

**REPORT OF THE 1998-1999
SPECIAL TASK FORCE ON PARENTING
AND CHILD CUSTODY**

RESEARCH MEMORANDUM NO. 490

Legislative Research Commission
Frankfort, Kentucky
March 2000

**REPORT OF THE 1998-1999
SPECIAL TASK FORCE ON PARENTING
AND CHILD CUSTODY**

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MEMORANDUM

TO: Senator David L. Williams, President of the Senate
Representative Jody Richards, Speaker of the House

FROM: Senator David Karem, Co-Chair
Representative Eleanor Jordan, Co-Chair

SUBJECT: Final Report of the Special Task Force on Parenting and Child Custody

DATE: January 6, 2000

During the 1998 Session of the Kentucky General Assembly, Senate Bills 290 and 386 were introduced calling for a comprehensive revision of the child custody and visitation statutes. Neither of these bills was enacted into law. The 1998 Kentucky General Assembly did pass House Bill 319, which established a task force (ultimately named the Special Task Force on Parenting and Child Custody) to study custody and visitation in Kentucky and submit findings to the Legislative Research Commission.

The Special Task Force consisted of 19 members with diverse backgrounds: 8 legislators, 4 judges, 2 attorneys, 2 domestic violence experts, 2 psychologists, and a children's advocate. The Special Task Force met for over a year to address many difficult parenting and child custody issues and arrive at a Final Report.

One fundamental principle flows through this Final Report. A child custody and visitation system should reduce hostility among parents and other parties during and after divorce and promote cooperation with regard to securing the best interests of children of divorce.

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SECTION 1

MEMBERSHIP AND STAFF

REPORT OF THE 1998-1999 SPECIAL TASK FORCE ON PARENTING AND CHILD CUSTODY

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PRESENTED TO THE
LEGISLATIVE RESEARCH COMMISSION
AND THE
2000 REGULAR SESSION OF THE
KENTUCKY GENERAL ASSEMBLY

SECTION 2

TASK FORCE ACTIVITY

The 1998 Kentucky General Assembly passed House Bill 319, which created a task force (ultimately named the Special Task Force on Parenting and Child Custody) to study child custody and visitation in Kentucky and submit findings to the Legislative Research Commission.

The Task Force held thirteen meetings from September 1998 to October 1999.

The Task Force received background information relating to:

1. The American and Kentucky experience with child custody and visitation.
2. Major child custody legislation introduced during the 1998 Session of the Kentucky General Assembly.
3. Parenting plans and parental agreements.
4. Various Kentucky mediation efforts, including mandatory custody and visitation mediation in Jefferson County, court ordered custody and visitation mediation in Fayette County, and rural experience with mediation.
5. The views of citizens, beginning with testimony from two representatives of Fathers On Rights for Custody Equality (FORCE) and two representatives from Parents and Children for Equality (PACE).
6. Child custody legal standards in Kentucky and how they might be improved.
7. The psychological needs of parents and children during and after divorce.
8. The Washington State approach to parenting and child custody, which emphasizes the use of parenting plans.
9. The role of guardians ad litem in custody and visitation cases.
10. The impact that domestic violence and child abuse have on custody and visitation.

11. Notice of the relocation of a parent following divorce, with the relocating parent providing notice to the nonrelocating parent.
12. Methods for enforcing custody when the noncustodial parent interferes with custody and methods for enforcing visitation when the custodial parent interferes with visitation.
13. Providing child custody and visitation education to parents, children, judges, domestic relations commissioners, attorneys, and law students.

SECTION 3

MAJOR ISSUES

1. Public policy underlying a successful child custody and visitation system.

The Task Force learned that no matter what child custody and visitation system is in place, some parents will unnecessarily litigate child custody and visitation. Most parents benefit, however, when the following public policy underlies a child custody and visitation system. A system should reduce hostility among parents and other parties during and after divorce and promote cooperation with regard to securing the best interests of children of divorce. A party should not cooperate, however, if the price of that cooperation is violence or sexual abuse perpetrated against that party, a child, or other family member.

2. Impact of domestic violence and child abuse on child custody and visitation.

The Issue 1 discussion presents the public policy underlying a successful child custody and visitation system. The public policy raises a conflict. On the one hand, the policy supports the creation of a system which reduces hostility among parents and other parties during and after divorce and promotes cooperation with regard to securing the best interests of children of divorce. On the other hand, the public policy states that a party should not cooperate if the price of that cooperation is violence or sexual abuse committed against that party, a child, or other family member.

Domestic violence and child abuse experts who testified before the Task Force noted the difficulty of reconciling the conflict. These experts raised several concerns which the Task Force attempted to address in the Recommendations and the two bill drafts. The major concerns are summarized below.

- Mandated Mediation (Issue 4). In cases of domestic violence, mediation is usually inadvisable.
 - Joint custody preference (Issue 5). An award of joint custody requires that the parties have continuing contact and communication. For victims of domestic violence and child abuse, this mandated contact may be dangerous, if not deadly. Joint custody should not be preferred but should be awarded only when in the best interests of the child.
 - Parenting plans and parental agreements (Issue 6). A parenting plan statute may require the creation of a parenting plan early in the divorce process. This is a stressful and fearful time for a person trying to leave an abusive relationship. Under these circumstances, a victim has difficulty with the long term thinking necessitated by the creation of a parenting plan. Domestic violence victims may also have difficulty paying for the legal counsel necessary to develop a parenting plan.
 - Relocation of a parent following divorce (Issue 8). A typical relocation statute requires a relocating parent to notify the other parent of the relocation. However, a victim of domestic violence sometimes must flee without giving notice in order to

avoid further battery. Any relocation statute should take into account the needs of domestic violence victims.

- Parental access to education, medical, and other records of a child (Issue 10). If a statute grants equal parental access to the records of a child following divorce, that statute should limit access when there is a danger of a violent parent using information in the records to track down his or her victim.

3. Replacing "custody" and "visitation" with terms such as "parenting functions" and "residential time" that more accurately describe parenting responsibilities and are less likely to foster conflict.

At present, the Kentucky statutes are written in terms of "custody" and "visitation."

Speakers observed that "custody" and "visitation" are inappropriate words for describing a child's relationship with that child's parents after divorce. Custody suggests that a parent owns the child. Visitation suggests that a parent visits with a child but has few parenting responsibilities with regard to that child. While custody and visitation are familiar terms, they do not convey the need to maintain the proper bond between both parents and child following divorce. The states of Colorado and Washington have replaced custody and visitation with terms which more accurately describe parenting responsibilities and are less likely to foster conflict. Some courts in Kentucky, under their own authority, have replaced "visitation" with phrases such as "parenting time."

4. Mandated mediation.

Current Kentucky child custody law makes a handful of references to mediation: KRS 403.036, 403.725, 403.740, and 403.750. These statutes prohibit or limit mandated mediation when there is a finding of domestic violence. Under their own authority, however, the Jefferson County Family Court and Fayette County Circuit Court mandate mediation of certain child custody and visitation disputes when not prohibited under KRS 403.036, 403.725, 403.740, and 403.750.

Around the United States, mediation has become recognized as a highly effective tool for reducing hostility between parents and resolving child custody and visitation disputes. As one author has noted, "Mediation research...indicates that clients reach agreement in divorce mediation between 50% and 80% of the time, with most studies in the mid to upper range." (Joan Kelly, *A Decade of Divorce Mediation Research--Some Answers and Questions*, 34 Family and Conciliation Cts Rev., 373, 375 (July 1996). The success of child custody and visitation mediation has led to mediators' offering their services in every state and many states' mandating mediation in child custody and visitation disputes where there is no history of significant prior bad acts by one of the parties.

The Task Force received testimony on how well mandated mediation in child custody and visitation disputes works in Kentucky. Individuals from Jefferson County

and Fayette County said that in those counties mandated mediation achieves success rates ranging from 50% to 90%, depending on the survey.

A Fayette County mediator listed four educational benefits from mediation. First, parents should learn that a divorce does not prevent them from caring for their child. To the contrary, the parents will have to care for that child until the child turns 18. Second, mediation allows for each parent to obtain information necessary for that parent to fully understand the other parent. Third, mediation provides each party with a sense of ownership. Mediation is not like a court decision where someone wins and someone loses. Mediation provides both parties with the opportunity to arrive at a decision which both parties can support. Fourth, mediation informs the parties that in the future the two of them can solve problems without going to court.

Some of the Jefferson County and Fayette County speakers recommended that a person should receive training and certification before becoming a mediator. If a person is going to mediate custody and visitation disputes, that person should receive special training, including domestic violence and child abuse training.

Also, the Jefferson County speakers observed that Jefferson County has dealt with the issue of cost through the establishment of a sliding schedule of fees based on the ability of the clients to pay. The less income a person has the less that person pays.

Lastly, the Task Force received testimony from two rural Circuit Judges. They said that they favored the use of mediation to resolve child custody and visitation disputes. However, rural counties lack the resources available in urban communities. Therefore, rural counties will need financial assistance to train mediators and set up mediation programs. Once the programs are established, less financial assistance will be necessary.

