

# **Kentucky Divorce Laws**

## **TITLE XXXV - DOMESTIC RELATIONS**

### **CHAPTER 402 MARRIAGE**

#### **402.005 Definition of marriage.**

As used and recognized in the law of the Commonwealth, "marriage" refers only to the civil status, condition, or relation of one (1) man and one (1) woman united in law for life, for the discharge to each other and the community of the duties legally incumbent upon those whose association is founded on the distinction of sex.

### **CHAPTER 403 DISSOLUTION OF MARRIAGE -- CHILD CUSTODY**

#### **General Provisions**

#### **403.010 Court may grant divorce -- Remarriage.**

A jury shall not be impaneled in any action for divorce, alimony or maintenance, but courts having general jurisdiction may grant a divorce for the cause set out in this chapter. A decree of dissolution of marriage authorizes either party to marry again.

#### **403.025 Proof in action for dissolution of marriage; credible witnesses.**

(1) The statements of a petition for dissolution of marriage concerning the residence of the parties and irretrievable breakdown of the marriage shall not be taken as true because of the respondent's failure to deny the statements, and the facts as to residence of the parties must be proved by one (1) or more credible witnesses. (2) The petitioner or respondent in an action for dissolution of marriage may be considered a credible witness, within the meaning of subsection (1) of this section, to be utilized in order to prove residency of the parties. The provisions of this subsection shall be retroactive in effect.

#### **403.033 Advisory committee appointment -- Functions -- Recommendations.**

The judge of any Circuit Court may appoint an advisory committee to counsel with litigants in divorce actions. The committee shall serve without salary or expenses. The court may request the parties involved in these proceedings to appear before the said committee at a designated time and place. The committee may make recommendation to the court as to their conclusions from said counseling. These recommendations are not binding on the court.

#### **403.036 Mediation not to be ordered unless conditions are met.**

In any court proceeding conducted pursuant to KRS 403.010 to 403.350, if there is a finding of domestic violence and abuse, as defined in KRS 403.720, the court shall not order mediation unless requested by the victim of the alleged domestic violence and abuse, and the court finds that:

- (1) The victim's request is voluntary and not the result of coercion; and
- (2) Mediation is a realistic and viable alternative to or adjunct to the issuance of an order sought by the victim of the alleged domestic violence and abuse.

#### **403.040 Annulment of divorce decree -- Effect.**

The court rendering a judgment for divorce may, at any time, annul it on the joint application of the parties, and restore the parties to the condition of husband and wife. The annulment voids the divorce decree and any separation agreement.

#### **403.041 Judgment of divorce may be annulled.**

A judgment of divorce from the bond of matrimony may be annulled by the court which rendered it, upon a petition verified by the parties in person so requesting.

**403.042 Judgment of divorce from bed and board may be annulled.**

A judgment of divorce from bed and board may be annulled by the court which rendered it, at the instance of either party showing just cause therefor in an equitable action.

**403.044 Testimony in certain cases not taken for sixty days after complaint filed.**

In divorce actions in which there are minor children who are the issue of the marriage no testimony other than on temporary motions shall be taken or heard before sixty (60) days have elapsed from the date of service of summons, the appointment of a warning order attorney or the filing of an entry of appearance or a responsive pleading by the defendant, whichever occurs first.

**403.050 Divorce from bed and board -- Grounds and legal effect.**

Divorce from bed and board may be rendered for any cause that allows divorce, or for any other cause that the court in its discretion considers sufficient. A divorce from bed and board shall operate as to property thereafter acquired, and upon the personal rights and legal capacities of the parties, as a divorce from the bond of matrimony, except that neither shall marry again during the life of the other, and except that it shall not bar curtesy, dower or distributive right. The judgment may be revised or set aside at any time by the court rendering it.

**403.090 Friend of the court -- Appointment -- Tenure -- Duties -- Wage withholding collections -- Compensation.**

(1) The fiscal court of any county may, by resolution, authorize the appointment of a "friend of the court." If the Circuit Court of the county has but one (1) judge, the appointment shall be made by the judge. If the court has two (2) or more judges, the appointment shall be made by joint action of the judges, at the general term. The person appointed to the office of friend of the court shall serve at the pleasure of, and subject to removal by, the appointing authority. The person appointed shall be a licensed practicing attorney. The appointed person shall take the constitutional oath of office and shall give bond in such sum as may be fixed by the appointing judge or judges.

(2) Except for those cases administered pursuant to 42 U.S.C. secs. 651 et seq., it shall be the duty of the friend of the court to supervise and enforce the payment of sums ordered or adjudged by the Circuit Court in divorce actions to be paid for the care and maintenance of minor children. All persons who have been ordered or adjudged by the court, in connection with divorce actions, to make payments for the care and maintenance of children, shall, if so ordered by the court, make such payments to the friend of the court. The friend of the court shall see that the payments, except for those cases administered pursuant to 42 U.S.C. secs. 651 et seq., are properly applied in accordance with the order or judgment. However, if the court so directs, the payments may be made through the juvenile session of District Court of the county; in such case the friend of the court shall render such assistance as may be required in keeping records concerning such payments and in the enforcement of delinquent payments, and the Circuit Court may direct that a designated amount or portion of the funds appropriated by the fiscal court for expenses of the friend of the court be paid to the juvenile session of District Court as reimbursement for the expenses incurred by the juvenile session of District Court in connection with the handling of such payments. The friend of the court shall promptly investigate all cases where payments have become delinquent, and when necessary shall cause the delinquent person to be brought before the court for the purpose of compelling payment. The friend of the court shall ascertain the facts concerning the care, custody, and maintenance of children for whom payments are being made, and shall report to the court all cases in which the children are not receiving proper care or maintenance, or in which the person having custody is failing to furnish proper custody. He shall make such other reports to the court as the court may require.

