

1 AN ACT relating to custody.

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

3 ➔Section 1. KRS 405.020 is amended to read as follows:

4 **(1) For purposes of this section, the court shall examine the factors stated in KRS**  
5 **620.023 to determine the best interests of the child.**

6 ~~(2)(1)~~ The father and mother shall have the joint custody, nurture, and education of  
7 their children who are under the age of eighteen (18). If either of the parents dies,  
8 the survivor, if suited to the trust, shall have the custody, nurture, and education of  
9 the children who are under the age of eighteen (18). The father shall be primarily  
10 liable for the nurture and education of his children who are under the age of  
11 eighteen (18) and for any unmarried child over the age of eighteen (18) when the  
12 child is a full-time high school student, but not beyond completion of the school  
13 year during which the child reaches the age of nineteen (19) years.

14 ~~(3)(2)~~ The father and mother shall have the joint custody, care, and support of their  
15 children who have reached the age of eighteen (18) and who are wholly dependent  
16 because of permanent physical or mental disability. If either of the parents dies, the  
17 survivor, if suited to the trust, shall have the custody, care, and support of ~~the~~~~[such]~~  
18 children.

19 ~~(4)(3)~~ Notwithstanding the provisions of subsections ~~(2)(1)~~ and ~~(3)(2)~~ of this  
20 section, **the following people may petition the court for legal custody of a child:**

21 **(a)** A person claiming to be a de facto custodian, as defined in KRS 403.270~~,~~  
22 ~~may petition a court for legal custody of a child~~. The court shall grant legal  
23 custody to the person if the court determines that the person meets the  
24 definition of de facto custodian and that the best interests of the child will be  
25 served by awarding custody to the de facto custodian;~~[-]~~

26 **(b) A person, other than a parent, who has provided full-time care, nurturing,**  
27 **and protection for the child for at least six (6) months prior to the filing of**

1 the petition and who claims the custodial parent is unfit. To determine if the  
2 parent is unfit, the court shall consider the following factors:

3 1. Any conviction of a criminal charge relating to the physical or sexual  
4 abuse or neglect of any child;

5 2. Any court findings that the parent has abused or neglected the child or  
6 another child in his or her care, custody, or control;

7 3. Repeated failure or refusal to provide essential parental care and  
8 protection for the child;

9 4. Repeated failure or refusal to provide essential food, clothing, shelter,  
10 medical care, or education reasonably necessary and available for the  
11 child's well-being;

12 5. The relationship between the parent and child;

13 6. The parent's efforts made to remedy conditions which create a risk of  
14 harm for the child, including progress on any court-ordered case plan;

15 7. A parent's substance use disorder, as defined by KRS 222.005;

16 8. Whether the parent is currently incarcerated and whether he or she  
17 will be available to care for the child in the foreseeable future;

18 9. Whether a parent is a mentally ill person as defined by KRS 202A.011;  
19 and

20 10. Whether there exists a reasonable expectation of significant  
21 improvement in the parent's situation in the immediately foreseeable  
22 future; and

23 The court shall grant legal custody to the petitioner if the court determines  
24 that the parent is unfit and that the best interests of the child will be served  
25 by awarding custody to the petitioner; and

26 (c) A person, other than a parent, who has physical custody of the child and  
27 who claims the parent has waived his or her superior right to custody as

1 evidenced by a knowing and voluntary surrender or relinquishment of the  
2 right, which may be implied from a parent's conduct. To determine whether  
3 a parent has waived his or her superior right to custody, the court shall  
4 consider the following factors:

- 5 1. Who was responsible for the care and welfare of the child prior to the  
6 initiation of custody proceedings;
- 7 2. The attachment of the child to the nonparent;
- 8 3. The nature and duration of the physical custody of the child by the  
9 nonparent;
- 10 4. The circumstances under which the child was left with the nonparent,  
11 including how the child was acquired by the nonparent and the intent  
12 of the parents at the time of their relinquishment of the child to the  
13 nonparent;
- 14 5. The age of the child when physical custody was acquired by the  
15 nonparent;
- 16 6. The age of the child when the parent sought the child's return;
- 17 7. Visits by the parent during the nonparent's physical custody of the  
18 child;
- 19 8. Any financial support by the parent while the child resided with the  
20 nonparent;
- 21 9. The parent's efforts to secure the child's return; and
- 22 10. Whether there exists a reasonable expectation of significant  
23 improvement in the parent's situation in the immediately foreseeable  
24 future; and

25 The court shall grant legal custody to the petitioner if the court determines  
26 that the parent has waived his or her superior right to custody and that the  
27 best interests of the child will be served by awarding custody to the

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petitioner.

(5) A petition filed under this section may proceed irrespective of the status of any proceeding under KRS Chapter 620.

~~(6)(4)~~ Notwithstanding the provisions of subsections ~~(2)(1)~~ and ~~(3)(2)~~ of this section, if either parent dies and at the time of death a child is in the custody of a de facto custodian, as defined in KRS 403.270, the court shall award custody to the de facto custodian if the court determines that the best interests of the child will be served by that award of custody.