5. Joint custody preference.

At present, at least 40 states have statutes which permit a court to award joint custody. (In the states without these statutes, a court may award joint custody at its own discretion.) In 25% of the states with joint custody statutes, the statutes express a preference for joint custody in all cases. In another 25% of the states with these statutes, a preference is given for joint custody when both parents desire joint custody. In the other 50% of the states, including Kentucky, joint custody is listed as an option.

Under current Kentucky law, KRS 403.270, there is no joint custody preference, but the law permits a court to award joint custody if it is in the best interests of the child. KRS 403.270(5). Under their own authority, however, a majority of Kentucky courts first consider joint custody when determining the custodial arrangement. The advantage of a court's first considering joint custody is that by doing so the court sends a message to the parties that the awarding of custody is not about one party's winning custody and the other party's losing. The court tries to work out some form of joint custody where both parties continue to support the best interests of the child. As a general rule, the parents

share major parenting decisions and time with the child. Only if joint custody is not feasible does a court award sole custody.

Critics of a statutory requirement that a court first consider joint custody argue that such a requirement denies a court the total freedom it needs in awarding custody and visitation. With a joint custody preference, a court may award joint custody even when a child will not benefit from being raised in two households. Critics maintain that in the worst case scenario, a court may award joint custody even when domestic violence or sexual abuse is present.

6. Parenting plans and parental agreements.

Current Kentucky Law does not refer to parenting plans or parental agreements.

Parenting plans and parental agreements serve the function of setting forth in writing some or all aspects of child custody and visitation during and after divorce.

Twenty-seven states have a parenting plan or parental agreement statute. Those states are: Alaska, Arizona, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Montana, Nebraska, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Vermont, Washington, and Wisconsin.

These statutes range in content as follows. Montana, Oregon, and Washington mandate parenting plans in most divorce cases involving children. Arizona, Colorado, Illinois, Louisiana, Massachusetts, New Mexico, Oklahoma, and Texas mandate parenting plans in most cases where joint custody is awarded. The other states authorize but do not mandate parenting plans.

Washington has the most detailed parenting plan statute (Chapter 26 of the Washington Code), and the Task Force devoted more time to studying the Washington statute than any other parenting plan statute. The Task Force received video conference testimony on the Washington statute from two experts.

Washington provides for both temporary and permanent written parenting plans.

“Temporary parenting plan” means a plan for parenting of the child pending final resolution of any action for dissolution of marriage, declaration of invalidity, or legal separation which is incorporated in a temporary order. “Permanent parenting plan” means a plan for parenting the child, including allocation of parenting functions, which plan is incorporated in any final decree or decree of modification in an action for dissolution of marriage, declaration of invalidity, or legal separation. “Parenting functions” means those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child. (Washington Code, Chapter 26)

A temporary parenting plan is arrived at when a parent seeks a temporary order relating to parenting. That parent files a proposed temporary parenting plan, and if the other parent contests the plan, then the other parent files his or her own proposed temporary parenting plan. Also, the parents may file an agreed temporary parenting plan. The court then makes a temporary parenting plan which is in the best interests of the child. However, a statute limits the parenting functions permitted a parent under the temporary parenting plan if that parent has engaged in certain prior bad acts.

A permanent parenting plan contains "provisions for resolution of future disputes between the parents, allocation of decision-making authority, and residential provisions for the child." Each party files a proposed permanent parenting plan, or both parties together file an agreed permanent parenting plan. If the parents disagree on the contents of the parenting plan, the court may order them to attend mediation or a mandatory settlement conference. If any issues remain in dispute after mediation or a mandatory settlement conference, those issues are litigated. As with a temporary parenting plan, a statute limits the parenting functions permitted a parent under the permanent parenting plan if that parent has engaged in certain prior bad acts.

Once a permanent parenting plan is in place, a statute establishes the procedure for modifying that plan as circumstances change.

7. Appointment of a guardian ad litem for the child.

Current Kentucky law provides for the appointment of a guardian ad litem to represent a child's interests under certain legal circumstances. For example, in an action for voluntary termination of parental rights, the court shall appoint a guardian ad litem to represent the child's best interests (KRS 625.041). However, the statutes do not provide for the appointment of a guardian ad litem in custody and visitation cases. Nonetheless, some Kentucky courts, under their own authority, do appoint guardians ad litem in custody and visitation cases.

Around the United States, confusion arises as to whether a person is acting as attorney or guardian ad litem for the child. An attorney for the child advocates for the child as if the child were an adult. A guardian ad litem ascertains what is in the best interests of the child and advocates on behalf of those best interests.

Child custody guardian ad litem statutes range from general to very detailed. The Florida statute in a couple of sentences authorizes a judge to appoint a child custody guardian ad litem when it is in the best interests of the child. Florida Code Section 61.401. A more detailed statute such as the Wisconsin statute (Wisconsin Code Section 767.045) or the Indiana statute (Indiana Code Sections 31-17-6-1 to 31-17-6-9) addresses several of the following issues.

- Should a guardian ad litem always be an attorney?
- What initial and ongoing training should a person have in order to serve as a guardian ad litem?
- What situations should trigger the appointment of a guardian ad litem?

- What are the responsibilities of a guardian ad litem?
- What situations should trigger the removal of a guardian ad litem?
- Should a guardian ad litem be exempt from civil liability except in cases of gross negligence?
- Who pays the guardian ad litem's fee?

8. Relocation of a parent following divorce.

In our mobile society, adults move with great frequency. If a custodial or noncustodial parent relocates a significant distance following divorce, how should the relocation affect the custodial arrangement determined at the time of divorce?

Kentucky lacks a relocation statute, but the bordering states of Illinois, Indiana, Missouri, Ohio, Tennessee, and Virginia impose some statutory requirement on a parent who moves a significant distance following divorce. The statutes range from the Virginia law, which requires mere notice, to the Missouri and Tennessee laws, which provide for a court to consider altering custody and visitation at the time the relocation occurs.

The Virginia law requires:

In any proceeding involving custody or visitation, the court shall include as a condition of any custody or visitation order a requirement that thirty days' advance written notice be given to the court and the other party by any party intending to relocate and of any intended change of address, unless the court, for good cause shown, orders otherwise. The court may require that the notice be in such form and contain such information as it deems proper and necessary under the circumstances of the case. (Virginia Code Section 20-124.5)

The Missouri and Tennessee laws, Missouri Code Section 452.377 and Tennessee Code Section 36-6-108 respectively, are longer than the Virginia statute but address several issues:

- What sort of relocation should trigger the statute?
- What should be in the relocation notice?
- When should the notice be limited or prohibited due to safety concerns?
- What should be the penalty for not providing the notice?
- What standard should the court follow for altering or not altering custody and visitation at the time the relocation occurs?

9. Child Custody and Visitation Enforcement.

The Task Force received testimony from divorced parents who said that the other parent interferes with custody or visitation. Typically, the other parent fails to deliver or return the child at the agreed upon time and place.

Currently, Kentucky has two statutes (KRS 509.070 and 403.240) which address interference with custody or visitation. KRS 509.070 criminalizes the situation where a person "keeps from lawful custody any mentally disturbed or other person entrusted by authority of law to the custody of another person or to an institution." This custodial interference is a Class D felony. The statute is almost never invoked in custody or visitation disputes, perhaps because the penalty is so severe. In the child custody and visitation statutes, a parent may move the court to enforce a court order (KRS 403.240(1)). Presumably, a parent may enforce a court order pertaining to child custody or visitation. Furthermore, KRS 403.240(2) permits a court to find a parent in contempt of court if that parent, without good cause, interferes with the visitation of the other parent. The courts have received criticism for failing to use KRS 403.240 to bring a halt to custody and visitation interference.

Several states have statutes specifically directed at custody and visitation enforcement. The states are: Delaware, Florida, Illinois, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, New York, Nevada, Ohio, South Dakota, Utah, and Vermont. The statutes mandate a court or permit a court to enforce custody and visitation through means in addition to holding a parent in contempt or convicting that parent of a felony. Methods of enforcement include ordering that the parent denied time with the child be granted time with the child in the amount withheld by the other parent; the offending party pay court costs, including attorneys' fees; the offending parent attend education classes; both parties attend mediation; the custodial parent post a bond which is forfeited if the custodial parent interferes with the other parent's visitation; the driver's license of the offending parent be suspended; and the offending parent perform community service.

10. Parental access to education, medical, and other records of a child.

Current Kentucky law does not address parental access to education, medical, and other records of a child. As a consequence, various educational, medical, and other institutions refuse to release records to noncustodial parents, thus forcing these parents to seek relief in court. Some members of the Task Force observed that any statute establishing equal parental access to records would have to take into consideration safety concerns. These members suggested that such a statute create a means for preventing a violent parent from tracking down another parent based on information contained in the child's records.

11. Educating judges, domestic relations commissioners, parents, and children about divorce, custody, visitation, and their impact on children.

Family Law includes divorce, custody, visitation, and other subjects. Family Law is quite different from other areas of the law in that Family Law concerns the sensitive issues which arise out of family dynamics.

