

1 AN ACT relating to guardians ad litem and counsel for minors and disabled adults
2 and making an appropriation therefor.

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

4 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO
5 READ AS FOLLOWS:

6 *(1) The Office of Child and Family Advocacy is hereby established as an*
7 *independent agency of state government and is attached for administrative*
8 *purposes to the Justice and Public Safety Cabinet to provide a state-sponsored*
9 *and controlled system for training and appointing guardians ad litem and*
10 *counsel for minors and disabled adults.*

11 *(2) The Child and Family Advocacy Commission is hereby created and shall:*

12 *(a) Receive applications, interview, and recommend to the Governor three (3)*
13 *attorneys as nominees for appointment as the child and family advocate;*

14 *(b) Assist the child and family advocate in drawing up procedures for the*
15 *selection of his or her staff;*

16 *(c) Review the performance of the system for training and appointing*
17 *guardians ad litem and counsel for minors and disabled adults, and provide*
18 *general supervision of the child and family advocate;*

19 *(d) Assist the Office of Child and Family Advocacy in ensuring its*
20 *independence through public education regarding the purpose of training*
21 *and appointing guardians ad litem and counsel for minors and disabled*
22 *adults; and*

23 *(e) Review and adopt an annual budget prepared by the child and family*
24 *advocate for the system for training and appointing guardians ad litem and*
25 *counsel for minors and disabled adults, and provide support for budgetary*
26 *requests to the General Assembly.*

27 *(3) The Child and Family Advocacy Commission shall consist of the following*

1 members who shall serve terms of four (4) years, except the initial terms shall be
2 established as provided in subsection (4) of this section:

3 (a) Two (2) members appointed by the Governor;

4 (b) The Attorney General or his or her designee;

5 (c) One (1) member appointed by the President of the Senate; and

6 (d) One (1) member appointed by the Speaker of the House of Representatives.

7 Appointed members shall be either child advocates or persons with substantial
8 experience in the representation of minors or disabled adults.

9 (4) At the first meeting of the commission, a drawing by lot shall be conducted to
10 determine the length of each original member's term. Initially there shall be one
11 (1) two (2) year term, two (2) three (3) year terms, and two (2) four (4) year terms.
12 Vacancies in the membership of the commission shall be filled in the same
13 manner as original appointments. Appointments to fill vacancies occurring
14 before the expiration of a term shall be for the remainder of the unexpired term.

15 (5) The commission shall first meet at the call of the Governor and thereafter as the
16 commission shall determine on a regular basis, but at least quarterly, and shall
17 be presided over by a chairperson elected by its members for a one (1) year term.
18 A majority of commission members shall constitute a quorum, and decisions
19 shall require the majority vote of those present; except that a recommendation to
20 the Governor pertaining to the appointment, renewal of the appointment, or
21 removal of the child and family advocate shall require a majority vote of the
22 commission. Each member of the commission shall have one (1) vote, and voting
23 by proxy shall be prohibited.

24 (6) The child and family advocate shall, upon appointment or renewal, be an ex
25 officio member of the commission without the power to vote, shall serve as
26 secretary of the commission, and shall be entitled to attend and participate in all
27 meetings of the commission except discussions relating to renewal of his or her

1 term or his or her removal.

2 (7) Commission members shall be reimbursed for reasonable and necessary expenses
3 incurred while engaged in carrying out the duties of the commission and shall
4 receive one hundred dollars (\$100) per day for each meeting attended unless
5 prohibited by law from receiving such compensation.

6 (8) In no event shall the commission or its members interfere with the discretion,
7 judgment, or advocacy of employees of the Office of Child and Family Advocacy
8 in training and appointing guardians ad litem and counsel for minors and
9 disabled adults.

