

1 AN ACT relating to parental rights.

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

3 ➔Section 1. KRS 199.011 is amended to read as follows:

4 As used in this chapter, unless the context otherwise requires:

- 5 (1) "Adoption worker" means an employee of the cabinet so designated by the
6 secretary for health and family services, a social worker employed by a county or
7 city who has been approved by the cabinet to handle, under its supervision,
8 adoption placement services to children, or a social worker employed by or under
9 contract to a child-placing adoption agency;
- 10 (2) "Adult adopted person" means any adopted person who is twenty-one (21) years of
11 age or older;
- 12 (3) "Cabinet" means the Cabinet for Health and Family Services;
- 13 (4) "Child" means any person who has not reached his ***or her*** eighteenth birthday;
- 14 (5) "Child-caring facility" means any institution or group home, including institutions
15 and group homes that are publicly operated, providing residential care on a twenty-
16 four (24) hour basis to children, not related by blood, adoption, or marriage to the
17 person maintaining the facility, other than an institution or group home certified by
18 an appropriate agency as operated primarily for educational or medical purposes, or
19 a residential program operated or contracted by the Department of Juvenile Justice
20 that maintains accreditation, or obtains accreditation within two (2) years of
21 opening from a nationally recognized accrediting organization;
- 22 (6) "Child-placing agency" means any agency licensed by the cabinet, which
23 supervises the placement of children in foster family homes or child-caring
24 facilities, or which places children for adoption;
- 25 (7) "Department" means the Department for Community Based Services;
- 26 (8) **(a) "Disability" means:**
- 27 **1. A physical or mental impairment, whether congenital or acquired, that**

substantially limits one (1) or more of the major life activities of an individual and is demonstrable by medically accepted clinical or laboratory diagnostic techniques;

2. A record of having such an impairment; or

3. Being regarded as having such an impairment.

(b) An individual who is currently engaging in the illegal use of drugs or the abuse of alcohol, drugs, or other substances is not an individual with a "disability" for purposes of this chapter.

(9) "Family rehabilitation home" means a child-caring facility for appropriate families and comprising not more than twelve (12) children and two (2) staff persons;

(10)~~(9)~~ "Fictive kin" means an individual who is not related by birth, adoption, or marriage to a child, but who has an emotionally significant relationship with the child, or an emotionally significant relationship with a biological parent, siblings, or half-siblings of the child in the case of a child from birth to twelve (12) months of age, prior to placement;

(11)~~(10)~~ "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or of a licensed child-placing agency;

(12)~~(11)~~ "Group home" means a homelike facility, excluding Department of Juvenile Justice-operated or -contracted facilities, for not more than eight (8) foster children, not adjacent to or part of an institutional campus, operated by a sponsoring agency for children who may participate in community activities and use community resources;

(13)~~(12)~~ "Institution" means a child-caring facility providing care or maintenance for nine (9) or more children;

(14)~~(13)~~ "Placement services" means those social services customarily provided by a licensed child-placing or a public agency, which are necessary for the arrangement

1 and placement of children in foster family homes, child-placing facilities, or
2 adoptive homes. Placement services are provided through a licensed child-placing
3 or a public agency for children who cannot be cared for by their biological parents
4 and who need and can benefit from new and permanent family ties established
5 through legal adoption. Licensed child-placing agencies and public agencies have a
6 responsibility to act in the best interests of children, biological parents, and adoptive
7 parents by providing social services to all the parties involved in an adoption;

8 ~~(15)~~~~(14)~~ "Rap back system" means a system that enables an authorized entity to
9 receive ongoing status notifications of any criminal history from the Department of
10 Kentucky State Police or the Federal Bureau of Investigation reported on an
11 individual whose fingerprints are registered in the system, upon approval and
12 implementation of the system;

13 ~~(16)~~~~(15)~~ "Reasonable and prudent parent standard" has the same meaning as in 42
14 U.S.C. sec. 675(10);

15 ~~(17)~~~~(16)~~ "Secretary" means the secretary for health and family services; and