(3) In the event that a waiver is granted under 42 U.S.C. secs. 651 et seq., allowing payment of wage withholding collections to be directed to the friend of the court, an obligor shall be given the option of payment either to the friend of the court or the centralized collection agency.

(4) In any action for divorce where the parties have minor children, the friend of the court, if requested by the trial judge, shall make such investigation as will enable the friend of the court to

ascertain all facts and circumstances that will affect the rights and interests of the children and will enable the court to enter just and proper orders and judgment concerning the care, custody, and maintenance of the children. The friend of the court shall make a report to the trial judge, at a time fixed by the judge, setting forth recommendations as to the care, custody, and maintenance of the children. The friend of the court may request the court to postpone the final submission of any case to give the friend of the court a reasonable time in which to complete the investigation.

(5) The friend of the court shall have authority to secure the issuance by the court of any order, rule, or citation necessary for the proper enforcement of orders and judgments in divorce actions concerning the custody, care, and maintenance of children. In performing duties under subsection (4) of this section the friend of the court shall attend the taking of depositions within the county, and shall have authority to cross-examine the witnesses. In the case of depositions taken on interrogatories, the friend of the court may file cross-interrogatories. The friend of the court shall be duly notified of the time and place of the taking of depositions in all divorce actions where the parties have minor children, and shall attend the taking of all such depositions when the friend of the court deems it necessary for the protection of the minor children, or when the friend of the court may be directed by the court to attend.

(6) The friend of the court shall not directly or indirectly represent any party to a divorce action except as herein authorized to represent the minor children of parties to a divorce action, but if an allowance is made for the support of a spouse and an infant child or children, may proceed to enforce the payment of the allowance made to the spouse also.

(7) Where a friend of the court is acting as a designee of the cabinet pursuant to KRS 205.712 and an applicant for Title IV-D services pursuant to KRS 205.721 has requested a modification of an existing child support order pursuant to a divorce or other judicial order, the friend of the court shall seek the modification, providing all jurisdictional requirements are met. The friend of the court's representation shall extend only for the limited purpose of seeking a modification of an existing child support order consistent with the provisions of KRS 403.212.

(8) The fiscal court of any county which has authorized the appointment of a friend of the court under this section shall, by resolution, fix a reasonable compensation for the friend of the court and make a reasonable allowance for necessary expenses, equipment, and supplies, payable out of the general fund of the county, upon approval of the appointing judge or judges.

#### **403.110 Purpose of chapter.**

This chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

- (1) Strengthen and preserve the integrity of marriage and safeguard family relationships;
- (2) Promote the amicable settlement of disputes that have arisen between parties to a marriage;
- (3) Mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;
- (4) Make reasonable provision for spouse and minor children during and after litigation; and
- (5) Make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making ir retrievable breakdown of the marriage relationship the sole basis for its dissolution.

#### **403.120 Marriage -- Court may declare invalid.**

(1) The Circuit Court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

- (a) A party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or deformity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress, or by fraud involving the essentials of marriage;
- (b) A party lacks the physical capacity to consummate the marriage by sexual intercourse, and the other party did not at the time the marriage was solemnized know of the incapacity;
- (c) The marriage is prohibited.

(2) A declaration of invalidity under paragraph (a), (b) or (c) of subsection (1) may be sought by any of the following persons and must be commenced within the times specified, but only for the causes set out in paragraph (a) may a declaration of invalidity be sought after the death of either party to the marriage:

- (a) For a reason set forth in paragraphs (a) and (b) of subsection (1), by party or by the legal representative of the party who lacked capacity to consent, who was the offended party or did not know of the incapacity, no later than 90 days after the petitioner obtained knowledge of the described condition;
- (b) For the reason set forth in paragraph (c) of subsection (1), by either party, no later than one (1) year after the petitioner obtained knowledge of the described condition.

**403.130 Rules of Civil Procedure to apply.**

- (1) The Rules of Civil Procedure apply to all proceedings under this chapter, except as otherwise provided in this chapter.
- (2) A proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled "In re the Marriage of .... and ....." A custody or support proceeding shall be entitled "In re the (Custody) (Support) of ....."
- (3) The initial pleading in all proceedings under this chapter shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this chapter, shall be denominated as provided in the Rules of Civil Procedure.
- (4) In this chapter, "decree" includes "judgment."
- (5) A decree of dissolution or of legal separation, if made, shall not be awarded to one (1) of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed.

**Dissolution -- Legal Separation**

**403.140 Marriage -- Court may enter decree of dissolution or separation.**

- (1) The Circuit Court shall enter a decree of dissolution of marriage if:
  - (a) The court finds that one (1) of the parties, at the time the action was commenced, resided in this state, or was stationed in this state while a member of the armed services, and that the residence or military presence has been maintained for 180 days next preceding the filing of the petition;
  - (b) The court finds that the conciliation provisions of KRS 403.170 either do not apply or have been met;
  - (c) The court finds that the marriage is irretrievably broken; and
  - (d) To the extent it has jurisdiction to do so, the court has considered, approved or made provision for child custody, the support of any child of the marriage entitled to support, the maintenance of either spouse, and the disposition of property.
- (2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects, in which latter event the other provisions of this chapter shall apply.