While Family Law is unique, few Kentucky judges specialize in Family Law cases. Jefferson County has established a Family Court, and by statute, KRS 23A.100, eight family court pilot projects have been established elsewhere in Kentucky. Most judges in Kentucky, however, are generalists. Family Law is a small part of their jurisdiction. These circumstances suggest that all judges and domestic relations commissioners would benefit from intensive education in the subject of Family Law, with a special emphasis on custody and visitation.

A growing trend among the states is to educate divorcing parents about divorce. Forty-four states authorize courts to require parental education. Twenty-five states accomplish this by statute, and nineteen rely on local rules.

Courts in forty-six Kentucky counties, under their own initiative, employ one of seven education programs. Typically, these programs educate parents about three subjects. First, parents are taught about the impact that divorce, restructuring of families, and judicial proceedings have on children. Second, the programs instruct parents on nonjudicial dispute resolution options. Third, each parent is taught to avoid interfering with the parenting responsibilities of the other parent. A parent pays a fee as low as \$20 to attend the program.

Currently, child education occurs less frequently than parent education around the United States and in Kentucky. However, some jurisdictions have had success with child education. Both Jefferson County and Fayette County have child education programs.

SECTION 4

RECOMMENDATIONS

1.
 - a. The Special Task Force on Parenting and Child Custody finds and declares that statutes, administrative regulations, Kentucky Supreme Court Rules, and Kentucky Bar Association Rules should reduce hostility among parents and other parties during and after divorce and promote cooperation with regard to promoting the best interests of children of divorce. However, a party should not cooperate if the price of that cooperation is violence or sexual abuse perpetrated against that party, a child, or other family member.
 - b. The Special Task Force on Parenting and Child Custody finds and declares that judges, Domestic Relations Commissioners, attorneys, mediators, psychologists, domestic violence and child abuse experts, and other professionals should support parties and children in achieving the goals referred to in Paragraph a.
2.
 - a. The terms "custody" and "visitation" should be replaced with terms such as "parenting responsibilities" and "parenting time." The rest of the recommendations are written in terms of "custody" and "visitation" only for ease of understanding.
 - b. Solely for the purposes of state and federal statutes that require a designation or determination of custody, if a child spends the majority of his or her time with one parent, the court shall designate that parent as the primary custodial parent. Whether a parent is designated the primary custodial parent under this paragraph, there shall be no impact on either parent's rights and responsibilities under KRS Chapter 403.
3.
 - a. Except as provided in KRS 403.036, 403.725, 403.740, and 403.750 or for good cause shown, the court, upon its own motion or a motion of one of the parties, may order the parties to mandatory mediation to resolve a custody or visitation dispute . The parties shall pay the mediator's fee. However, the chief judge of the relevant judicial circuit, or the chief judge of the relevant family court, may create a sliding schedule of fees based on the parties' ability to pay.
 - b. The Administrative Office of the Courts shall establish a mediation program in each of the family court pilot projects.
 - c. By the year 2002 , all Kentucky family mediators shall be subjected to mandatory training and certification requirements. By the year 2002, before a mediator mediates a Family Law dispute, that mediator shall receive training in domestic violence and child abuse. The Administrative Office of the Courts shall accredit programs for the certification of family mediators.
4.
 - a. The court shall first consider awarding joint temporary custody and joint permanent custody but may award any form of custody which is determined to be in the best interests of the child. The best interests of the child are served when the court awards custody and visitation in such a way as to protect the safety of the child, all parties to the proceeding, and other family members. In awarding custody, the court shall grant the same consideration to each party. If the court declines to award joint temporary custody

or joint permanent custody, the court shall state in writing the reason for the denial of an award of joint custody.

b. As a general rule under joint custody, both parents have equal rights and responsibilities for major decisions concerning their child including, but not limited to, education, health care, and religious training, and the parents will consult with each other on these major decisions. However, a court may designate one parent to have the sole right to make certain major decisions while granting both parents equal rights and responsibilities for other major decisions.

c. An award of joint custody means that physical custody is shared by the parents in a way that assures the child frequent and substantial contact with each parent. An award of joint custody does not require an equal division of time with each parent.

5. a. No sooner than 120 days following the filing of a petition for dissolution of marriage, a party may file a proposed permanent parenting plan with the court, both parties may file a joint proposed permanent parenting plan, or the court may order the parties to file separate proposed permanent parenting plans or a joint proposed permanent parenting plan. In the best interest of the child, the court may accept, modify, or reject any proposed parenting plan. If the court rejects all proposed parenting plans, the court may formulate its own permanent parenting plan in the best interests of the child.

b. At any time following the filing of a petition for dissolution of marriage, the court, on its own motion, may formulate its own parenting plan.

c. A parenting plan is a plan for assigning permanent parenting responsibilities and parenting time in the best interests of the child.

d. Except as provided in KRS 403.036, 403.725, 403.740, and 403.750 or for good cause shown, a court may order mediation to assist parties in formulating, modifying, or implementing a parenting plan.

6. a. The court, upon its own motion or a motion of one of the parties, may appoint a guardian ad litem to represent the best interests of the child, in custody, visitation, or support litigation brought under KRS Chapter 403. A guardian ad litem shall consider, but shall not be bound by, the wishes of the minor child or the wishes of others as to the best interests of the child.

b. All guardians ad litem shall be attorneys, licensed to practice law in the Commonwealth of Kentucky, with experience in Family Law matters.

c. The parties shall pay the guardian ad litem's fee. However, the chief judge of the relevant judicial circuit or family court may create a sliding schedule of fees based on the parties' ability to pay.

d. A guardian ad litem shall be immune from civil liability for any act or omission resulting in damage or injury if that guardian ad litem was acting in good faith and within the scope of his or her official functions and duties, except in cases of gross negligence.

7. a. In any custody or visitation proceeding, the court, except as provided in paragraph b., shall include as a condition of any custody or visitation order a requirement that 60 days advance written notice be given to the other parties by any party intending to relocate more than 50 miles or outside the Commonwealth. The notice shall be given in

writing by certified mail, return receipt requested, to any party with custody or visitation rights. The notice of the proposed relocation shall include:

- i. A statement of intent to move;
- ii. The new address, if known. If the new address is not known, then the new city;
- iii. The date of the proposed relocation; and
- iv. A statement that the other parties have 30 days, from the date that notice is received, to file a petition to revise custody or visitation.

b. Where the court finds that the health or safety of any adult or child would be placed at risk by the giving of notice under paragraph a., the court may waive some or all of the notice requirements, before or after the relocation, and take any other remedial action necessary to facilitate the legitimate needs of the parties and the best interests of the child.

c. If the parties agree to a revised schedule of custody and visitation for the child, which may include a parenting plan, they may submit the terms of the agreement to the court with a written affidavit signed by all the parties with custody or visitation rights, and the court may order the revised schedule of custody and visitation without a hearing.

d. The relocating party may relocate 60 days after providing the written notice unless another party files a petition to revise custody or visitation within 30 days after receiving notice. The court shall hold a hearing on the petition as soon as possible. Based on the best interests of the child, the court shall consider modifying custody and visitation for the relocating party and any other party. If a party relocates with a child without the court's approval, the court shall consider ordering the return of the child. If a party relocates with a child with the court's approval, the court shall permit any nonrelocating party to have telephone access sufficient to assure that the child has frequent, continuing, and meaningful contact with any nonrelocating party unless the child's best interests warrant otherwise. The court shall order the allocation of transportation and transportation costs among the parties.

e. The court shall consider a failure to provide notice of a proposed relocation as cause to order the relocating party to pay court costs, including reasonable attorneys' fees, to any other party with custody or visitation rights who files a petition to revise custody or visitation within three months after learning of the relocation.

f. Nothing in this Recommendation shall limit a party's right to petition a court to revise custody or visitation.

8. a. If one party without good cause interferes with the custody or visitation of another party, the latter party may seek custody or visitation enforcement from the court. The enforcement shall include the awarding of compensatory custody or visitation and the awarding of court costs, including reasonable attorneys' fees, to the enforcing party for the second and subsequent enforcements in a twelve month period. The compensatory custody shall be similar to the custody or visitation that was interfered with without good cause. The enforcement may include: ordering the offending party to attend an education program, ordering the parties to attend mediation, or any other remedies in the best interests of the child.

b. The custody and visitation enforcement referred to in paragraph a. shall be in addition to, and not replace, custody and visitation enforcement methods currently available to a court.

9. Any parent who is a party to a proceeding under KRS 403.010 to 403.350 shall have full and equal access to education, medical, and other records of a child unless the court orders to the contrary for safety or other reasons.

10. The Kentucky Supreme Court should develop specific rules of procedure to govern all proceedings under KRS 403.010 to 403.350, except as otherwise provided in KRS 403.010 to 403.350.