16 ~~(18)~~~~(17)~~ "Voluntary and informed consent" means that at the time of the execution of
17 the consent, the consenting person was fully informed of the legal effect of the
18 consent, that the consenting person was not given or promised anything of value
19 except those expenses allowable under KRS 199.590(6), that the consenting person
20 was not coerced in any way to execute the consent, and that the consent was
21 voluntarily and knowingly given. If at the time of the execution of the consent the
22 consenting person was represented by independent legal counsel, there shall be a
23 presumption that the consent was voluntary and informed. The consent shall be in
24 writing, signed and sworn to by the consenting person, and include the following:

- 25 (a) Date, time, and place of the execution of the consent;
26 (b) Name of the child, if any, to be adopted, and the date and place of the child's
27 birth;

- 1 (c) Consenting person's relationship to the child;
- 2 (d) Identity of the proposed adoptive parents or a statement that the consenting
3 person does not desire to know the identification of the proposed adoptive
4 parents;
- 5 (e) 1. A statement that the consenting person understands that the consent will
6 be final and irrevocable under this paragraph unless withdrawn under
7 this paragraph.
- 8 2. If placement approval by the secretary is required, the voluntary and
9 informed consent shall become final and irrevocable seventy-two (72)
10 hours after the execution of the voluntary and informed consent. This
11 consent may be withdrawn only by written notification sent to the
12 proposed adoptive parent or the attorney for the proposed adoptive
13 parent on or before the expiration of the seventy-two (72) hours by
14 certified or registered mail and also by first-class mail.
- 15 3. If placement approval by the secretary is not required, the voluntary and
16 informed consent shall become final and irrevocable seventy-two (72)
17 hours after the execution of the voluntary and informed consent. This
18 consent may be withdrawn only by written notification sent to the
19 proposed adoptive parent or the attorney for the proposed adoptive
20 parent on or before the expiration of the seventy-two (72) hours by
21 certified or registered mail and also by first-class mail;
- 22 (f) Disposition of the child if the adoption is not adjudged;
- 23 (g) A statement that the consenting person has received a completed and signed
24 copy of the consent at the time of the execution of the consent;
- 25 (h) Name and address of the person who prepared the consent, name and address
26 of the person who reviewed and explained the consent to the consenting
27 person, and a verified statement from the consenting person that the consent

1 has been reviewed with and fully explained to the consenting person; and

2 (i) Total amount of the consenting person's legal fees, if any, for any purpose
3 related to the execution of the consent and the source of payment of the legal
4 fees.

5 ➔Section 2. KRS 199.471 is amended to read as follows:

6 Petitions for adoption of children placed for adoption by the cabinet or a licensed child-
7 placing institution or agency shall not be denied:

8 (1) On the basis of the religious, ethnic, racial, or interfaith background of the adoptive
9 applicant, unless contrary to the expressed wishes of the biological parent or
10 parents; or~~parent(s)~~

11 (2) On the sole basis of a disability of the adoptive applicant without considering
12 whether targeted adaptive or supportive services could enable the applicant to
13 provide essential care and protection for the child.

14 ➔Section 3. KRS 199.473 is amended to read as follows:

15 (1) All persons other than a child-placing agency or institution, the department, or
16 persons excepted by KRS 199.470(4) who wish to place or receive a child shall
17 make written application to the secretary for permission to place or receive a child.

18 (2) Prior to the approval of an application to place or receive a child, the fee required
19 pursuant to subsection (13) of this section shall be paid and a home study shall be
20 completed. The purpose of the home study shall be to review the background of the
21 applicant and determine the suitability of the applicant to receive a child, taking into
22 account at all times the best interest of the child for whom application to receive has
23 been made.

24 (3) (a) The home study shall be made in accordance with administrative regulations
25 promulgated by the cabinet in accordance with KRS Chapter 13A.

26 (b) The cabinet shall conduct the home study for an applicant whose total gross
27 income is equal to or less than two hundred fifty percent (250%) of the federal

1 poverty level guidelines issued each year by the federal government, unless
2 the applicant submits a written request for the home study to be conducted by
3 a licensed child-placing agency or institution. Upon request, the cabinet shall
4 make information available to an applicant who does not meet the
5 requirements of this paragraph to assist the applicant in obtaining a home
6 study from a licensed child-placing agency approved to provide adoption
7 services.