**403.150 Procedure -- Commencement of action, pleadings, abolition of existing defenses.**

- (1) All proceedings under this chapter are commenced in the manner provided by the Rules of Civil Procedure.
- (2) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege the marriage is irretrievably broken and shall set forth:
  - (a) The age, occupation, Social Security number, and residence of each party and his length of residence in this state. If domestic violence and abuse, as defined in KRS 403.720, is alleged by either party, the party filing the petition shall certify the existence and status of any domestic violence protective orders. The party filing the petition and alleging the abuse may substitute the party's attorney's address as the address of the party and any minor children;
  - (b) The date of the marriage and the place at which it was registered;
  - (c) That the parties are separated and the date on which the parties separated;
  - (d) The names, ages, Social Security numbers, and addresses of any living infant children of the marriage, and whether the wife is pregnant;
  - (e) Any arrangements as to custody, visitation, and support of the children and the maintenance of a spouse; and
  - (f) The relief sought.

- (3) Either or both parties to the marriage may initiate the proceeding.
- (4) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Rules of Civil Procedure and may file a verified response.
- (5) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.
- (6) The court may join additional parties proper for the exercise of its authority to implement this chapter.
- (7) When the wife is pregnant at the time the petition is filed, the court may continue the case until the pregnancy is terminated.

**403.160 Temporary orders -- Maintenance, child support, injunction -- Disclosure of information on domestic violence or child abuse.**

- (1) In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.
- (2) (a) In a proceeding for dissolution of marriage, legal separation, or child support, either party, with notice to the opposing party, may move for temporary child support. The motion shall be accompanied by an affidavit setting forth the number of children of the marriage and the information required to calculate the combined adjusted parental gross income set forth in KRS 403.212(2)(g), and the Social Security numbers of all parties subject to the motion. The court shall, within fourteen (14) days from the filing of said motion, order an amount of temporary child support based upon the child support guidelines as provided by law, and the ordered child support shall be retroactive to the date of the filing of the motion unless otherwise ordered by the court.  
(b) Upon a showing of good cause, either party may move the court to enter an order for temporary child support without written or oral notice to the adverse party. After reviewing the affidavit required by paragraph (a) of this subsection, the court may issue a temporary child support order based upon the child support guidelines. The order shall provide that the order becomes effective seven (7) days following service of the order and movant's affidavit upon the adverse party unless the adverse party, within the seven (7) day period, files a motion for a hearing before the court. The motion for hearing shall be accompanied by the affidavit required by paragraph (a) of this subsection. Pending the hearing, the adverse party shall pay child support in an amount based upon the guidelines and the adverse party's affidavit. The child support order entered following the hearing shall be retroactive to the date of the filing of the motion for temporary support unless otherwise ordered by the court.
- (3) As part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction or restraining order pursuant to the Rules of Civil Procedure.
- (4) If the court or agent of the court is made aware that there is reasonable evidence of domestic violence or child abuse, the court shall determine whether disclosure to any other person of the information could be harmful to the parent or child, and if the court determines that disclosure to any person could be harmful, the court and its agents shall not make the disclosure.
- (5) On the basis of the showing made and in conformity with KRS 403.200, the court may issue a temporary injunction or restraining order and an order for temporary maintenance in amounts and on terms just and proper in the circumstances.
- (6) A temporary order or temporary injunction:
  - (a) Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;
  - (b) May be revoked or modified before final decree on a showing of the facts necessary to revocation or modification under the circumstances; and
  - (c) Terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

**403.170 Marriage -- Irretrievable breakdown.**

- (1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken. No

decree shall be entered until the parties have lived apart for 60 days. Living apart shall include living under the same roof without sexual cohabitation. The court may order a conciliation conference as a part of the hearing.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the prospect of reconciliation, and shall:

(a) Make a finding whether the marriage is irretrievably broken; or

(b) Continue the matter for further hearing not fewer than 30 nor more than 60 days later, or as soon thereafter as the matter may be reached on the court's calendar, and may suggest to the parties that they seek counseling. The court, at the request of either party shall, or on its own motion may, order a conciliation conference. At the adjourned hearing the court shall make a finding whether the marriage is irretrievably broken.

(3) A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

#### **403.180 Separation agreement -- Court may find unconscionable.**

(1) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for maintenance of either of them, disposition of any property owned by either of them, and custody, support and visitation of their children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the custody, support, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(3) If the court finds the separation agreement unconscionable, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property, support, and maintenance.

(4) If the court finds that the separation agreement is not unconscionable as to support, maintenance, and property:

(a) Unless the separation agreement provides to the contrary, its terms shall be set forth verbatim or incorporated by reference in the decree of dissolution or legal separation and the parties shall be ordered to perform them; or

(b) If the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement and state that the court has found the terms not unconscionable.

(5) Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(6) Except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms if the separation agreement so provides. Otherwise, terms of a separation agreement are automatically modified by modification of the decree.

#### **403.190 Disposition of property.**

(1) In a proceeding for dissolution of the marriage or for legal separation, or in a proceeding for disposition of property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall assign each spouse's property to him. It also shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors including:

(a) Contribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker;

(b) Value of the property set apart to each spouse;

(c) Duration of the marriage; and

(d) Economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children.

(2) For the purpose of this chapter, "marital property" means all property acquired by either spouse subsequent to the marriage except:

- (a) Property acquired by gift, bequest, devise, or descent during the marriage and the income derived therefrom unless there are significant activities of either spouse which contributed to the increase in value of said property and the income earned therefrom;
  - (b) Property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent;
  - (c) Property acquired by a spouse after a decree of legal separation;
  - (d) Property excluded by valid agreement of the parties; and
  - (e) The increase in value of property acquired before the marriage to the extent that such increase did not result from the efforts of the parties during marriage.
- (3) All property acquired by either spouse after the marriage and before a decree of legal separation is presumed to be marital property, regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (2) of this section.
- (4) If the retirement benefits of one spouse are excepted from classification as marital property, or not considered as an economic circumstance during the division of marital property, then the retirement benefits of the other spouse shall also be excepted, or not considered, as the case may be. However, the level of exception provided to the spouse with the greater retirement benefit shall not exceed the level of exception provided to the other spouse. Retirement benefits, for the purposes of this subsection shall include retirement or disability allowances, accumulated contributions, or any other benefit of a retirement system or plan regulated by the Employees Retirement Income Security Act of 1974, or of a public retirement system administered by an agency of a state or local government, including deferred compensation plans created pursuant to KRS 18A.230 to 18A.275 or defined contribution or money purchase plans qualified under Section 401(a) of the Internal Revenue Code of 1954, as amended.