11. a. On or before July 15, 2001, the chief judge of each judicial circuit and the chief judge of each family court shall implement a parent education program in the circuit or the family court which shall meet or exceed minimum requirements established by the Kentucky Supreme Court and this Recommendation. The program shall have the purpose of educating divorcing parents of a minor child about: the impact that divorce, the restructuring of families, and judicial proceedings have upon children; nonjudicial dispute resolution options; and methods for preventing custody and visitation conflicts.

b. Each parent shall attend the program within 60 days after the filing of a petition for dissolution of marriage. If a parent refuses to attend the program within the 60 day period, the court shall impose any appropriate sanction.

c. At the time of registering for the program, a parent shall be informed in writing of the right to attend the program at sessions not attended by the other parent and the right to attend the program at sessions conducted in a secret location, if necessary to protect the safety of the parent or other family member. The program shall provide facilities for the parent to exercise these rights.

d. The parents shall pay the education program fee. However, the chief judge shall create a sliding schedule of fees based on the parties' ability to pay.

e. The chief judge may also establish an education program for minor children which shall meet or exceed minimum requirements established by the Kentucky Supreme Court.

12. a. The Kentucky Supreme Court should provide adequate mandatory training and education to Circuit Judges, District Judges, and domestic relations and trial commissioners with regard to all aspects of Family Law, including the unique aspects of custody and visitation.

b. The Kentucky Supreme Court and the Kentucky Bar Association should provide adequate training and education to attorneys with regard to all aspects of Family Law, including the unique aspects of custody and visitation.

c. The Kentucky Supreme Court and the Kentucky Bar Association should explore certifying Family Law practitioners.

d. The Kentucky Supreme Court and the Kentucky Bar Association should explore the creation of a Bar Rule which requires an attorney to represent his or her client in a custody or visitation dispute while keeping in mind the best interests of the child.

SECTION 5

TWO BILL DRAFTS

AN ACT relating to domestic relations.

Be it enacted by the General Assembly of the Commonwealth of Kentucky

SECTION 1. A NEW SECTION OF KRS 403.010 TO 403.350 IS CREATED TO READ AS FOLLOWS:

As used in KRS 403.010 to 403.350, unless the context requires otherwise:

- (1) "Best interests of the child" means the safety and proper care, nurture, supervision, and financial support of a child.
- (2) (a) "De facto parent" 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 Social Services. Any period of time after a legal proceeding has been commenced by a parent seeking to regain parenting responsibilities for the child shall not be included in determining whether the child has resided with the person for the required minimum period of time.
- (b) A person shall not be a de facto parent until a court determines by clear and convincing evidence that the person meets the definition of a de facto parent established in paragraph (a) of this subsection. Once a court determines that a person meets the definition of a de facto parent, the court shall give the person the same standing as a parent in KRS Chapter 403 litigation.

- (3) "Joint parenting responsibilities" means that parents have joint responsibilities for major decisions concerning a child including, but not limited to, education, health care, and religious training, and that the parties will consult with each other on these major decisions. However, a court may designate one (1) party as the only party to make certain major decisions while granting all parties the same responsibilities for other major decisions. An award of joint parenting responsibilities means that parenting time is shared among the parties in a way that assures the child frequent and substantial contact with each party. An award of joint parenting responsibilities does not mean that a child has to spend the same amount of parenting time with each party.
- (4) "Parent" means a birth parent, an adoptive parent, or a de facto parent.
- (5) "Parenting plan" means a plan for the assigning of permanent parenting responsibilities and parenting time in the best interests of the child.
- (6) "Parenting responsibilities" means the safety, care, nurture, supervision, and financial support of a child provided by parents. Parenting responsibilities include, but are not limited to:
- (a) Major decisions about the child, including, but not limited to, education, health care, and religious training; and
- (b) Child support to pay for the child's financial needs.
- (7) "Parenting time" means the time that a parent spends with a child. During parenting time, a party protects from injury, cares for, nurtures, and supervises the child.
- (8) "Sole parenting responsibilities" means that a parent exercises all parenting responsibilities except as provided in paragraphs (a) and (b) of this subsection.
- (a) Under the provisions of KRS 403.210, a parent with sole parenting responsibilities shall share with another parent the responsibility to provide financial support to meet the needs of the child.

(b) The parent or de facto parent with sole parenting responsibilities shall be subject to the requirements of Sections 27 and 28 of this Act.

Section 2. KRS 403.110 is amended to read as follows:

KRS 403.010 to 403.350[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 **among parties through mediation, other nonjudicial dispute resolution options, and the courts**[that have arisen between parties to a marriage];
- (3) **Foster cooperation among parties with regard to promoting the best interests of the child. However, a party should not cooperate if the price of that cooperation is violence or sexual abuse perpetrated against that party, a child, or other family member;**
- (4) Mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;
- (5)[(4)] Make reasonable provision for spouse and minor children during and after litigation; and
- (6)[(5)] Make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making irretrievable breakdown of the marriage relationship the sole basis for its dissolution.

Section 3. KRS 21A.170 is amended to read as follows:

The Supreme Court shall provide, at least once every two (2) years, in-service training programs for Circuit Judges, District Judges, and domestic relations and trial commissioners in:

- (1) Child development, the dynamics of physical and sexual abuse, the impact of violence on child development, the treatment of offenders, and related issues;[and]

(2) Dynamics of domestic violence, effects of domestic violence on adult and child victims, legal remedies for protection, lethality and risk issues, model protocols for addressing domestic violence, available community resources and victims services, and reporting requirements; **and**

(3) Those matters listed in subsection (3) of Section 6 of this Act, with a special emphasis on the assigning of parenting responsibilities and parenting time.

Each Circuit Judge, District Judge, and trial and domestic relations commissioner shall successfully complete the training prescribed by the Supreme Court by rule.

SECTION 4. A NEW SECTION OF KRS 403.010 TO 403.350 IS CREATED TO READ AS FOLLOWS:

(1) On or before July 15, 2001, the chief judge of each judicial circuit and the chief judge of each family court shall implement a parent education program in the circuit or the family court that shall meet or exceed the minimum requirements established by the Kentucky Supreme Court in addition to those established in subsection (2) of this section. If the Kentucky Supreme Court fails to establish minimum requirements by July 15, 2001, chief judges shall implement parent education programs that meet or exceed the minimum requirements established in subsection (2) of this section.

(2) (a) Each parent shall attend the program within sixty (60) days after the filing of a petition for dissolution of marriage. If a parent refuses to attend the program within the sixty (60) day period, the court shall impose any appropriate sanction.

(b) The parents shall pay the education program fee. However, the chief judge shall create a sliding schedule of fees based on the parties' ability to pay.

(c) At the time of registering for the program, a parent shall be informed in writing of the right to attend the program at sessions not attended by the other parent and the right to attend the program at sessions conducted in a

secret location, if necessary to protect the safety of the parent or other family member. The program shall provide the facilities for the parent to exercise these rights.

(d) The program shall include, but shall not be limited to, educating divorcing parents of a minor child about:

1. The impact that divorce, the restructuring of families, and judicial proceedings have upon children;
2. Nonjudicial dispute resolution options, including, but not limited to, mediation; and
3. Methods for preventing interfering, without good cause, with the parenting responsibilities and parenting time of the other parent and the legal consequences of interfering, without good cause, as described in Sections 14 and 15 of this Act.

(3) The chief judge may also establish an education program for minor children that shall meet or exceed minimum requirements established by the Kentucky Supreme Court on or before July 15, 2001. If the Kentucky Supreme Court fails to establish minimum requirements by July 15, 2001, the chief judge may proceed to establish an education program for minor children.

SECTION 5. A NEW SECTION OF KRS 403.010 TO 403.350 IS CREATED TO READ AS FOLLOWS:

Except as provided in KRS 403.036 and Sections 33, 34, and 35 of this Act, or for other good cause shown, the court, upon its own motion or a motion of one (1) of the parties, may order the parties to mandatory mediation to resolve a dispute concerning any issue arising under KRS 403.010 to 403.350. The parties shall pay the mediator's fee. However, the chief judge of the relevant judicial circuit, or the chief judge of the relevant family court, may create a sliding schedule of fees based on the parties' ability to pay.

Section 6. KRS 23A.110 is amended to read as follows:

- (1) A chief judge of family court shall be designated by the Chief Justice at each site identified in KRS 23A.100(1). When a family court has a single family court judge, that judge shall be designated chief judge. Each family court shall establish a Family Court Council to assist in developing and implementing each new site. The council shall be multidisciplinary in nature and chaired by the chief judge of the family court. Each council shall recommend local rules of family court. Pursuant to Supreme Court Rule 1.040(3)(a), local rules shall be written, approved by the Chief Justice, and filed with the Supreme Court clerk.
- (2) The Administrative Office of the Courts shall employ a statewide family court coordinator to assist family courts with:
 - (a) Resource needs;
 - (b) Standardization of policies;
 - (c) Practices and procedures;
 - (d) Training;
 - (e) Automation;
 - (f) Data compilation and analysis;
 - (g) Budgetary needs; and
 - (h) Coordination of family court sites with community and outside agencies.
- (3) Family court jurisdiction shall include, but not be limited to, cases involving:
 - (a) Domestic or family issues or dissolution of marriage;
 - (b) **Parenting responsibilities, as defined in Section 1 of this Act**[Child custody];
 - (c) **Parenting time, as defined in Section 1 of this Act**[Visitation];
 - (d) Support and equitable distribution;
 - (e) Adoption and termination of parental rights;
 - (f) Domestic violence, including emergency protective orders;

- (g) Noncriminal juvenile matters, including juvenile mental inquests and self-consent abortions;
 - (h) Paternity and URESA matters;
 - (i) Dependency, abuse, or neglect; and
 - (j) Status offenses, including truancy, unmanageable children, and runaways.
- (4) *Each family court shall establish a mediation program to resolve a dispute concerning any issue arising under KRS 403.010 to 403.350. Except as provided in KRS 403.036 and Sections 33, 34, and 35 of this Act, or for other good cause shown, parties shall participate in the mediation program.*
- (5) Whenever the Chief Justice, by order pursuant to Section 110(5)(b) of the Constitution of Kentucky, or the Supreme Court, pursuant to Section 116 of the Constitution of Kentucky, establishes a family court within a judicial circuit, the District Court and the Circuit Court shall exercise concurrent jurisdiction, or as the Chief Justice or the Supreme Court may direct, exclusive jurisdiction in all matters assigned to family court, notwithstanding any other statute relating to the subject matter jurisdiction of the Circuit and District Courts.