8 (c) A licensed child-placing agency approved to provide adoption services shall
9 conduct the home study for an applicant whose gross total income is more
10 than two hundred fifty percent (250%) of the federal poverty level guidelines
11 issued each year by the federal government.

12 (d) Calculation of family size for this subsection shall include each child
13 requested to be adopted.

14 (e) The portion of the home study pertaining to the home and family background
15 shall be valid for one (1) year following the date of its completion by an
16 adoption worker.

17 (4) The adoption worker making the home study shall make a finding in writing
18 recommending either that the application be granted or that the application be
19 denied. The recommendation of the adoption worker shall then be reviewed by the
20 secretary.

21 (5) Based on the report and recommendation of the adoption worker making the home
22 study, the secretary shall grant or refuse permission for the applicant to place or
23 receive a child as early as practicable, but, in any case, the decision shall be made
24 within sixty (60) days after the receipt of the application. In reaching a decision, the
25 secretary shall be guided by the ability of the persons wishing to receive the child to
26 give the child a suitable home, and shall at all times consider the best interest of the
27 child from a financial, medical, psychological, and psychiatric standpoint.

1 (6) (a) If the application is refused, the secretary shall in general terms furnish in
2 writing the reasons for his or her refusal.

3 (b) If the application is refused based upon any disability of the applicant, the
4 secretary shall confirm that an individual assessment was conducted, and
5 that targeted adaptive or supportive services and modifications were
6 reviewed and considered prior to the refusal.

7 (c) The cabinet shall maintain all information and supporting documentation
8 related to the assessment, considered targeted adaptive or supportive
9 services and available modifications for a period of two (2) years or as
10 otherwise ordered by a court of competent jurisdiction.

11 (7) (a) Any person who seeks temporary custody of a child prior to the secretary's
12 ruling on an application for adoption shall file a petition seeking temporary
13 custody, with a notice of intent to adopt, with the Circuit Court that will have
14 jurisdiction of the adoption proceedings.

15 (b) The clerk of the court shall send a notice of the filing of the petition to the
16 cabinet. A hearing on the petition shall occur no later than seventy-two (72)
17 hours after the filing of the petition, excluding weekends and holidays.
18 Proceedings under this subsection shall be incorporated into the court's
19 adoption file.

20 (c) If the adoption is not finalized within six (6) months of the filing of the
21 petition and notice of intent, the court shall conduct a hearing on the status
22 and custody of the child.

23 (8) (a) Upon a finding by the Circuit Court that the child should be placed prior to
24 the secretary's ruling on the application, the Circuit Court may grant the
25 applicant temporary custody of the child pending the decision of the secretary.

26 (b) Temporary custody shall not be granted to an applicant unless a background
27 check, including but not limited to a criminal records check by the Justice and

Public Safety Cabinet or the Administrative Office of the Courts and a background check of child abuse and neglect records maintained by the cabinet, has been submitted to and reviewed by the court. The background check required for temporary custody shall be part of the home study required under subsection (2) of this section.

(c) If the application is denied by the secretary, the temporary custody order shall be set aside and, upon motion of the cabinet or of the child's parent or parents, the Circuit Court may order the child returned to the biological parent or parents or the child's custody may be awarded to the cabinet, another licensed child-placing agency, or other individuals deemed appropriate by the court.

(d) This section shall not be deemed to permit the completion of any adoption proceeding without the approval of the secretary and compliance with KRS 615.030, if required.

(9) (a) In any case where the cabinet refuses to approve the placement of a child for adoption when requested by the parent or parents of the child, or refuses the request of any person or persons that a child be placed with that person or those persons for adoption, the decision of the secretary in so refusing shall be final unless within ten (10) days after notice of refusal, the biological or proposed adopting parent or parents shall appeal to the Circuit Court of the county in which the adoption is proposed.

(b) No placement shall be disapproved:

1. On the basis of the religious, ethnic, racial, or interfaith background of the adoptive applicant, if the placement is made with the consent of the parent; or

2. On the sole basis of a disability of the adoptive applicant without considering whether targeted adaptive or supportive services could enable the applicant to provide essential care and protection for the

1 child.