10 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO
11 READ AS FOLLOWS:

12 (1) The Office of Child and Family Advocacy shall consist of the child and family
13 advocate and such assistant child and family advocates as the child and family
14 advocate shall deem necessary, and such secretarial and other personnel as the
15 child and family advocate shall deem necessary. Employees of the Office of Child
16 and Family Advocacy shall be covered by the merit system and shall participate
17 in the Kentucky Employees Retirement System pursuant to the provisions of KRS
18 61.510 to 61.705.

19 (2) (a) The child and family advocate shall be appointed by the Governor from a
20 list of three (3) attorneys submitted to him or her by the Child and Family
21 Advocacy Commission and shall be an attorney licensed to practice law in
22 Kentucky with at least five (5) years of experience in the practice of law who
23 has:

24 1. Served as counsel in at least twenty (20) dependency, neglect, or abuse
25 proceedings;

26 2. Familiarity with the role, purpose, and function of guardians ad litem
27 and counsel in district, family, and juvenile courts; and

1 3. The ability to develop training curricula.

2 (b) The child and family advocate shall, prior to or immediately after being
3 appointed, be trained in nationally recognized standards for a guardian ad
4 litem and for court-appointed counsel.

5 (3) The assistant child and family advocates shall be attorneys and shall be appointed
6 by the child and family advocate. However, the assistant child and family
7 advocates shall not be subject to the provisions of KRS 12.210.

8 (4) Secretarial, clerical, and other personnel shall be appointed by the child and
9 family advocate.

10 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO
11 READ AS FOLLOWS:

12 The authority and duties of the Office of Child and Family Advocacy shall include but
13 are not limited to:

14 (1) Administering a statewide guardian ad litem and counsel training and
15 appointment program that shall train and appoint all guardians ad litem and
16 counsel for minors and disabled adults;

17 (2) Establishing policy and procedure for the management of a statewide guardian
18 ad litem and counsel training and appointment program, including developing
19 and promulgating administrative regulations to carry out Sections 1 to 4 of this
20 Act;

21 (3) Managing the guardian ad litem and counsel training and appointment program
22 to ensure that minors and disabled adults receive qualified guardians ad litem
23 and counsel in accordance with state and federal law and policy.

24 (4) Determining necessary personnel and appointing assistant child and family
25 advocates who shall train and appoint guardians ad litem and counsel for minors
26 and disabled adults;

27 (5) Establishing offices in all Department for Community Based Services service

- 1 regions that shall train and appoint guardians ad litem and counsel for the
2 Commonwealth's minors and disabled adults;
- 3 (6) Recruiting local attorneys who would be willing to serve and be trained as
4 guardians ad litem and counsel for minors and disabled adults;
- 5 (7) Developing and updating a guardian ad litem and counsel manual that includes:
6 (a) Best practices for a guardian ad litem and counsel for minors and disabled
7 adults; and
8 (b) Statutory, regulatory, and case law relating to a guardian ad litem and
9 counsel for minors and disabled adults;
- 10 (8) Developing and providing a library of materials for the continuing education of
11 guardians ad litem and counsel for minors and disabled adults;
- 12 (9) Providing resources to educate court personnel regarding the role and function
13 of guardians ad litem and counsel for minors and disabled adults;
- 14 (10) Developing needs assessment strategies, performing needs assessment surveys,
15 and ensuring that guardian ad litem and counsel training programs correspond
16 with actual and perceived needs for training;
- 17 (11) Designing and implementing evaluation tools based on specific objectives
18 targeted in the needs assessments described in subsection (10) of this section;
- 19 (12) Being authorized to seek, apply for, and solicit funds for the operation of the
20 guardian ad litem and counsel training and appointment program from any
21 source, public or private, and to receive donations, grants, awards, and similar
22 funds from any legal source. Those funds shall be placed in a special account for
23 the Office of Child and Family Advocacy and, notwithstanding KRS 45.229, those
24 funds shall not lapse;
- 25 (13) Preparing and submitting an annual report, by January 1 of each year, to the
26 Child and Family Advocacy Commission and the Legislative Research
27 Commission regarding:

1 (a) The development, policy, and management of the statewide training and
2 appointment program for guardians ad litem and counsel for minors and
3 disabled adults;

4 (b) The training and evaluation of guardians ad litem and counsel for minors
5 and disabled adults; and

6 (c) The number of guardians ad litem and counsel trained and appointed by
7 the office for minors and disabled adults; and

8 (14) Doing other activities and instituting other programs as necessary to carry out
9 Sections 1 to 4 of this Act, or those decisions or statutes which are the subject of
10 this section.