#### **403.200 Maintenance -- Court may grant order for either spouse.**

- (1) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of a marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:
- (a) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs; and
  - (b) Is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.
- (2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, and after considering all relevant factors including:
- (a) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;
  - (b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;
  - (c) The standard of living established during the marriage;
  - (d) The duration of the marriage;
  - (e) The age, and the physical and emotional condition of the spouse seeking maintenance; and
  - (f) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

#### **403.210 Recognition of "Family Support Act of 1988" mandate.**

The General Assembly recognizes that under the federal "Family Support Act of 1988," P.L. 100-485, the Commonwealth of Kentucky is required to implement child support guidelines.

#### **403.211 Action to establish or enforce child support -- Rebuttable presumption for award -- Allocation of child-care costs and health care expenses -- Order for payment of health insurance coverage -- Noncustodial parent's health plan -- Attachment of income -- Credit for disability payments.**

(1) An action to establish or enforce child support may be initiated by the parent, custodian, or agency substantially contributing to the support of the child. The action may be brought in the county in which the child resides or where the defendant resides.

(2) At the time of initial establishment of a child support order, whether temporary or permanent, or in any proceeding to modify a support order, the child support guidelines in KRS 403.212 shall serve as a rebuttable presumption for the establishment or modification of the amount of child support. Courts may deviate from the guidelines where their application would be unjust or inappropriate. Any deviation shall be accompanied by a written finding or specific finding on the record by the court, specifying the reason for the deviation.

(3) A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption and allow for an appropriate adjustment of the guideline award if based upon one (1) or more of the following criteria:

(a) A child's extraordinary medical or dental needs;

(b) A child's extraordinary educational, job training, or special needs;

(c) Either parent's own extraordinary needs, such as medical expenses;

(d) The independent financial resources, if any, of the child or children;

(e) Combined monthly adjusted parental gross income in excess of the Kentucky child support guidelines;

(f) The parents of the child, having demonstrated knowledge of the amount of child support established by the Kentucky child support guidelines, have agreed to child support different from the guideline amount. However, no such agreement shall be the basis of any deviation if public assistance is being paid on behalf of a child under the provisions of Part D of Title IV of the Federal Social Security Act; and

(g) Any similar factor of an extraordinary nature specifically identified by the court which would make application of the guidelines inappropriate.

(4) "Extraordinary" as used in this section shall be determined by the court in its discretion.

(5) When a party has defaulted or the court is otherwise presented with insufficient evidence to determine gross income, the court shall order child support based upon the needs of the child or the previous standard of living of the child, whichever is greater. An order entered by default or due to insufficient evidence to determine gross income may be modified upward and arrearages awarded from the date of the original order if evidence of gross income is presented within two (2) years which would have established a higher amount of child support pursuant to the child support guidelines set forth in KRS 403.212.

(6) The court shall allocate between the parents, in proportion to their combined monthly adjusted parental gross income, reasonable and necessary child care costs incurred due to employment, job search, or education leading to employment, in addition to the amount ordered under the child support guidelines.

(7) (a) If health care insurance coverage is reasonable and available at the time the request for coverage is made, the court shall allocate between the parents, in proportion to their combined monthly adjusted parental gross income, the cost of health care insurance coverage for the child, in addition to the support ordered under the child support guidelines.

(b) A parent, who has one hundred percent (100%) of the combined monthly adjusted parental gross income, shall be entitled to a reduction in gross income of the entire amount of premiums incurred and paid.

(c) The court shall order the cost of health care of the child to be paid by either or both parents of the child regardless of who has physical custody. The court order shall include:

1. A judicial directive designating which parent shall have financial responsibility for providing health care for the dependent child, which shall include, but not be limited to, insurance coverage, payments of necessary health care deductibles or copayments; and

2. A statement providing that if the designated parent's health care coverage provides for covered services for dependent children beyond the age of majority, then any unmarried children up to twenty-five (25) years of age who are full-time students enrolled in and attending an accredited educational institution and who are primarily dependent on the insured parent for maintenance and support shall be covered.

(d) If health care insurance coverage is not reasonable and available at the time the request for the coverage is made, the court order shall provide for health care insurance coverage at the time it becomes reasonable and available.

(8) The cost of extraordinary medical expenses shall be allocated between the parties in proportion to their combined monthly adjusted parental gross incomes. "Extraordinary medical expenses"

means uninsured expenses in excess of one hundred dollars (\$100) per child per calendar year. "Extraordinary medical expenses" includes, but is not limited to, the costs that are reasonably necessary for medical, surgical, dental, orthodontal, optometric, nursing, and hospital services; for professional counseling or psychiatric therapy for diagnosed medical disorders; and for drugs and medical supplies, appliances, laboratory, diagnostic, and therapeutic services.

(9) The court order shall include the Social Security numbers of all parties subject to a support order.

(10) In any case administered by the Cabinet for Health and Family Services, if the parent ordered to provide health care coverage is enrolled through an insurer but fails to enroll the child under family coverage, the other parent or the Cabinet for Health and Family Services may, upon application, enroll the child.