SECTION 7. A NEW SECTION OF KRS 403.010 TO 403.350 IS CREATED TO READ AS FOLLOWS:

- (1) *The court shall first consider awarding permanent joint parenting responsibilities but shall assign permanent parenting responsibilities in any form determined to be in the best interests of the child, as defined in Section 1 of this Act. In assigning permanent parenting responsibilities, the court shall give the same consideration to each parent. If the court declines to award joint permanent parenting responsibilities, the court shall state in writing the reason for the denial of an award of joint permanent parenting responsibilities.*

(2) (a) In assigning permanent parenting responsibilities in the best interests of the child, a court shall consider all relevant factors, including, but not limited to:

1. The physical, emotional, mental, religious, and social needs of the child;
2. The capability and desire of each parent, to meet these needs. One (1) factor a court shall employ in assessing the desire of a parent to meet these needs shall be the willingness of that parent to cooperate with another parent to meet these needs unless a court limits cooperation due to abuse or neglect of a child, domestic violence, or other good cause shown;
3. The history of the child's interaction with each parent, siblings, and any other person who may affect the child's best interests;
4. The mental and physical health of all individuals involved;
5. The history of the child's adjustment to home, school, and community;
6. Information, records, and evidence of acts of abuse or neglect, as defined in KRS 600.020, toward any child;
7. Information, records, and evidence of domestic violence, as defined in KRS 403.720;
8. The circumstances under which the child was placed or allowed to remain with a de facto parent, including whether the parent now seeking parenting responsibilities 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 parent to allow the parent now seeking parenting responsibilities to seek employment, work, or attend school;

9. The intent of the parent or parents in placing the child with the de facto parent; and

10. The extent to which the child has been protected, cared for, nurtured, supervised, and financially supported by any de facto parent.

(b) In assigning permanent parenting responsibilities in the best interests of the child, a court shall not consider abandonment of the family residence by a parent where the parent was physically harmed or was seriously threatened with physical harm, when the harm or threat of harm was casually related to the abandonment.

Section 8. KRS 403.280 is amended to read as follows:

- (1) A party to a parenting responsibilities[~~custody~~] proceeding may move for a temporary parenting responsibilities[~~custody~~] order. The motion must be supported by an affidavit as provided in KRS 403.350. The court may award temporary parenting responsibilities[~~custody under the standards of KRS 403.270~~] after a hearing, or, if there is no objection, solely on the basis of the affidavits. A court shall assign temporary parenting responsibilities under Section 7 of this Act.
- (2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary parenting responsibilities[~~custody~~] order is vacated unless a parent or the child's custodian moves that the proceeding continue as a permanent parenting responsibilities[~~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 permanent parenting responsibilities[~~custody~~] decree be issued.
- (3) If a permanent parenting responsibilities[~~custody~~] proceeding commenced in the absence of a petition for dissolution of marriage or legal separation under KRS 403.420(1)(a) or (b) is dismissed, any temporary parenting responsibilities[~~custody~~] order is vacated.

- (4) If a court determines by clear and convincing evidence that a person is a de facto parent[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.

SECTION 9. A NEW SECTION OF KRS CHAPTER 403.010 TO 403.350 IS CREATED TO READ AS FOLLOWS:

(1) Solely for the purposes of state and federal statutes that require a designation or determination of custody:

- (a) If physical custody is such that parents spend substantially equal amounts of time with a child, the court shall not designate any parent as the primary custodial parent; and
- (b) If a child spends the majority of his or her time with one (1) parent, the court shall designate that parent as the primary custodial parent.

(2) Whether a parent is designated the primary custodial parent under this section, there shall be no impact on any parent's parenting responsibilities, parenting time, and other responsibilities under KRS Chapter 403.

SECTION 10. A NEW SECTION OF KRS 403.010 TO 403.350 IS CREATED TO READ AS FOLLOWS:

(1) (a) No sooner than one hundred and twenty (120) days following the filing of a petition for dissolution of marriage:

1. A party may file a proposed parenting plan with the court;
2. Both parties may file a joint proposed parenting plan; or
3. The court may order the parties to file separate proposed parenting plans or a joint proposed parenting plan.

(b) At any time following the filing of a petition for dissolution of marriage, the court, on its own motion, may formulate its own parenting plan.

(c) In the best interests of the child, the court may accept, modify, or reject any parenting plan proposed under paragraph (a) of this subsection. If the court

rejects all proposed parenting plans, the court may formulate its own parenting plan in the best interests of the child.

- (2) After a court approves a parenting plan, that court, on motion by any party, may modify or repeal the parenting plan in the best interests of the child.
- (3) Except as provided in KRS 403.036 and Sections 33, 34, and 35 of this Act, or for other good cause shown, a court may order mediation to assist parties in formulating, implementing, or modifying a parenting plan.

SECTION 11. A NEW SECTION OF KRS 403.010 TO 403.350 IS CREATED TO READ AS FOLLOWS:

Any parent who is a party to a proceeding under KRS 403.010 to 403.350 shall have full and equal access to education, medical, and other records of a child unless the court orders to the contrary for safety or other reasons.

SECTION 12. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) The court, upon its own motion or a motion of one (1) of the parties, may appoint a guardian ad litem to represent the best interests of the child in litigation brought under KRS Chapter 403.
- (2) All guardians ad litem shall be attorneys, licensed to practice law in the Commonwealth of Kentucky, with experience in KRS Chapter 403 litigation.
- (3) The parties shall pay the guardian ad litem's fee. However, the chief judge of the relevant judicial circuit or family court may create a sliding schedule of fees based on the parties' ability to pay.
- (4) A guardian ad litem shall be immune from civil liability for any act or omission resulting in damage or injury if that guardian ad litem was acting in good faith and within the scope of his or her official functions and duties, except in cases of gross negligence.

Section 13. KRS 403.300 is amended to read as follows:

- (1) In contested parenting responsibilities~~[custody]~~ proceedings, and in other parenting responsibilities~~[custody]~~ proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning parenting responsibilities~~[custodial arrangements]~~ for the child or may appoint a guardian ad litem under Section 12 of this Act. The investigation and report may be made by the guardian ad litem, the friend of the court, or such other agency or qualified professional 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 or her potential parenting responsibilities and parenting time~~[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.

SECTION 14. A NEW SECTION OF KRS 403.010 TO 403.350 IS CREATED TO READ AS FOLLOWS:

- (1) If one (1) party without good cause interferes with the parenting responsibilities or parenting time of another party, the latter party shall continue to meet his or her obligations with regard to parenting responsibilities and parenting time. However, the latter party may seek parenting responsibilities or parenting time enforcement from the court under this section.
- (2) The enforcement shall include the awarding to the enforcing party of:
 - (a) Parenting responsibilities or parenting time similar to the parenting responsibilities or parenting time that was interfered with without good cause; and
 - (b) Court costs, including reasonable attorneys' fees, for the second and subsequent enforcements in a twelve (12) month period.
- (3) The enforcement may include:
 - (a) Ordering the offending party to attend an educational program;
 - (b) Ordering the parties to attend mediation, except as provided in KRS 403.036 and Sections 33, 34, and 35 of this Act, or for other good cause shown; and
 - (c) Any other remedies in the best interests of the child.
- (4) The parenting responsibilities enforcement referred to in this section shall be in addition to, and not replace, enforcement procedures described in Section 15 of this Act or otherwise available to the court.

Section 15. KRS 403.240 is amended to read as follows:

- (1) If a party fails to comply with a provision of a decree or temporary order or injunction, the parenting responsibilities, parenting time responsibilities, and maintenance responsibilities[obligation] of the other party are[to make payments for support or maintenance or to permit visitation is] not suspended; but he or she 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 parenting time~~[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.]~~

Section 16. KRS 205.730 is amended to read as follows:

- (1) Unless the cabinet has reason to believe allegations of child abuse or domestic violence and that the disclosure of the information could be harmful to the custodial parent or the child of the parent, the cabinet shall attempt to locate a noncustodial parent of a child described in KRS 205.725, and establish or set an amount of modification, and enforce the child support obligation.
- (2) Upon the request of a putative father and for the purpose of establishing paternity only, the cabinet shall attempt to locate a custodial parent of a child described in KRS 205.712 if the cabinet finds the action to be in the best interest of the child.
- (3) If paternity is established for a child described in KRS 205.725 as a result of the location of the custodial parent, the cabinet shall establish a child support obligation or a modification for a child support obligation and shall enforce the child support obligation if the cabinet finds the enforcement of the order to be in the best interest of the child.