11 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO
12 READ AS FOLLOWS:

13 (1) The Office of Child and Family Advocacy shall appoint guardians ad litem and
14 counsel for minors and disabled adults.

15 (2) (a) A court may request a guardian ad litem or counsel to represent the best
16 interest of a minor or disabled adult in any case before the court. The court
17 shall consider the best interest of the minor or disabled adult in determining
18 whether to appoint a guardian ad litem or counsel. In all cases where a
19 guardian ad litem or counsel is requested, the court shall make a finding
20 that establishes the necessity of the appointment.

21 (b) The Circuit Clerk shall forward the request and findings to the local Office
22 of Child and Family Advocacy who shall immediately appoint a guardian
23 ad litem or counsel who has been trained by the office and who is located
24 locally.

25 (3) (a) The local Office of Child and Family Advocacy shall appoint a guardian ad
26 litem or counsel to represent the best interest of each minor who may
27 become the subject of a petition alleging dependency, neglect, or abuse,

1 from the earlier of the day that the Cabinet of Health and Family Services
2 has notified the local office that:

3 1. The minor was removed from the minor's home by the cabinet; or

4 2. Petition was filed.

5 (b) A guardian ad litem or counsel may meet with a minor during a team
6 meeting, court hearing, or similar venue when a Cabinet for Health and
7 Family Services caseworker is present for a purpose other than the
8 guardian ad litem's or counsel's visit with the minor.

9 (c) A guardian ad litem or counsel shall be provided access to all Cabinet for
10 Health and Family Services records regarding the minor at issue and the
11 minor's family.

12 (4) The child and family advocate shall ensure that each guardian ad litem and
13 counsel appointed by the office for a minor or disabled adult:

14 (a) Represents the best interest of each minor or disabled adult in all venues;

15 (b) Prior to representing any minor or disabled adult before the court, be
16 trained in:

17 1. Applicable statutory, regulatory, and case law; and

18 2. Nationally recognized standards for a guardian ad litem and counsel;

19 (c) Conducts or supervises an ongoing, independent investigation in order to
20 obtain, first-hand, a clear understanding of the situation and needs of the
21 minor or disabled adult;

22 (d) Personally meets with the minor or disabled adult, unless:

23 1. The minor or disabled adult is outside of the Commonwealth; or

24 2. Meeting with the minor or disabled adult would be detrimental to the
25 minor or disabled adult;

26 (e) Personally interviews the minor or disabled adult, unless:

27 1. The minor is not old enough to communicate;

- 1 2. The minor or disabled adult lacks the capacity to participate in a
2 meaningful interview; or
- 3 3. The interview would be detrimental to the minor or disabled adult;
- 4 (f) Personally attends all review hearings pertaining to the minor's or disabled
5 adult's case;
- 6 (g) Participates in all appeals, unless excused by order of the court;
- 7 (h) To the extent possible, and unless it would be detrimental to the minor or
8 disabled adult, personally or through a trained volunteer, paralegal, or
9 other trained staff, keeps the minor or disabled adult advised of:
- 10 1. The status of the minor's or disabled adult's case;
11 2. All court and administrative proceedings;
12 3. Discussions with, and proposals made by, other parties;
13 4. Court action; and
14 5. The psychiatric, medical, or other treatment or diagnostic services that
15 are to be provided to the minor or disabled adult, if any;
- 16 (i) Makes all necessary court filings to advance the guardian ad litem's or
17 counsel's position regarding the best interest of the minor or disabled adult;
18 and
- 19 (j) Who represents a minor:
- 20 1. Conducts an independent investigation regarding the minor at issue,
21 the minor's family, and what constitutes the best interest of the minor.
22 The guardian ad litem or counsel may interview the minor's Cabinet
23 for Health and Family Services caseworker but may not:
- 24 a. Rely exclusively on the conclusions and findings of the Cabinet
25 for Health and Family Services; or
- 26 b. Except as provided in subsection (5) of this section, conduct a
27 visit with the client in conjunction with the visit of a Cabinet for