(11) In any case administered by the cabinet, information received or transmitted shall not be published or be open for public inspection, including reasonable evidence of domestic violence or child abuse if the disclosure of the information could be harmful to the custodial parent or the child of the parent. Necessary information and records may be furnished as specified by KRS 205.175.

(12) In the case in which a noncustodial parent provides health care coverage, and changes employment, and the new employer provides health care coverage, the Cabinet for Health and Family Services shall transfer notice of the provision for coverage for the child to the employer, which shall operate to enroll this child in the noncustodial parent's health plan, unless the noncustodial parent contests the notice as specified by KRS Chapter 13B.

(13) Notwithstanding any other provision of this section, any wage or income shall not be exempt from attachment or assignment for the payment of current child support or owed or to-be-owed child support.

(14) A payment of money received by a child as a result of a parental disability shall be credited against the child support obligation of the parent. A payment shall not be counted as income to either parent when calculating a child support obligation. An amount received in excess of the child support obligation shall be credited against a child support arrearage owed by the parent that accrued subsequent to the date of the parental disability, but shall not be applied to an arrearage that accrued prior to the date of disability. The date of disability shall be as determined by the paying agency.

#### **403.212 Child support guidelines -- Terms to be applied in calculations -- Table.**

(1) The following provisions and child support table shall be the child support guidelines established for the Commonwealth of Kentucky.

(2) For the purposes of the child support guidelines:

(a) "Income" means actual gross income of the parent if employed to full capacity or potential income if unemployed or underemployed.

(b) "Gross income" includes income from any source, except as excluded in this subsection, and includes but is not limited to income from salaries, wages, retirement and pension funds, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, Supplemental Security Income (SSI), gifts, prizes, and alimony or maintenance received. Specifically excluded are benefits received from means-tested public assistance programs, including but not limited to public assistance as defined under Title IV-A of the Federal Social Security Act, and food stamps.

(c) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Straight-line depreciation, using Internal Revenue Service (IRS) guidelines, shall be the only allowable method of calculating depreciation expense in determining gross income. Specifically excluded from ordinary and necessary expenses for purposes of this guideline shall be investment tax credits or any other business expenses inappropriate for determining gross income for purposes of calculating child support. Income and expenses from self-employment or operation of a business shall be carefully reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. In most cases, this amount will differ from a determination of business income for tax purposes. Expense reimbursement or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business or personal use of business property or payments of expenses by a business, shall be counted as income if they are

significant and reduce personal living expenses such as a company or business car, free housing, reimbursed meals, or club dues.

(d) If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income, except that a determination of potential income shall not be made for a parent who is physically or mentally incapacitated or is caring for a very young child, age three (3) or younger, for whom the parents owe a joint legal responsibility. Potential income shall be determined based upon employment potential and probable earnings level based on the obligor's or obligee's recent work history, occupational qualifications, and prevailing job opportunities and earnings levels in the community. A court may find a parent to be voluntarily unemployed or underemployed without finding that the parent intended to avoid or reduce the child support obligation.

(e) "Imputed child support obligation" means the amount of child support the parent would be required to pay from application of the child support guidelines.

(f) Income statements of the parents shall be verified by documentation of both current and past income. Suitable documentation shall include, but shall not be limited to, income tax returns, paystubs, employer statements, or receipts and expenses if self-employed.

(g) "Combined monthly adjusted parental gross income" means the combined monthly gross incomes of both parents, less any of the following payments made by the parent:

1. The amount of pre-existing orders for current maintenance for prior spouses to the extent payment is actually made and the amount of current maintenance, if any, ordered paid in the proceeding before the court;

2. The amount of pre-existing orders of current child support for prior-born children to the extent payment is actually made under those orders; and

3. A deduction for the support to the extent payment is made, if a parent is legally responsible for and is actually providing support for other priorborn children who are not the subject of a particular proceeding. If the prior-born children reside with that parent, an "imputed child support obligation" shall be allowed in the amount which would result from application of the guidelines for the support of the prior-born children.

(h) "Split custody arrangement" means a situation where each parent is the residential custodian for one (1) or more children for whom the parents share a joint legal responsibility.

(3) The child support obligation set forth in the child support guidelines table shall be divided between the parents in proportion to their combined monthly adjusted parental gross income.

(4) The child support obligation shall be the appropriate amount for the number of children in the table for whom the parents share a joint legal responsibility. The minimum amount of child support shall be sixty dollars (\$60) per month.

(5) The court may use its judicial discretion in determining child support in circumstances where combined adjusted parental gross income exceeds the uppermost levels of the guideline table.

(6) The child support obligation in a split custody arrangement shall be calculated in the following manner:

(a) Two (2) separate child support obligation worksheets shall be prepared, one (1) for each household, using the number of children born of the relationship in each separate household, rather than the total number of children born of the relationship.

(b) The nonresidential custodian with the greater monthly obligation amount shall pay the difference between the obligation amounts, as determined by the worksheets, to the other parent.

