

1 AN ACT relating to joint 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 has resided with the person for a period of six (6)
8 months or more if the child is under three (3) years of age and for a period of
9 one (1) year or more if the child is three (3) years of age or older or has been
10 placed by the Department for Community Based Services. Any period of time
11 after a legal proceeding has been commenced by a parent seeking to regain
12 custody of the child shall not be included in determining whether the child has
13 resided with the person for the required minimum period.

14 (b) A person shall not be a de facto custodian until a court determines by clear
15 and convincing evidence that the person meets the definition of de facto
16 custodian established in paragraph (a) of this subsection. Once a court
17 determines that a person meets the definition of de facto custodian, the court
18 shall give the person the same standing in custody matters that is given to each
19 parent under this section and KRS 403.280, 403.340, 403.350, 403.822, and
20 405.020.

21 (2) The court shall determine custody in accordance with the best interests of the child
22 and equal consideration shall be given to each parent and to any de facto custodian.

23 ***There shall be a presumption, rebuttable by a preponderance of evidence, that***
24 ***joint custody and equally shared parenting time is in the best interest of the child.***

25 ***If a deviation from equal parenting time is warranted, the court shall construct a***
26 ***parenting time schedule which maximizes the time each parent or de facto***
27 ***custodian has with the child and is consistent with ensuring the child's welfare.***

1 The court shall consider all relevant factors including:

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

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

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

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

11 (e) The child's adjustment and continuing proximity to his or her home, school,
12 and community;

13 (f)(e) The mental and physical health of all individuals involved;

14 (g)(f) Information, records, and evidence of domestic violence as defined in
15 KRS 403.720;

16 (h)(g) The extent to which the child has been cared for, nurtured, and
17 supported by any de facto custodian;

18 (i)(h) The intent of the parent or parents in placing the child with a de facto
19 custodian; ~~and~~

20 (j)(i) The circumstances under which the child was placed or allowed to
21 remain in the custody of a de facto custodian, including whether the parent
22 now seeking custody was previously prevented from doing so as a result of
23 domestic violence as defined in KRS 403.720 and whether the child was
24 placed with a de facto custodian to allow the parent now seeking custody to
25 seek employment, work, or attend school; and

26 (k) The likelihood a parent will allow the child frequent, meaningful, and
27 continuing contact with the other parent or de facto custodian.

- 1 (3) The court shall not consider conduct of a proposed custodian that does not affect his
2 relationship to the child. If domestic violence and abuse is alleged, the court shall
3 determine the extent to which the domestic violence and abuse has affected the
4 child and the child's relationship to both parents.
- 5 (4) The abandonment of the family residence by a custodial party shall not be
6 considered where said party was physically harmed or was seriously threatened with
7 physical harm by his or her spouse, when such harm or threat of harm was causally
8 related to the abandonment.
- 9 (5) ~~The court may grant joint custody to the child's parents, or to the child's parents
10 and a de facto custodian, if it is in the best interest of the child.~~
- 11 ~~(6) If the court grants custody to a de facto custodian, the de facto custodian shall have
12 legal custody under the laws of the Commonwealth.~~
- 13 ➔Section 2. KRS 403.280 is amended to read as follows:
- 14 (1) A party to a custody proceeding may move for a temporary custody order. The
15 motion must be supported by an affidavit as provided in KRS 403.350. The court
16 may award temporary custody under the standards of KRS 403.270 after a hearing,
17 or, if there is no objection, solely on the basis of the affidavits. If the parents or a de
18 facto custodian joined under subsection (9) of this section present a temporary
19 custody agreement and mutually agreed plan for parenting time, and the court
20 confirms that the agreement adequately provides for the welfare of the child, the
21 agreement shall become the temporary custody order of the court.
- 22 (2) In making an order for temporary custody, there shall be a presumption, rebuttable
23 by preponderance of evidence, that **it is in the best interest of the child for** the
24 parents or a de facto custodian joined under subsection (9) of this section ~~to~~~~shall~~
25 have temporary joint custody and ~~shall~~ share equally in parenting time.
- 26 (3) If a deviation from equal parenting time is warranted, the court shall construct a
27 parenting time schedule which maximizes the time each parent or de facto custodian

1 joined under subsection (9) of this section has with the child and is consistent with
2 ensuring the child's welfare.