1 Health and Family Services caseworker;

2 2. If the minor is placed in an out-of-home placement, or is being
3 considered for placement in an out-of-home placement, unless it
4 would be detrimental to the minor;

5 a. To the extent possible, determines the minor's goals and
6 concerns regarding placement; and

7 b. Personally assesses or supervises an assessment of the
8 appropriateness and safety of the minor's environment in each
9 placement;

10 3. Is familiar with local experts who can provide consultation and
11 testimony regarding the reasonableness and appropriateness of efforts
12 made by the Cabinet for Health and Family Services to;

13 a. Maintain a minor in the minor's home; or

14 b. Reunify a minor with the minor's parent; and

15 4. In cases where a plan for reunification is required, personally or
16 through a trained volunteer, paralegal, or other trained staff, monitors
17 implementation of a minor's plan for reunification and any
18 dispositional orders to determine whether services ordered by the
19 court;

20 a. Are actually provided;

21 b. Are provided in a timely manner; and

22 c. Are accomplishing the intended goal of the services, to the extent
23 an assessment can be made.

24 (5) (a) A guardian ad litem and counsel shall represent the best interest of the
25 minor or disabled adult.

26 (b) If the minor's or disabled adult's wishes differ from the guardian ad litem's
27 or determination of the minor's or disabled adult's best interest, the

1 guardian ad litem or counsel shall communicate the minor's or disabled
2 adult's wishes to the court in addition to presenting his or her determination
3 of the minor's or disabled adult's best interest.

4 (c) A difference between the minor's or disabled adult's wishes and the
5 guardian ad litem's or counsel's determination of best interest shall not be
6 considered a conflict of interest for the attorney.

7 (d) The guardian ad litem or counsel shall disclose the wishes of the minor or
8 disabled adult unless the minor or disabled adult:

9 1. Instructs the guardian ad litem or counsel not to disclose the minor's
10 or disabled adult's wishes; or

11 2. Has not expressed any wishes.

12 (e) The court may appoint one (1) guardian ad litem or counsel to represent the
13 best interests of more than one (1) child of the same parents.

14 (f) In every hearing where the guardian ad litem or counsel makes a
15 recommendation regarding the best interest of the minor or disabled adult,
16 the court shall require the guardian ad litem or counsel to disclose the
17 factors that form the basis of the recommendation.

18 (6) A guardian ad litem or counsel shall:

19 (a) Continue to represent the minor or disabled adult until released from that
20 duty by the office; and

21 (b) Maintain current and accurate records regarding:

22 1. The number of times the attorney has had contact with the minor or
23 disabled adult; and

24 2. The actions the attorney has taken in representation of the minor or
25 disabled adult.

26 ➔ Section 5. KRS 26A.140 is amended to read as follows:

27 (1) Courts shall implement measures to accommodate the special needs of children

1 which are not unduly burdensome to the rights of the defendant, including, but not
2 limited to:

- 3 (a) Trained guardians ad litem or special advocates, if available, shall be
4 requested by the court and appointed by the Office of Child and Family
5 Advocacy for all child victims in accordance with Section 4 of this Act and
6 shall serve in Circuit and District Courts to offer consistency and support to
7 the child and to represent the child's interests where needed.
- 8 (b) During trials involving child victims or child witnesses, the environment of
9 the courtroom shall be modified to accommodate children through the use of
10 small chairs, frequent breaks, and the use of age appropriate language.
- 11 (c) Children expected to testify shall be prepared for the courtroom experience by
12 the Commonwealth's or county attorney handling the case with the assistance
13 of the guardian ad litem or special advocate.
- 14 (d) In appropriate cases, procedures shall be used to shield children from visual
15 contact with alleged perpetrator.