(7) The child support guidelines table is as follows:

COMBINED

MONTHLY

ADJUSTED

PARENTAL

GROSS SIX

INCOME ONE TWO THREE FOUR FIVE OR

CHILD CHILDREN MORE

\$ 0 \$ 60 \$ 60 \$ 60 \$ 60 \$ 60 \$ 60

100 60 60 60 60 60 60

200 70 70 70 70 70 70

300 80 80 80 80 80 80

400 90 90 90 90 90 90

500 100 105 110 115 120 125

600 120 125 130 135 140 145

700 140 156 161 166 171 176

800 160 203 208 213 218 223  
900 180 261 266 271 276 281  
1,000 195 303 325 330 335 340  
1,100 212 324 384 389 394 399  
1,200 229 346 433 446 451 456  
1,300 246 367 460 504 510 515  
1,400 262 392 491 554 576 582  
1,500 277 417 522 588 642 650  
1,600 293 437 548 618 674 717  
1,700 308 458 574 647 706 755  
1,800 322 478 599 675 736 788  
1,900 336 495 620 699 763 816  
2,000 350 512 642 723 789 844  
2,100 364 529 663 747 815 872  
2,200 376 546 684 771 841 900  
2,300 389 563 706 795 868 928  
2,400 401 580 727 819 894 956  
2,500 413 597 749 843 920 984  
2,600 424 614 770 867 946 1,012  
2,700 435 630 790 889 970 1,038  
2,800 445 646 809 911 994 1,064  
2,900 455 662 829 934 1,019 1,090  
3,000 465 677 849 956 1,043 1,116  
3,100 475 693 868 978 1,067 1,142  
3,200 485 709 888 1,001 1,092 1,168  
3,300 495 725 908 1,023 1,116 1,194  
3,400 506 741 928 1,045 1,140 1,220  
3,500 516 757 947 1,067 1,164 1,246  
3,600 526 773 967 1,090 1,189 1,272  
3,700 536 790 988 1,113 1,215 1,299  
3,800 548 808 1,011 1,139 1,243 1,329  
3,900 559 826 1,033 1,164 1,270 1,359  
4,000 571 844 1,056 1,190 1,298 1,388  
4,100 580 862 1,078 1,215 1,326 1,418  
4,200 592 880 1,101 1,240 1,353 1,448  
4,300 603 898 1,123 1,266 1,381 1,477  
4,400 615 916 1,146 1,291 1,409 1,507  
4,500 626 933 1,161 1,316 1,435 1,535  
4,600 636 949 1,181 1,338 1,459 1,561  
4,700 647 964 1,200 1,360 1,483 1,586  
4,800 657 980 1,220 1,381 1,507 1,612  
4,900 667 995 1,239 1,403 1,531 1,637  
5,000 676 1,010 1,257 1,424 1,554 1,661  
5,100 686 1,025 1,275 1,444 1,576 1,685  
5,200 695 1,039 1,294 1,465 1,599 1,709  
5,300 705 1,054 1,312 1,486 1,621 1,733  
5,400 714 1,069 1,330 1,506 1,644 1,757  
5,500 724 1,083 1,348 1,527 1,666 1,781  
5,600 733 1,098 1,367 1,548 1,689 1,805  
5,700 743 1,113 1,385 1,568 1,712 1,829  
5,800 753 1,127 1,403 1,589 1,734 1,853  
5,900 762 1,142 1,421 1,610 1,757 1,877  
6,000 772 1,157 1,440 1,630 1,779 1,901  
6,100 781 1,171 1,458 1,651 1,802 1,926  
6,200 791 1,186 1,476 1,672 1,824 1,950  
6,300 800 1,198 1,498 1,690 1,844 1,970  
6,400 808 1,209 1,511 1,705 1,860 1,988  
6,500 816 1,219 1,524 1,720 1,876 2,005  
6,600 823 1,230 1,538 1,735 1,893 2,023  
6,700 830 1,240 1,551 1,750 1,909 2,040

6,800 837 1,251 1,564 1,764 1,925 2,058  
6,900 844 1,261 1,577 1,779 1,942 2,075  
7,000 851 1,272 1,591 1,794 1,958 2,093  
7,100 858 1,282 1,604 1,809 1,975 2,110  
7,200 865 1,293 1,617 1,824 1,991 2,127  
7,300 872 1,303 1,630 1,839 2,007 2,145  
7,400 879 1,313 1,644 1,854 2,024 2,162  
7,500 885 1,324 1,657 1,869 2,040 2,179  
7,600 891 1,333 1,668 1,881 2,053 2,194  
7,700 896 1,342 1,679 1,893 2,066 2,208  
7,800 901 1,350 1,691 1,905 2,079 2,223  
7,900 907 1,359 1,702 1,917 2,093 2,238  
8,000 912 1,368 1,713 1,929 2,106 2,252  
8,100 917 1,377 1,724 1,941 2,119 2,267  
8,200 922 1,386 1,736 1,953 2,133 2,281  
8,300 928 1,395 1,747 1,965 2,146 2,296  
8,400 933 1,404 1,758 1,977 2,159 2,311  
8,500 938 1,413 1,769 1,989 2,173 2,325  
8,600 944 1,421 1,780 2,002 2,186 2,340  
8,700 949 1,430 1,792 2,014 2,199 2,354  
8,800 954 1,437 1,800 2,024 2,210 2,366  
8,900 958 1,444 1,809 2,033 2,220 2,376  
9,000 962 1,450 1,817 2,042 2,230 2,387  
9,100 966 1,457 1,825 2,052 2,241 2,398  
9,200 971 1,463 1,833 2,061 2,251 2,408  
9,300 975 1,470 1,842 2,070 2,261 2,419  
9,400 979 1,476 1,850 2,079 2,271 2,430  
9,500 983 1,483 1,858 2,089 2,281 2,440  
9,600 988 1,489 1,866 2,098 2,291 2,451  
9,700 992 1,496 1,874 2,107 2,301 2,461  
9,800 996 1,502 1,883 2,117 2,311 2,472  
9,900 1,000 1,508 1,891 2,126 2,321 2,483  
10,000 1,005 1,515 1,899 2,165 2,331 2,493  
10,400 1,022 1,541 1,932 2,202 2,372 2,536  
10,500 1,027 1,548 1,940 2,212 2,382 2,546  
10,600 1,032 1,554 1,948 2,221 2,392 2,557  
10,700 1,036 1,561 1,956 2,230 2,402 2,567  
10,800 1,040 1,567 1,965 2,240 2,412 2,578  
10,900 1,044 1,573 1,973 2,249 2,422 2,589  
11,000 1,049 1,580 1,981 2,258 2,432 2,599  
11,100 1,053 1,587 1,989 2,268 2,443 2,610  
11,200 1,058 1,593 1,997 2,277 2,453 2,620  
11,300 1,062 1,600 2,005 2,286 2,463 2,631  
11,400 1,066 1,606 2,013 2,295 2,473 2,642  
11,500 1,070 1,613 2,021 2,305 2,483 2,652  
11,600 1,075 1,619 2,029 2,314 2,493 2,663  
11,700 1,079 1,626 2,037 2,323 2,503 2,673  
11,800 1,084 1,633 2,046 2,333 2,513 2,684  
11,900 1,088 1,639 2,054 2,342 2,523 2,695  
12,000 1,093 1,646 2,062 2,351 2,533 2,705  
12,100 1,097 1,653 2,070 2,361 2,544 2,716  
12,200 1,102 1,659 2,078 2,370 2,554 2,726  
12,300 1,106 1,666 2,086 2,379 2,564 2,737  
12,400 1,110 1,672 2,094 2,388 2,574 2,748  
12,500 1,114 1,679 2,102 2,398 2,584 2,758  
12,600 1,119 1,685 2,110 2,407 2,594 2,769  
12,700 1,123 1,692 2,118 2,416 2,604 2,779  
12,800 1,128 1,699 2,127 2,426 2,614 2,790  
12,900 1,132 1,705 2,135 2,435 2,624 2,801  
13,000 1,137 1,712 2,143 2,444 2,634 2,811