- (4) The cabinet shall serve as a registry for the receipt of information which directly relates to the identity or location of absent parents, and, upon request of a putative father, the location of a custodial parent, in order to establish paternity, to answer interstate inquiries concerning deserting parents or custodial parents, to coordinate and supervise any activity on a state level in search of an absent parent or custodial parent, to develop guidelines for coordinating activities of any governmental agency in providing information necessary for location of absent parents or custodial parents, to obtain information on the location of parents to enforce state and federal laws against parental kidnapping and to make or to enforce *parenting responsibilities, as defined in Section 1 of this Act, order or a parenting time, as defined in Section 1 of this Act,* [a child custody or visitation] order, and is to process all requests received from an initiating county or an initiating state which has adopted the Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act.
- (5) In order to carry out responsibilities imposed under this chapter, the cabinet may request information and assistance from any governmental agency. All state, county, and city agencies, officers, and employees shall cooperate with the cabinet in determining the location of parents who have abandoned or deserted children and shall cooperate with the cabinet in determining the location of custodial parents for the purpose of establishing paternity with all pertinent information relative to the location, income and assets, property, and debt of the parents, notwithstanding any provision of state law making the information confidential.
- (6) The information which is obtained by the cabinet shall only be available to such governmental agency or political subdivision of any state for purposes of locating an absent parent to enforce the parent's obligation of support and for the purposes of location of custodial parents to establish paternity of putative fathers.

Section 17. KRS 205.770 is amended to read as follows:

- (1) If a child is receiving services under Part D of Title IV of the Social Security Act and the cabinet has taken action under the provisions of KRS 205.715 to 205.800, 403.215, 405.405 to 405.530 and 530.050 to obtain support on behalf of the child, matters concerning *parenting responsibilities, as defined in Section 1 of this Act, and parenting time, as defined in Section 1 of this Act.* [custody of the child and visitation rights of the parents shall] not be used by either parent as a reason not to pay child support to the cabinet.
- (2) Upon a determination by the cabinet that such would be in the best interest of the child, the cabinet may petition a Circuit Court of proper jurisdiction in the name of the child to make a determination of *parenting responsibilities and parenting time* [child custody and visitation rights of a parent].

Section 18. KRS 403.010 is amended to read as follows:

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 KRS 403.010 to 403.350 [this chapter]. A decree of dissolution of marriage authorizes either party to marry again.

Section 19. KRS 403.090 is amended to read as follows:

- (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. sec. 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. sec. 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 parenting responsibilities for~~the care, custody, and maintenance of~~ children for whom payments are being made, and shall report to the court all cases in which a party is failing to carry out parenting responsibilities for the children~~are not receiving proper care or maintenance, or in which the person having custody is failing to furnish proper custody~~. He or she 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. sec. 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 parenting responsibilities for~~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 parenting responsibilities for~~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 parenting responsibilities for~~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.

Section 20. KRS 403.130 is amended to read as follows:

- (1) Until such time as the Kentucky Supreme Court promulgates specific rules of procedure for KRS 403.010 to 403.350, the Rules of Civil Procedure apply to all proceedings under KRS 403.010 to 403.350[this chapter], except as otherwise provided in KRS 403.010 to 403.350[this chapter]. The specific rules of procedure promulgated for KRS 403.010 to 403.350 shall supersede the Rules of Civil Procedure and shall apply to all proceedings under KRS 403.010 to 403.350, except as otherwise provided in KRS 403.010 to 403.350.
- (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

parenting responsibilities[~~custody or support~~] proceeding, including support, shall be entitled "In re the Parenting Responsibilities for....." A proceeding devoted exclusively to support shall be entitled "In re the Support of....."[(Custody) (Support) of....."]

- (3) The initial pleading in all proceedings under KRS 403.010 to 403.350[this chapter] shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under KRS 403.010 to 403.350[this chapter], shall be denominated as provided in the Rules of Civil Procedure until such time as the Kentucky Supreme Court promulgates specific rules of procedure for KRS 403.010 to 403.350. The promulgated specific rules of procedure shall supersede the Rules of Civil Procedure and shall denominate all pleadings in matters under KRS 403.010 to 403.350.
- (4) In KRS 403.010 to 403.350[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.

Section 21. KRS 403.140 is amended to read as follows:

- (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 parenting responsibilities[~~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 KRS 403.010 to 403.350[this chapter] shall apply.

Section 22. KRS 403.150 is amended to read as follows:

- (1) All proceedings under KRS 403.010 to 403.350[this chapter] are commenced in the manner provided by the Rules of Civil Procedure until such time as the Kentucky Supreme Court promulgates specific rules of procedure for KRS 403.010 to 403.350. The specific rules of procedure promulgated for KRS 403.010 to 403.350 shall supersede the Rules of Civil Procedure and shall govern how all proceedings under KRS 403.010 to 403.350 are commenced.
- (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 *parenting responsibilities and parenting time* ~~for~~~~[c]ustody, 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. *However, once the Kentucky Supreme Court promulgates specific rules of procedure for KRS 403.010 to 403.350, those Rules of Civil Procedure shall govern the service and the 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 *KRS 403.010 to 403.350*~~[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.

Section 23. KRS 403.180 is amended to read as follows:

- (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 *parenting responsibilities and parenting time* ~~for~~~~[c]ustody, 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 *parenting responsibilities and parenting time* ~~for~~~~[c]ustody, 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 parenting responsibilities and parenting time for~~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.

Section 24. KRS 403.190 is amended to read as follows:

- (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 *a[the]* spouse *in the best interests*~~[having custody]~~ of any children.
- (2) For the purpose of KRS 403.010 to 403.350~~[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.

Section 25. KRS 403.211 is amended to read as follows:

- (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 parental 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 adjusted 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) 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 *the assignment of parenting time*[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.
 - (b) 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 adjusted 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 Families and Children, 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 Families and Children 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 Families and Children 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.

Section 26. KRS 403.220 is amended to read as follows:

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 KRS 403.010 to 403.350~~[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.

Section 27. KRS 403.290 is amended to read as follows:

- (1) The court may interview the child in chambers to ascertain the child's wishes as to **the assignment of parenting responsibilities and parenting time**~~this 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.

Section 28. KRS 403.310 is amended to read as follows:

- (1) **Parenting responsibilities**~~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 **parenting responsibilities**~~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 **parenting**

responsibilities[~~custody~~] proceeding be kept secret, the court may make an appropriate order sealing the record.

Section 29. KRS 403.320 is amended to read as follows:

- (1) A parent[~~not granted custody~~] of a[the] child is entitled to reasonable parenting time with that child[visitation rights] unless the court finds, after a hearing, that parenting time[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 parenting time[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 parenting time[visitation arrangement], if any, which would not endanger seriously the[child's or the custodial parent's] physical, mental, or emotional health of the child or any parent.
- (3) The court may modify an order granting or denying parenting time[visitation rights] whenever modification would serve the best interests of the child; but the court shall not restrict parenting time[a parent's visitation rights] unless it finds that the parenting time[visitation] would endanger seriously the child's physical, mental, moral, or emotional health.

Section 30. KRS 403.330 is amended to read as follows:

- (1) Except as otherwise agreed by the parties in writing at the time of the parenting responsibilities[~~custody~~] decree, a party with sole parenting responsibilities shall[~~the custodian may~~] determine the child's upbringing, including his or her education, health care, and religious training, unless the court after hearing, finds, upon motion by a party seeking parenting responsibilities[~~the noncustodial parent~~], that in the absence of a specific limitation of the authority of the party with sole

parenting responsibilities[~~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 parenting responsibilities[~~the custodial or visitation terms of the decree~~] are carried out.

Section 31. KRS 403.340 is amended to read as follows:

- (1) No motion to modify a parenting responsibilities[~~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 child has been placed[~~custodian appointed under the prior decree has placed the child~~] with a de facto parent[~~custodian~~].
- (2) 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 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. In applying these standards, the court shall retain the custodian appointed pursuant to the prior decree unless:
 - (a) The custodian agrees to the modification;
 - (b) The child has been integrated into the family of the petitioner with consent of the custodian; or

- (c) The child's present environment endangers seriously his physical, mental, moral, or emotional health, and the harm likely to be caused by a change of environment is outweighed by its advantages to him.; or
 - (d) The custodian has placed the child with a de facto parent[~~custodian~~].
- (3) 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 a[either] parent to observe parenting time[visitation], child support, or other provisions of the decree which affect the child, except that modification of parenting responsibilities[~~custody~~] orders shall not be made solely on the basis of failure to comply with parenting time[visitation] or child support provisions, or on the basis of which parent is more likely to allow parenting time[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.
- (4) 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.

Section 32. KRS 403.350 is amended to read as follows:

A party seeking a temporary parenting responsibilities[~~custody~~] order or modification of a parenting responsibilities[~~custody~~] decree shall submit together with his or her 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 *parent is exercising joint or sole parenting responsibilities with regard to the child*[eustodian], the court shall make the de facto *parent*[eustodian] 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.