16 (2) The Supreme Court is encouraged to issue rules for the conduct of criminal and
17 civil trials involving child abuse in which a child victim or child witness may testify
18 at the trial.

19 ➔Section 6. KRS 49.120 is amended to read as follows:

- 20 (1) All claims must be filed with the commission within one (1) year from the time the
21 claim for relief accrued.
- 22 (2) The claim for relief shall be deemed to accrue at the time of the negligent act with
23 regard to property damage.
- 24 (3) The claim for relief for personal injury shall be deemed to accrue at the time the
25 personal injury is first discovered by the claimant or in the exercise of reasonable
26 care should have been discovered; however, no action for personal injury shall be
27 commenced beyond two (2) years from the date on which the alleged negligent act

1 or omission actually occurred.

2 (4) Notwithstanding subsection (3) of this section, the claim for relief for medical
3 malpractice shall be deemed to accrue at the time the personal injury is first
4 discovered by the claimant or in the exercise of reasonable care should have been
5 discovered; however, no action for personal injury as a result of medical
6 malpractice shall be commenced beyond three (3) years from the date on which the
7 alleged negligent act or omission of malpractice actually occurred.

8 (5) If at the time the alleged negligent act or omission occurred or if at the time the
9 claim for relief accrued or thereafter, the claimant is an infant or of unsound mind
10 or under any other legal disability to file suit, a guardian or next friend or committee
11 or other qualified representative shall bring such action in the commission on behalf
12 of such person within the same time limitation set forth herein or the claim is
13 barred, notwithstanding KRS 413.170 and 413.280. If there is no guardian or
14 committee or he is unwilling or unable to act or is himself a claimant, the
15 commission shall ~~request~~~~appoint~~ a guardian ad litem **from the Office of Child**
16 **and Family Advocacy** to represent the interests of the claimant under legal
17 disability. The commission shall ~~pay~~~~allow~~ the guardian ad litem a ~~reasonable~~ fee
18 **not to exceed five hundred dollars (\$500)** for his **or her** services, to be taxed as
19 costs.

20 ➔Section 7. KRS 91.550 is amended to read as follows:

21 (1) The personal property of infants or persons judicially found to be of unsound mind
22 shall not be distrained for taxes assessed on their real property.

23 (2) The real property of an infant or person judicially found to be of unsound mind shall
24 not, during his disability, after ascertainment of such disability by the city, be sold
25 without the appointment of a guardian ad litem **by the Office of Child and Family**
26 **Advocacy in accordance with Section 4 of this Act** to represent the interest of such
27 person, for less than its certified assessed value on any judgment of sale rendered

1 for taxes and costs alone, where the real property came to the infant or person of
2 unsound mind by descent, distribution or devise, or by gift or settlement of some
3 person then deceased, or where the real property belonged to the person of unsound
4 mind before he became of unsound mind.

5 (3) No entire estate shall be sold, for taxes and costs chargeable to the owner of the
6 particular estate, for less than its certified assessed value, so as to defeat any
7 reversion, remainder or other future estate outstanding, unless the reversioners,
8 remaindermen or holders of other future estates are ascertained and are of full age,
9 and no such entire estate shall ever be put up to sale unless the particular estate of
10 the taxpayer has first been put up and has failed to bring the amount of the taxes and
11 costs.