13,100	1,141	1,719	2,151	2,454	2,645	2,822
13,200	1,146	1,725	2,159	2,463	2,665	2,832
13,300	1,150	1,732	2,167	2,472	2,665	2,843
13,400	1,154	1,738	2,175	2,481	2,675	2,854
13,500	1,158	1,745	2,183	2,491	2,685	2,864
13,600	1,163	1,751	2,191	2,500	2,695	2,875
13,700	1,167	1,758	2,199	2,509	2,705	2,885
13,800	1,172	1,765	2,208	2,519	2,715	2,896
13,900	1,176	1,771	2,216	2,528	2,725	2,907
14,000	1,181	1,778	2,224	2,537	2,735	2,917
14,100	1,185	1,785	2,232	2,547	2,746	2,928
14,200	1,190	1,791	2,240	2,556	2,756	2,938
14,300	1,194	1,798	2,248	2,565	2,766	2,949
14,400	1,198	1,804	2,256	2,574	2,776	2,960
14,500	1,202	1,811	2,264	2,584	2,786	2,970
14,600	1,207	1,817	2,272	2,593	2,796	2,981
14,700	1,211	1,824	2,280	2,602	2,806	2,991
14,800	1,216	1,831	2,289	2,612	2,816	3,002
14,900	1,220	1,837	2,297	2,621	2,826	3,013
15,000	1,225	1,844	2,305	2,630	2,836	3,023

**403.213 Criteria for modification of orders for child support and for health care -- Effects of emancipation and death of obligated parent -- Commission to review guidelines.**

(1) The Kentucky child support guidelines may be used by the parent, custodian, or agency substantially contributing to the support of the child as the basis for periodic updates of child support obligations and for modification of child support orders for health care. The provisions of any decree respecting child support may be modified only as to installments accruing subsequent to the filing of the motion for modification and only upon a showing of a material change in circumstances that is substantial and continuing.

(2) Application of the Kentucky child support guidelines to the circumstances of the parties at the time of the filing of a motion or petition for modification of the child support order which results in equal to or greater than a fifteen percent (15%) change in the amount of support due per month shall be rebuttably presumed to be a material change in circumstances. Application which results in less than a fifteen percent (15%) change in the amount of support due per month shall be rebuttably presumed not to be a material change in circumstances. For the one (1) year period immediately following enactment of this statute, the presumption of material change shall be a twenty-five percent (25%) change in the amount of child support due rather than the fifteen percent (15%) stated above.

(3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child shall be terminated by emancipation of the child unless the child is a high school student when he reaches the age of eighteen (18). In cases where the child becomes emancipated because of age, but not due to marriage, while still a high school student, the court-ordered support shall continue while the child is a high school student, but not beyond completion of the school year during which the child reaches the age of nineteen (19) years. Provisions for the support of the child shall not be terminated by the death of a parent obligated to support the child. If a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances. Emancipation of the child shall not terminate the obligation of child support arrearages that accrued while the child was an unemancipated minor.

(4) The child support guidelines table shall be reviewed at least once every four (4) years by a commission consisting of the following persons:

(a) The secretary of the Cabinet for Health and Family Services or a supervisory staff person designated by him;

(b) Two (2) members of the Kentucky Bar Association who have at least six (6) consecutive years' experience and are presently practicing domestic relations cases, one (1) member from a metropolitan or large urban area and one (1) member from a less populated area;

(c) Two (2) Circuit Judges appointed by the Chief Justice of the Kentucky Supreme Court, one (1) from a metropolitan or large urban area, and one (1) from a less populated area;

(d) One (1) District Judge appointed by the Chief Justice of the Kentucky Supreme Court;

- (e) Two (2) county attorneys appointed by the president of the County Attorneys Association, one (1) from a metropolitan or large urban area and one (1) from a less populated area;
- (f) The Attorney General or his designee, who shall be an attorney from his office;
- (g) One (1) person who is a custodial parent;
- (h) One (1) person who is a noncustodial parent;
- (i) One (1) person who is a parent with split custody; and
- (j) One (1) child advocate.