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

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

7 (6) Subject to KRS 403.320(4) and 403.340(5), modification of a temporary custody
8 order may be sought when there is a material and substantial change in the
9 circumstances of the parents, de facto custodian, or child.

10 (7) If a proceeding for dissolution of marriage or legal separation is dismissed, any
11 temporary custody order is vacated unless a parent or the child's custodian moves
12 that the proceeding continue as a custody proceeding and the court finds, after a
13 hearing, that the circumstances of the parents and the best interests of the child
14 require that a custody decree be issued.

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

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

21 ➔Section 3. KRS 403.320 is amended to read as follows:

22 (1) A parent not granted custody of the child **and not awarded shared parenting time**
23 **under the presumption specified in subsection (2) of Section 1 of this Act,**
24 **subsection (2) of Section 2 of this Act, or subsection (6) of Section 4 of this Act** is
25 entitled to reasonable visitation rights unless the court finds, after a hearing, that
26 visitation would endanger seriously the child's physical, mental, moral, or emotional
27 health. Upon request of either party, the court shall issue orders which are specific

1 as to the frequency, timing, duration, conditions, and method of scheduling
2 visitation and which reflect the development age of the child.

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

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

11 (4) (a) Except as provided in paragraph (b) of this subsection, any court-ordered
12 modification of a child visitation decree, based in whole or in part on:

13 1. The active duty of a parent or a de facto custodian as a regular member
14 of the United States Armed Forces deployed outside the United States;
15 or

16 2. Any federal active duty of a parent or a de facto custodian as a member
17 of a state National Guard or a Reserve component;

18 shall be temporary and shall revert back to the previous child visitation decree
19 at the end of the deployment outside the United States or the federal active
20 duty, as appropriate.

21 (b) A parent or de facto custodian identified in paragraph (a) of this subsection
22 may consent to a modification of a child visitation decree that continues past
23 the end of the deployment outside the United States or the federal active duty,
24 as appropriate.

25 (5) 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 where
8 the child resides.

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 physical, mental,
16 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 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 physical,
6 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; 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
11 physical, mental, moral, or emotional health, the court shall consider all relevant
12 factors, including, but not limited to:
- 13 (a) The interaction and interrelationship of the child with his parent or parents, his
14 de facto custodian, his siblings, and any other person who may significantly
15 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) (a) Except as provided in paragraph (b) of this subsection, any court-ordered
27 modification of a child custody decree, based in whole or in part on:

1 1. The active duty of a parent or a de facto custodian as a regular member
2 of the United States Armed Forces deployed outside the United States;
3 or

4 2. Any federal active duty of a parent or a de facto custodian as a member
5 of a state National Guard or a Reserve component;

6 shall be temporary and shall revert back to the previous child custody decree
7 at the end of the deployment outside the United States or the federal active
8 duty, as appropriate.

9 (b) A parent or de facto custodian identified in paragraph (a) of this subsection
10 may consent to a modification of a child custody decree that continues past the
11 end of the deployment outside the United States or the federal active duty, as
12 appropriate.

13 (6) *If the court orders a modification of a child custody decree, there shall be a*
14 *presumption, rebuttable by a preponderance of evidence, that it is in the best*
15 *interest of the child for the parents to have joint custody and share equally in*
16 *parenting time. If a deviation from equal parenting time is warranted, the court*
17 *shall construct a parenting time schedule which maximizes the time each parent*
18 *or de facto custodian has with the child and is consistent with ensuring the*
19 *child's welfare.*

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