

1 AN ACT relating to de facto custodians.

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

3 ➔Section 1. KRS 403.270 is amended to read as follows:

- 4 (1) (a) As used in this chapter and KRS 405.020, unless the context requires  
5 otherwise, "de facto custodian" means a person who has been shown by clear  
6 and convincing evidence to have been the primary caregiver for, and financial  
7 supporter of, a child who ***within the last two (2) years*** has resided with the  
8 person for ***an aggregate***<sup>[a]</sup> period of six (6) months or more if the child is  
9 under three (3) years of age and for ***an aggregate***<sup>[a]</sup> period of one (1) year or  
10 more if the child is three (3) years of age or older or has been placed by the  
11 Department for Community Based Services. Any period of time after a legal  
12 proceeding has been commenced by a parent seeking to regain custody of the  
13 child shall not be included in determining whether the child has resided with  
14 the person for the required minimum period.
- 15 (b) A person shall not be a de facto custodian until a court determines by clear  
16 and convincing evidence that the person meets the definition of de facto  
17 custodian established in paragraph (a) of this subsection. Once a court  
18 determines that a person meets the definition of de facto custodian, the court  
19 shall give the person the same standing in custody matters that is given to each  
20 parent under this section and KRS 403.280, 403.340, 403.350, 403.822, and  
21 405.020.
- 22 (2) The court shall determine custody in accordance with the best interests of the child  
23 and equal consideration shall be given to each parent and to any de facto custodian.  
24 Subject to KRS 403.315, there shall be a presumption, rebuttable by a  
25 preponderance of evidence, that joint custody and equally shared parenting time is  
26 in the best interest of the child. If a deviation from equal parenting time is  
27 warranted, the court shall construct a parenting time schedule which maximizes the

- 1 time each parent or de facto custodian has with the child and is consistent with  
2 ensuring the child's welfare. The court shall consider all relevant factors including:
- 3 (a) The wishes of the child's parent or parents, and any de facto custodian, as to  
4 his or her custody;
  - 5 (b) The wishes of the child as to his or her custodian, with due consideration  
6 given to the influence a parent or de facto custodian may have over the child's  
7 wishes;
  - 8 (c) The interaction and interrelationship of the child with his or her parent or  
9 parents, his or her siblings, and any other person who may significantly affect  
10 the child's best interests;
  - 11 (d) The motivation of the adults participating in the custody proceeding;
  - 12 (e) The child's adjustment and continuing proximity to his or her home, school,  
13 and community;
  - 14 (f) The mental and physical health of all individuals involved;
  - 15 (g) A finding by the court that domestic violence and abuse, as defined in KRS  
16 403.720, has been committed by one (1) of the parties against a child of the  
17 parties or against another party. The court shall determine the extent to which  
18 the domestic violence and abuse has affected the child and the child's  
19 relationship to each party, with due consideration given to efforts made by a  
20 party toward the completion of any domestic violence treatment, counseling,  
21 or program;
  - 22 (h) The extent to which the child has been cared for, nurtured, and supported by  
23 any de facto custodian;
  - 24 (i) The intent of the parent or parents in placing the child with a de facto  
25 custodian;
  - 26 (j) The circumstances under which the child was placed or allowed to remain in  
27 the custody of a de facto custodian, including whether the parent now seeking

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

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

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

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