The members designated in paragraphs (g) to (j) of this subsection shall be appointed by the Governor from a list of three (3) names for each category submitted by the Cabinet for Health and Family Services. If the status of one (1) of these members changes, the member shall be replaced through appointment by the Governor from a list of three (3) names submitted by the cabinet.

(5) The commission shall make a recommendation to the Kentucky General Assembly to ensure that the child support guidelines table results in a determination of appropriate child support amounts.

#### **403.215 Assignment of wages for child support obligations.**

After July 15, 1990, any new or modified order or decree which contains provisions for the support of a minor child or minor children, shall provide for a wage assignment which shall begin immediately except for good cause shown, and which shall be paid based upon the payment schedule of wages of the employer to whom the wage assignment is directed, and at a minimum, on a monthly basis. If good cause is shown, the wage assignment shall take effect when an arrearage accrues that is equal to the amount of support payable for one (1) month, pursuant to KRS 405.465.

#### **403.220 Costs of action and attorney's fees.**

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

#### **403.230 Legal separation -- Court may convert, to a decree of dissolution -- Restoration of former name.**

- (1) No earlier than one year after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage.
- (2) Upon request by a wife whose marriage is dissolved or declared invalid, the court may, and if there are no children of the parties shall, order her maiden name or a former name restored.

#### **403.240 Decree or temporary order -- Failure to comply with -- Good-cause defense -- Attorney's fees.**

- (1) If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended; but he may move the court to grant an appropriate order.
- (2) The failure of either party, without good cause, to comply with a provision of a decree or temporary order or injunction, including a provision with respect to visitation or child support shall constitute contempt of court, and the court shall remedy the failure to comply.
- (3) Good cause not to comply with a provision of a decree or temporary order or injunction with respect to visitation shall include mutual consent of the parties, reasonable belief by either party that there exists the possibility of endangerment to the physical, mental, moral, or emotional health of the child, or endangerment to the physical safety of either party, or extraordinary circumstances as determined by the court.
- (4) The court may, if no reasonable cause is found for denial of visitation, award attorney's fees to the prevailing party.

**403.250 Modification or termination of provisions for maintenance and property disposition.**

(1) Except as otherwise provided in subsection (6) of KRS 403.180, the provisions of any decree respecting maintenance may be modified only upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(2) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

**Custody**

**403.270 Custodial issues -- Best interests of child shall determine -- Joint custody permitted -- De facto custodian.**

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

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

(2) The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent and to any de facto custodian. The court shall consider all relevant factors including:

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

(b) The wishes of the child as to his custodian;

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

(d) The child's adjustment to his home, school, and community;

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

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

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

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

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

(3) The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child. If domestic violence and abuse is alleged, the court shall determine the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parents.

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

(5) The court may grant joint custody to the child's parents, or to the child's parents and a de facto custodian, if it is in the best interest of the child.

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

#### **403.280 Temporary custody orders.**

(1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in KRS 403.350. The court may award temporary custody under the standards of KRS 403.270 after a hearing, or, if there is no objection, solely on the basis of the affidavits.

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

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

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

#### **403.290 Child: court may interview, court may seek advice of professional personnel.**

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

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

#### **403.300 Investigation: court may order in custody proceedings -- Attorney to receive copy.**

(1) In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by the friend of the court or such other agency as the court may select.

(2) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he has reached the age of 16, unless the court finds that he lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The clerk shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data, and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing.

#### **403.310 Hearings: custody proceedings shall receive priority.**

(1) Custody proceedings shall receive priority in being set for hearing.

(2) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interests of the child.

(3) The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(4) If the court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the court may make an appropriate order sealing the record.

#### **403.320 Visitation of minor child.**

(1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health. Upon request of either party, the court shall issue orders which are specific as to the frequency, timing, duration, conditions, and method of scheduling visitation and which reflect the development age of the child.

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

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

#### **403.325 Visitation denied parent convicted of homicide of other parent -- Exception -- Hearing required.**

(1) Notwithstanding the provisions of KRS 403.320, if a parent of a child is convicted of murder or manslaughter in the first degree of the other parent, a court shall not grant the convicted parent visitation rights with respect to that child unless the court, through a hearing, determines that visitation is in the child's best interest.

(2) If the court later modifies a denial of visitation to grant visitation, the court shall do so only after a hearing which establishes that visitation is in the child's best interest.

(3) In any hearing conducted under subsection (1) or (2) of this section:

(a) Jurisdiction shall lie with the Circuit Court of the county where the child resides; and

(b) The convicted parent, to obtain visitation, shall have to meet the burden of proving that visitation is in the child's best interest.

#### **403.330 Judicial supervision of custody decree or agreement.**

(1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the court after hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.

(2) If both parents or all contestants agree to the order, or if the court finds that in the absence of the order the child's physical health would be endangered or his emotional development significantly impaired, the court may order the local probation, another appropriate local entity, or if currently involved in the case, the child welfare department to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

#### **403.340 Modification of custody decree.**

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

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

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

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

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

if a change has occurred and whether a modification of custody is in the best interests of the child, the court shall consider the following:

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

**403.350 Affidavit required with motion for temporary custody order or for modification of custody decree.**

A party seeking a temporary custody order or modification of a custody decree shall submit together with his moving papers an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits. If a court determines that a child is in the custody of a de facto custodian, the court shall make the de facto custodian a party to the proceeding. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.