Section 33. KRS 403.725 is amended to read as follows:

- (1) Any family member or member of an unmarried couple who is a resident of this state or has fled to this state to escape domestic violence and abuse may file a verified petition in the District Court of the county in which he resides. If the petitioner has left his usual place of residence within this state in order to avoid domestic violence and abuse, the petition may be filed and proceedings held in the District Court in the county of his usual residence or in the District Court in the county of current residence. Any family member or member of an unmarried couple who files a petition for an emergency protective order in District or Circuit Court shall make known to the court any *parenting responsibilities, as defined in Section 1 of this Act,*[eustody] or divorce actions, involving both the petitioner and the respondent, that are pending in any Circuit Court in the Commonwealth. The petition shall also include the name of the court where filed.
- (2) Any family member or any member of an unmarried couple, as those terms are defined in KRS 403.720, may file for and receive protection under KRS 403.715 to 403.785, notwithstanding the existence of or intent to file an action in the Circuit Court by either party under the provisions of *KRS 403.010 to 403.350*[this chapter].

- (3) A petition filed pursuant to subsection (1) of this section may be filed by the family member or member of an unmarried couple seeking relief or by an adult family member or member of an unmarried couple on behalf of a minor family member.
- (4) If a family member files an action for dissolution of marriage or parenting responsibilities~~[child custody]~~ in Circuit Court, the Circuit Court shall have jurisdiction to issue a protective order upon the filing of a verified motion therein either at the commencement or during the pendency of the action in Circuit Court pursuant to the provisions of KRS 403.730 to 403.785.
- (5) No Circuit or District Court shall require mediation, conciliation, or counseling prior to or as a condition of issuing an emergency protective order or domestic violence order.
- (6) When the elected, appointed, or special judge of the district is absent from the district, otherwise unavailable, or unable to act, any Circuit Judge shall have the authority to issue an emergency protective order pursuant to KRS 403.730 to 403.785. If a Circuit Judge issues an emergency protective order, except as otherwise provided in this section, that judge shall conduct the hearing as required by KRS 403.745 and any order issued shall be enforced as provided in KRS 403.715 to 403.785~~[this chapter]~~.
- (7) During any hearing in Circuit Court on dissolution of marriage, parenting responsibilities~~[child custody]~~, or parenting time, as defined in Section 1 of this Act~~[visitation]~~, at which both parties are present or represented by counsel, the Circuit Judge shall have the authority to issue a protective order pursuant to KRS 403.750 to 403.785.
- (8) Following the issuance of a protective order under this section, if the judge who issued the order is absent from the district, otherwise unavailable, or unable to conduct proceedings regarding the enforcement, violation, or modification of the

order within a reasonable time, the proceedings shall be conducted by any District or Circuit Judge.

Section 34. KRS 403.740 is amended to read as follows:

- (1) If, upon review of the petition, as provided for in KRS 403.735, the court determines that the allegations contained therein indicate the presence of an immediate and present danger of domestic violence and abuse, the court shall issue, upon proper motion, ex parte, an emergency protective order:
 - (a) Restraining the adverse party from any contact or communication with the petitioner except as directed by the court;
 - (b) Restraining the adverse party from committing further acts of domestic violence and abuse;
 - (c) Restraining the adverse party from disposing of or damaging any of the property of the parties;
 - (d) Directing the adverse party to vacate the residence shared by the parties to the action;
 - (e) Utilizing the criteria set forth in Section 7 of this Act, KRS{ 403.270,} 403.320, and 403.420, grant temporary parenting responsibilities, as defined in Section 1 of this Act{custody}; or
 - (f) Enter other orders the court believes will be of assistance in eliminating future acts of domestic violence and abuse; or any combination thereof.
- (2) Except as provided in KRS 403.036, if the court issues an emergency protective order pursuant to subsection (1) of this section, the court shall not order or refer the parties to mediation for resolution of the issues alleged in the petition filed pursuant to KRS 403.735.
- (3) An emergency protective order issued in accordance with this section shall be issued without bond being required of the petitioner.

- (4) An emergency protective order issued in accordance with this section shall be effective for a period of time fixed in the order, but not to exceed fourteen (14) days. Upon the issuance of an emergency protective order, a date for a full hearing, as provided for in KRS 403.745, shall be fixed not later than the expiration date of the emergency protective order. An emergency protective order shall be reissued for a period not to exceed fourteen (14) days if service has not been made on the adverse party by the fixed court date and time or as the court determines is necessary for the protection of the petitioner.
- (5) The adverse party shall be personally served with a copy of the emergency protective order, a copy of the notice setting the full hearing, and a copy of the petition. Service may be made in the manner and by the persons authorized to serve subpoenas under the provisions of Rule 45.03 of the Rules of Civil Procedure. No service fee shall be assessed to the petitioner.

Section 35. KRS 403.750 is amended to read as follows:

- (1) Following the hearing provided for under KRS 403.740 and 403.745, the court, if it finds from a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred and may again occur, may:
 - (a) Restrain the adverse party from any contact or communication with the petitioner except as directed by the court;
 - (b) Restrain the adverse party from committing further acts of domestic violence and abuse;
 - (c) Restrain the adverse party from disposing of or damaging any of the property of the parties;
 - (d) Direct the adverse party to vacate the residence shared by the parties to the action;

- (e) Utilizing the criteria set forth in Section 7 of this Act, KRS{ 403.270,} 403.320, and 403.420, award temporary parenting responsibilities, as defined in Section 1 of this Act[custody];
 - (f) Utilizing the criteria set forth in KRS 403.211, 403.212, and 403.213, award temporary support;
 - (g) Direct that either or both parties receive counseling services available in the community, except that the court shall not order or refer the parties to participate in mediation for resolution of the issues alleged in the petition filed pursuant to KRS 403.715 to 403.785; or
 - (h) Enter other orders the court believes will be of assistance in eliminating future acts of domestic violence and abuse.
- (2) Any order entered pursuant to this section shall be effective for a period of time, fixed by the court, not to exceed three (3) years and may be reissued upon expiration for an additional period of up to three (3) years. The number of times an order may be reissued shall not be limited. With respect to whether an order should be reissued, any party may present to the court testimony relating to the importance of the fact that acts of domestic violence or abuse have not occurred during the pendency of the order.
- (3) Upon proper filing of a motion, either party may seek to amend a domestic violence order.
- (4) When temporary child support is granted under the provisions of this section, the court shall enter an order detailing how the child support is to be paid and collected. The enforcement procedures for child support orders, entered pursuant to KRS 403.211, 403.212, and 403.213, including but not limited to 403.215, shall be available to temporary child support orders issued under KRS 403.715 to 403.785.
- (5) Any order entered pursuant to this section restraining a party or parties to an action shall be issued without bond being required of the petitioner.

Section 36. KRS 403.765 is amended to read as follows:

If, following the entry of an order authorized by KRS 403.740 or 403.750, or the authentication of a foreign protective order pursuant to KRS 403.737, 403.7521, 403.7524, 403.7527, 403.7529, 403.7531, or 403.7535, the petitioner or the adverse party initiate an action in the Circuit Court under the provisions of KRS 403.715 to 403.785[this chapter], the party filing the petition shall certify the existence and status of any domestic violence protective orders. Unless the Circuit Court issues and serves an order pertaining to the same subject matter of any existing domestic violence order, orders of the District Court or the issuing court shall remain in effect and shall be enforced in either District or Circuit Court.

Section 37. KRS 405.010 is amended to read as follows:

The father and mother of a child under the age of eighteen (18) are equally entitled to its services and earnings. If one of the parents is dead, or has abandoned the child, or been deprived of its parenting responsibilities, as defined in Section 1 of this Act,[custody] by court decree, the other is entitled to its services and earnings. The parents jointly may maintain an action for loss of the services or earnings of their child under the age of eighteen when the loss is occasioned by an injury wrongfully or negligently inflicted upon the child. But if either the father or mother is dead, or has abandoned the child, or has been deprived of its parenting responsibilities[custody] by court decree, or refuses to sue, the other may sue alone. This section shall not affect the existing law relating to workers' compensation and industrial accidents.

Section 38. KRS 405.020 is amended to read as follows:

- (1) The father and mother shall have the joint custody, nurture, and education of their children who are under the age of eighteen (18). If either of the parents dies, the survivor, if suited to the trust, shall have the custody, nurture, and education of the children who are under the age of eighteen (18). The father shall be primarily liable for the nurture and education of his children who are under the age of eighteen (18)

and for any unmarried child over the age of eighteen (18) when the child is a full-time high school student, but not beyond completion of the school year during which the child reaches the age of nineteen (19) years.