2 (10) (a) The cabinet may refuse to approve the placement of a child for adoption if the
3 child's custodial parent is unwilling for the child to be placed for adoption
4 with the proposed adoptive family. The cabinet may approve or deny the
5 placement, in spite of the fact that the custodial parent or parents are unwilling
6 to be interviewed by the cabinet or other approving entity, or if, after diligent
7 efforts have been made, the adoption worker is unable to locate or interview
8 the custodial parent or parents.

9 (b) The cabinet shall be made a party defendant to ~~any~~^{the} appeal taken under
10 subsection (9) of this section. In the hearing of an appeal, the court shall
11 review the findings of the secretary and shall determine if the secretary has
12 acted arbitrarily, unlawfully, or in a manner that constitutes an abuse of
13 discretion.

14 (11) If a child who does not fall within the exception provided for in KRS 199.470(4) is
15 placed or received in a home without the court's review of the background check
16 required under this section or the permission of the secretary for health and family
17 services, or if permission to receive a child has been denied, a representative of the
18 cabinet shall notify in writing or may petition the juvenile session of District Court
19 of the county in which the child is found setting out the facts concerning the child.
20 When the petition has been filed, the court shall take jurisdiction of the child and
21 shall provide for it as it would provide for a dependent, neglected, or abused child
22 under KRS Chapter 620, except that the child may not be placed in the home of the
23 applicants who are to receive the child unless permission to do so is granted by the
24 secretary or the action is ordered by a Kentucky court of competent jurisdiction.

25 (12) When either the custodial parent or parents of the child to be placed or the persons
26 wishing to receive the child reside out-of-state, the requirement of KRS 615.030,
27 Interstate Compact on the Placement of Children, shall be met before the cabinet

1 gives approval for the child's placement.

2 (13) The secretary of the Cabinet for Health and Family Services shall be paid a
3 nonrefundable fee of two hundred dollars (\$200) upon the filing of the written
4 application for permission to place or receive a child. Payment shall be made by
5 certified or cashier's check only. All funds collected under this section shall be
6 deposited in a restricted account, which is hereby created, for the purpose of
7 subsidizing an adoptive parent for suitable care of a special-needs child as
8 authorized in KRS 199.555.

9 (14) Nothing in this statute shall be construed to limit the authority of the cabinet or a
10 child-placing institution or agency to determine the proper disposition of a child
11 committed to it by the juvenile session of District Court or the Circuit Court, prior
12 to the filing of an application to place or receive a child.

13 ➔Section 4. KRS 625.050 is amended to read as follows:

14 (1) A petition for involuntary termination of parental rights shall be entitled "In the
15 interest of ..., a child."

16 (2) The petition shall be filed in the Circuit Court for any of the following counties:

17 (a) The county in which either parent resides or may be found;

18 (b) The county in which juvenile court actions, if any, concerning the child have
19 commenced; or

20 (c) The county in which the child involved resides or is present.

21 (3) Proceedings for involuntary termination of parental rights may be initiated upon
22 petition by the cabinet, any child-placing agency licensed by the cabinet, any
23 county or Commonwealth's attorney, or parent.

24 (4) The petition for involuntary termination of parental rights shall be verified and
25 contain the following:

26 (a) Name and mailing address of each petitioner;

27 (b) Name, sex, date of birth, and place of residence of the child;

- 1 (c) Name and address of the living parents of the child;
- 2 (d) Name, date of death and cause of death, if known, of any deceased parent;
- 3 (e) Name and address of the putative father, if known by the petitioner, of the
- 4 child if not the same person as the legal father;
- 5 (f) Name and address of the person, cabinet, or agency having custody of the
- 6 child;
- 7 (g) Name and identity of the person, cabinet, or authorized agency to whom
- 8 custody is sought to be transferred;
- 9 (h) Statement that the person, cabinet, or agency to whom custody is to be given
- 10 has facilities available and is willing to receive the custody of the child;
- 11 (i) All pertinent information concerning termination or disclaimers of parenthood
- 12 or voluntary consent to termination;
- 13 (j) Information as to the legal status of the child and the court so adjudicating;
- 14 and
- 15 (k) A concise statement of the factual basis for the termination of parental rights.
- 16 (5) No petition may be filed under this section prior to five (5) days after the birth of
- 17 the child.
- 18 (6) No petition may be filed to terminate the parental rights of:
- 19 (a) A woman solely because of her use of a nonprescribed controlled substance
- 20 during pregnancy if she enrolls in and maintains substantial compliance with
- 21 both a substance abuse treatment or recovery program and a regimen of
- 22 prenatal care as recommended by her health care practitioner throughout the
- 23 remaining term of her pregnancy. Upon certified completion of the treatment
- 24 or recovery program, or six (6) months after giving birth during which time
- 25 substantial compliance with a substance abuse treatment or recovery program
- 26 has occurred, whichever is earlier, any records maintained by a court or by the
- 27 cabinet relating to a positive test for a nonprescribed controlled substance

