaction and interrelationship of the child with his or her parent or parents, ~~his~~ de facto custodian, ~~his~~ siblings, and any other person who may significantly affect the child's best interests;

(b) The mental and physical health of all individuals involved;

(c) Repeated or substantial failure, without good cause as specified in KRS 403.240, of either parent to observe visitation, child support, or other provisions of the decree which affect the child, except that modification of custody orders shall not be made solely on the basis of failure to comply with visitation or child support provisions, or on the basis of which parent is more likely to allow visitation or pay child support;

(d) If domestic violence and abuse, as defined in KRS 403.720, is found by the court to exist, the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parents.

(5) ~~Subject to KRS 403.315, if the court orders a modification of a child custody 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 5. KRS 403.320 is amended to read as follows:

9        (1) A parent not granted custody of the child~~{ and not awarded shared parenting time~~  
10        ~~under the presumption specified in KRS 403.270(2), 403.280(2), or 403.340(5)}~~ is  
11        entitled to reasonable visitation rights unless the court finds, after a hearing, that  
12        visitation would endanger seriously the child's physical, mental, moral, or  
13        emotional health. Upon request of either party, the court shall issue orders which  
14        are specific as to the frequency, timing, duration, conditions, and method of  
15        scheduling visitation and which reflect the development age of the child.

16        (2) If domestic violence and abuse, as defined in KRS 403.720, has been alleged, the  
17        court shall, after a hearing, determine the visitation arrangement, if any, which  
18        would not endanger seriously the child's or the custodial parent's physical, mental,  
19        or emotional health.

20        (3) The court may modify an order granting or denying visitation rights whenever  
21        modification would serve the best interests of the child; but the court shall not  
22        restrict a parent's visitation rights unless it finds that the visitation would endanger  
23        seriously the child's physical, mental, moral, or emotional health.

24        (4) (a) Under circumstances where the court finds, by clear and convincing evidence,  
25        it is in the best interest of the child, any relative, by blood or affinity, that was  
26        previously granted temporary custody pursuant to ~~{the provisions of }KRS~~  
27        620.090 may be granted reasonable noncustodial parental visitation rights by

1                   a Circuit Court or Family Court as an intervenor or by original action.

2        **(b)** Once the relative has been granted visitation pursuant to this subsection, those  
3                   rights shall not be adversely affected by the termination of custodial or  
4                   parental rights of an individual who has permanent custody of the child unless  
5                   the court determines that termination of the visitation rights ~~is[are]~~ in the best  
6                   interest~~[interests]~~ of the child.

7        **(c)** The action shall be brought in the county in which the temporary or  
8                   permanent custody order was entered or where the child resides.