- (2) The father and mother shall have the joint custody, care, and support of their children who have reached the age of eighteen (18) and who are wholly dependent because of permanent physical or mental disability. If either of the parents dies, the survivor, if suited to the trust, shall have the custody, care, and support of such children.
- (3) Notwithstanding the provisions of subsections (1) and (2) of this section, a person claiming to be a de facto parent[eustodian], as defined in Section 1 of this Act[KRS 403.270], may petition a court for parenting responsibilities, as defined in Section 1 of this Act, for~~legal custody of~~ a child. The court shall grant parenting responsibilities~~legal custody~~ to the person if the court determines that the person meets the definition of de facto parent[eustodian] and that the best interests of the child will be served by awarding parenting responsibilities~~custody~~ to the de facto parent[eustodian].
- (4) Notwithstanding the provisions of subsections (1) and (2) of this section, if either parent dies and at the time of death a child is in the physical custody of a de facto parent, as defined in Section 1 of this Act[eustodian, as defined in KRS 403.270], the court shall award sole parenting responsibilities, as defined in Section 1 of this Act,~~custody~~ to the de facto parent[eustodian] if the court determines that the best interests of the child will be served by that assignment of parenting responsibilities~~award of custody~~.

Section 39. KRS 405.021 is amended to read as follows:

- (1) The Circuit Court may grant reasonable parenting time, as defined in Section 1 of this Act,~~visitation rights~~ to either the paternal or maternal grandparents of a child and issue any necessary orders to enforce the decree if it determines that it is in the

best interests[interest] of the child, as defined in Section 1 of this Act, to do so. Once a grandparent has been granted parenting time[visitation] rights under this subsection, those rights shall not be adversely affected by the termination of parental rights belonging to the grandparent's son or daughter, who is the father or mother of the child visited by the grandparent, unless the Circuit Court determines that it is in the best interests[interest] of the child to do so.

- (2) The action shall be brought in Circuit Court in the county in which the child resides.
- (3) The Circuit Court may grant parenting time[nonecustodial parental visitation rights] to the grandparent of a child if the parent of the child who is the son or daughter of the grandparent is deceased and the grandparent has assumed the financial obligation of child support owed by the deceased parent, unless the court determines that the parenting time[visitation] is not in the best interests[interest] of the child. If parenting time[visitation] is not granted, the grandparent shall not be responsible for child support.

Section 40. KRS 405.025 is amended to read as follows:

- (1) The parent, as defined in Section 1 of this Act, or guardian with joint or sole parenting responsibilities, as defined in Section 1 of this Act, for[of] any unemancipated minor[~~, in his care and custody,~~] against whom judgment has been rendered for the willful marking upon, defacing or damaging of any property, shall be liable for the payment of that judgment up to an amount not to exceed twenty-five hundred dollars (\$2500), if the parent or guardian has been joined as a party defendant in the original action. The judgment provided herein to be paid shall be paid to the owner of the property damaged but such payment shall not be a bar to any criminal action or any proceeding against the unemancipated minor committing such damage for the balance of the judgment not paid by the parent or guardian. No parent or guardian shall be liable under the provisions of this subsection in a

cumulative amount in excess of ten thousand dollars (\$10,000) for the willful marking upon, defacing or damaging of any property by any child.

- (2) Nothing in this section is intended to or shall limit to twenty-five hundred dollars (\$2500) the liability of a person to whom the negligence of a minor is imputed by KRS 186.590, nor shall this section limit the liability set forth in any other statute to the contrary.

Section 41. KRS 405.070 is amended to read as follows:

When a parent of a child joins any religious society whose faith is similar to that of the Shakers without having made adequate provision for his children, the Circuit Court of the county where he resides, or of the county in which any part of his property is situated, if he does not reside in this state, may, upon petition of any next friend, appoint a committee to any infant child, or child of unsound mind, of the father or mother, and make out of the father's or mother's estate a provision for the maintenance of the child, and take the child from the father, mother or society, and provide for assignment of parenting responsibilities, as defined in Section 1 of this Act[its custody].

Section 42. KRS 406.051 is amended to read as follows:

- (1) The District Court has jurisdiction of an action brought under this chapter and all remedies for the enforcement of judgments for expenses of pregnancy and confinement for a wife or for education, necessary support, or funeral expenses for children born out of wedlock. An appeal may be had to the Circuit Court if prosecuted within sixty (60) days from the date of judgment. The court has continuing jurisdiction to modify or revoke a judgment for future education. All remedies under the uniform reciprocal enforcement of support act are available for enforcement of duties of support under this chapter.
- (2) The District Court may exercise jurisdiction, concurrent with that of the Circuit Court, to assign parenting responsibilities, as defined in Section 1 of this Act, and parenting time, as defined in Section 1 of this Act,~~determine matters of child~~

~~custody and visitation}~~ in cases where paternity is established as set forth in this chapter. The District Court, in making these determinations, shall utilize the provisions of KRS Chapter 403 relating to the assignment of parenting responsibilities and parenting time~~[child custody and visitation]~~. The District Court may decline jurisdiction if it finds the circumstances of any case require a level of proceedings more appropriate to the Circuit Court.

Section 43. KRS 510.310 is amended to read as follows:

In any proceeding to determine parenting responsibilities, as defined in Section 1 of this Act, or parenting time, as defined in Section 1 of this Act~~[custody of or visitation with children]~~, no evidence that one has been charged with violation of this statute, if the person charged and the complainant are married or that such a proceeding is pending, or any evidence regarding the circumstances on which such charge is based, shall be admissible into evidence on the issue of parenting responsibilities or parenting time~~[custody or visitation]~~, nor shall any weight be given by any court to the existence of such a proceeding or the facts on which such proceeding is based. Nothing herein shall be construed to prevent evidence of incest or sexual assault or abuse of a child from being admitted in a parenting responsibilities or parenting time~~[custody or visitation]~~ proceeding.

Section 44. KRS 620.027 is amended to read as follows:

The District Court has jurisdiction, concurrent with that of the Circuit Court, to determine matters of parenting responsibilities, as defined in Section 1 of this Act, and parenting time, as defined in Section 1 of this Act~~[child custody and visitation]~~ in cases where the need for a permanent relative placement and parenting responsibilities~~[custody]~~ order is established as set forth in this chapter and the order is requested by the relative custodian. The District Court, in making these determinations, shall utilize the provisions of KRS Chapter 403 relating to parenting responsibilities and parenting time~~[child custody and visitation]~~. In no event shall permanent parenting responsibilities~~[custody]~~ orders be

entered if the relative custodian elects to pursue approval as a provisional foster parent with the cabinet. In any case where the child is actually residing with a grandparent in a stable relationship, the court may recognize the grandparent as having the same standing as a parent for evaluating what parenting responsibilities~~[custody]~~ arrangements are in the best interest of the child.

Section 45. The following KRS section is repealed:

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

Section 46. The General Assembly urges the Kentucky Supreme Court, by July 15, 2001, to promulgate specific rules of procedure to govern all proceedings under KRS 403.010 to 403.350, except as otherwise provided in KRS 403.010 to 403.350.

BILL DRAFT

AN ACT relating to domestic relations.

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

SECTION 1. A NEW SECTION OF KRS 403.010 TO 403.350 IS CREATED TO READ AS FOLLOWS:

- (1) *In any child custody or visitation proceeding under KRS 403.010 to 403.350, the court, except as provided in subsection (2) of this section, shall include as a condition of any custody or visitation order a requirement that sixty (60) days advance written notice be given to any other party by any party intending to relocate more than fifty (50) miles away or outside the Commonwealth. The notice shall be given in writing by certified mail, return receipt requested, to any other party. The notice of the proposed relocation shall include:*
 - (a) *A statement of intent to move;*
 - (b) *The new address, if known. If the new address is not known, then the new city;*
 - (c) *The date of the proposed relocation; and*
 - (d) *A statement that any other party has thirty (30) days, from the date that notice is received, to file a petition to revise custody, visitation, or both.*
- (2) *If the court finds that the health or safety of any adult or child would be placed at risk by the giving of notice under subsection (1) of this section, the court may waive some or all of the notice requirements, before or after the relocation, and take any other remedial action necessary to facilitate the legitimate needs of the parties and the best interests of the child.*
- (3) *If the parties agree to revised custody, visitation, or both for the child, they may submit the terms of the agreement to the court with a written affidavit signed by*

all the parties, and the court may order the revised custody, visitation, or both without a hearing.

- (4) The relocating party may relocate sixty (60) days after providing the written notice required under subsections (1) and (2) of this section unless another party files a petition to revise custody, visitation, or both within thirty (30) days after receiving notice. The court shall hold a hearing on the petition as soon as possible. Based on the best interests of the child, the court shall consider modifying custody, visitation, or both for the relocating party and any other party. Also based on the best interests of the child, the court shall consider at this hearing, or at a later hearing, ordering the return of the child if a party relocates with the child without complying with the requirements of this subsection and subsections (1), (2), and (3) of this section. The court shall permit a nonrelocating party to have telephone access sufficient to assure that the child has frequent, continuing, and meaningful contact with a nonrelocating party unless the child's best interests warrant otherwise. The court shall order the allocation of transportation, transportation costs, or both, among the parties.
- (5) The court shall consider a failure to provide notice of a proposed relocation, as described in subsections (1) and (2) of this section, as cause to order the relocating party to pay court costs, including reasonable attorneys' fees, to any other party with custody, visitation, or both rights who files a petition to revise custody, visitation, or both within three (3) months after learning of the relocation.
- (6) Nothing in this section shall limit a party's right to petition a court to revise custody, visitation, or both.