1 shall be sealed by the court and may not be used in any future criminal
2 prosecution or future petition to terminate the woman's parental rights; or

3 (b) Any parent solely because of a disability as defined in Section 1 of this Act
4 unless the parent has been provided, or unless the parent has knowingly
5 and affirmatively rejected in writing, adaptive and supportive services based
6 on an individual assessment of the parent.

7 (7) Any petition filed pursuant to this section shall:

8 (a) Include a copy of any individual assessment required under subsection (6)
9 of this section and the services provided pursuant to the assessment, or the
10 rejection of offered services signed by the parent; and

11 (b) Be fully adjudicated and a final judgment shall be entered by the court within
12 six (6) months of the service of the petition on the parents.

13 ➔Section 5. KRS 625.090 is amended to read as follows:

14 (1) The Circuit Court may involuntarily terminate all parental rights of a parent of a
15 named child, if the Circuit Court finds from the record~~pleadings and~~ by clear and
16 convincing evidence that:

- 17 (a) 1. The child has been adjudged to be an abused or neglected child, as
18 defined in KRS 600.020(1), by a court of competent jurisdiction;
19 2. The child is found to be an abused or neglected child, as defined in KRS
20 600.020(1), by the Circuit Court in this proceeding;
21 3. The child is found to have been diagnosed with neonatal abstinence
22 syndrome at the time of birth, unless his or her birth mother:
23 a. Was prescribed and properly using medication for a legitimate
24 medical condition as directed by a health care practitioner that may
25 have led to the neonatal abstinence syndrome;
26 b. Is currently, or within ninety (90) days after the birth, enrolled in
27 and maintaining substantial compliance with both a substance

- 1 abuse treatment or recovery program and a regimen of prenatal
2 care or postnatal care as recommended by her health care
3 practitioner throughout the remaining term of her pregnancy or the
4 appropriate time after her pregnancy; or
- 5 c. In the absence of a prescription for the treatment of a legitimate
6 medical condition, agrees, prior to discharge from the hospital, to
7 participate in a court-ordered assessment by a drug treatment
8 provider and the assigning of a certified peer support specialist for
9 referral to appropriate treatment, and agrees to participate in
10 treatment which shall commence within ninety (90) days after the
11 birth; or
- 12 4. The parent has been convicted of a criminal charge relating to the
13 physical or sexual abuse or neglect of any child and that physical or
14 sexual abuse, neglect, or emotional injury to the child named in the
15 present termination action is likely to occur if the parental rights are not
16 terminated;
- 17 (b) 1. The Cabinet for Health and Family Services has filed a petition with the
18 court pursuant to KRS 620.180 or 625.050; or
- 19 2. A child-placing agency licensed by the cabinet, any county or
20 Commonwealth's attorney, or a parent has filed a petition with the court
21 under KRS 625.050; and
- 22 (c) Termination would be in the best interest of the child.
- 23 (2) No termination of parental rights shall be ordered unless the Circuit Court also finds
24 by clear and convincing evidence the existence of one (1) or more of the following
25 grounds:
- 26 (a) That the parent has abandoned the child for a period of not less than ninety
27 (90) days;

- 1 (b) That the parent has inflicted or allowed to be inflicted upon the child, by other
2 than accidental means, serious physical injury;
- 3 (c) That the parent has continuously or repeatedly inflicted or allowed to be
4 inflicted upon the child, by other than accidental means, physical injury or
5 emotional harm;
- 6 (d) That the parent has been convicted of a felony that involved the infliction of
7 serious physical injury to any child;
- 8 (e) That the parent, for a period of not less than six (6) months, has continuously
9 or repeatedly failed or refused to provide or has been substantially incapable
10 of providing essential parental care and protection for the child and that there
11 is no reasonable expectation of improvement in parental care and protection,
12 considering the age of the child;
- 13 (f) That the parent has caused or allowed the child to be sexually abused or
14 exploited;
- 15 (g) That the parent, for reasons other than poverty alone, has continuously or
16 repeatedly failed to provide or is incapable of providing essential food,
17 clothing, shelter, medical care, or education reasonably necessary and
18 available for the child's well-being and that there is no reasonable expectation
19 of significant improvement in the parent's conduct in the immediately
20 foreseeable future, considering the age of the child;
- 21 (h) That:
- 22 1. The parent's parental rights to another child have been involuntarily
23 terminated;
- 24 2. The child named in the present termination action was born subsequent
25 to or during the pendency of the previous termination; and
- 26 3. The conditions or factors which were the basis for the previous
27 termination finding have not been corrected;

- 1 (i) That the parent has been convicted in a criminal proceeding of having caused
2 or contributed to the death of another child as a result of physical or sexual
3 abuse or neglect;
- 4 (j) That the child has been in foster care under the responsibility of the cabinet
5 for fifteen (15) cumulative months out of forty-eight (48) months preceding
6 the filing of the petition to terminate parental rights; or
- 7 (k) That the child has been removed from the biological or legal parents more
8 than two (2) times in a twenty-four (24) month period by the cabinet or a
9 court.
- 10 (3) In determining the best interest of the child and the existence of a ground for
11 termination, the Circuit Court shall consider the following factors:
- 12 (a) Mental illness as defined by KRS 202A.011(9), or an intellectual disability as
13 defined by KRS 202B.010(9) of the parent as certified by a qualified mental
14 health professional, or a disability as defined in Section 1 of this Act, if the
15 mental illness, intellectual disability, or disability~~[which]~~ renders the parent
16 consistently unable to care for the immediate and ongoing physical or
17 psychological needs of the child for extended periods of time;
- 18 (b) Acts of abuse or neglect as defined in KRS 600.020(1) toward any child in the
19 family;
- 20 (c) If the child has been placed with the cabinet, whether the cabinet has, prior to
21 the filing of the petition;
- 22 1. Made reasonable efforts as defined in KRS 620.020 to reunite the child
23 with the parents unless one or more of the circumstances enumerated in
24 KRS 610.127 for not requiring reasonable efforts have been
25 substantiated in a written finding by the District Court; or
- 26 2. Provided a parent with a disability as defined in Section 1 of this Act
27 with targeted adaptive and supportive services based on an individual

1 assessment of the parent, or has received a written acknowledgement
2 from the parent knowingly and affirmatively rejecting the offered
3 services;

4 (d) The efforts and adjustments the parent has made in his or her circumstances,
5 conduct, or conditions to make it in the child's best interest to return the
6 child~~[him]~~ to his or her home within a reasonable period of time, considering
7 the age of the child;

8 (e) The physical, emotional, and mental health of the child and the prospects for
9 the improvement of the child's welfare if termination is ordered; and

10 (f) The payment or the failure to pay a reasonable portion of substitute physical
11 care and maintenance if financially able to do so.

12 (4) If the child has been placed with the cabinet, the parent may present testimony
13 concerning the reunification, adaptive, or supportive services offered by the cabinet
14 and whether additional services would be likely to bring about lasting parental
15 adjustment enabling a return of the child to the parent.

16 (5) If the parent proves by a preponderance of the evidence that the child will not
17 continue to be an abused or neglected child as defined in KRS 600.020(1) if
18 returned to the parent, or if the parent proves by a preponderance of the evidence
19 that appropriate and specifically targeted adaptive or supportive services based
20 upon an individual assessment of the parent have not been offered or provided to
21 the parent, the court in its discretion may determine not to terminate parental rights.

22 (6) Upon the conclusion of proof and argument of counsel, the Circuit Court shall enter
23 findings of fact, conclusions of law, and a decision as to each parent-respondent
24 within thirty (30) days either:

25 (a) Terminating the right of the parent; or

26 (b) Dismissing the petition and stating whether the child shall be returned to the
27 parent or shall remain in the custody of the state.