12 ➔Section 8. KRS 199.500 is amended to read as follows:

13 (1) An adoption shall not be granted without the voluntary and informed consent, as
14 defined in KRS 199.011, of the living parent or parents of a child born in lawful
15 wedlock or the mother of the child born out of wedlock, or the father of the child
16 born out of wedlock if paternity is established in a legal action or if an affidavit is
17 filed stating that the affiant is the father of the child, except that the consent of the
18 living parent or parents shall not be required if:

19 (a) The parent or parents have been adjudged mentally disabled and the judgment
20 shall have been in effect for not less than one (1) year prior to the filing of the
21 petition for adoption;

22 (b) The parental rights of the parents have been terminated under KRS Chapter
23 625;

24 (c) The living parents are divorced and the parental rights of one (1) parent have
25 been terminated under KRS Chapter 625 and consent has been given by the
26 parent having custody and control of the child; or

27 (d) The biological parent has not established parental rights as required by KRS

1 625.065.

2 (2) A minor parent who is a party defendant may consent to an adoption but a guardian
3 ad litem for the parent shall be **requested by the court and** appointed **by the Office**
4 **of Child and Family Advocacy in accordance with Section 4 of this Act.**

5 (3) In the case of a child twelve (12) years of age or older, the consent of the child shall
6 be given in court. The court in its discretion may waive this requirement.

7 (4) Notwithstanding the provisions of subsection (1) of this section, an adoption may be
8 granted without the consent of the biological living parents of a child if it is pleaded
9 and proved as a part of the adoption proceedings that any of the provisions of KRS
10 625.090 exist with respect to the child.

11 (5) An adoption shall not be granted or a consent for adoption be held valid if the
12 consent for adoption is given prior to seventy-two (72) hours after the birth of the
13 child. A voluntary and informed consent may be taken at seventy-two (72) hours
14 after the birth of the child and shall become final and irrevocable seventy-two (72)
15 hours after it is signed.

16 ➔Section 9. KRS 202A.121 is amended to read as follows:

17 Upon the appearance of the person detained pursuant to KRS 202A.041 or upon the filing
18 of a petition pursuant to KRS 202A.051, the court shall **request, and the Office of Child**
19 **and Family Advocacy shall** appoint **in accordance with Section 4 of this Act,** an
20 attorney to represent the respondent with such appointment and representation to continue
21 unless the respondent retains private counsel. The appointed attorney shall be forthwith
22 notified by the clerk of the allegations in the petition and the date and purpose of the
23 preliminary hearing. Notwithstanding KRS 202A.091, an attorney appointed by the
24 **Office of Child and Family Advocacy**~~[court]~~ or retained by the respondent shall be given
25 access to the court records relating to the petition.

26 ➔Section 10. KRS 202B.210 is amended to read as follows:

27 Upon the filing of a petition for involuntary admission pursuant to KRS 202B.045, the

1 court shall request, and the Office of Child and Family Advocacy shall appoint in
2 accordance with Section 4 of this Act, an attorney to represent the respondent with the
3 appointment and representation to continue unless the respondent retains private counsel.
4 The appointed attorney shall be forthwith notified by the clerk of the allegations in the
5 petition and the date and purpose of the preliminary hearing. ~~[When it is necessary to~~
6 ~~appoint counsel, the District Court shall endeavor to appoint private counsel, if available,~~
7 ~~to represent respondents, from a list of attorneys who have volunteered to represent such~~
8 ~~respondents. The list shall be maintained by the District Court clerk.]~~Private counsel
9 appointed by the Office of Child and Family Advocacy~~[court]~~ shall be compensated in
10 the manner set forth in KRS 620.100.~~[If no other method of appointing counsel for the~~
11 ~~respondent is available, the respondent shall be represented by the public advocate~~
12 ~~pursuant to KRS Chapter 31.]~~

13 ➔Section 11. KRS 202B.250 is amended to read as follows:

- 14 (1) No less than once in every five (5) years following the initial order for involuntary
15 admission of a resident to an ICF/ID, or an order authorizing continued care and
16 treatment following review pursuant to this section, the court shall hold a hearing to
17 review the status of the resident and necessity for continued care and treatment in
18 the ICF/ID. Notice at least twenty (20) days in advance of the hearing shall be
19 provided by the court to the ICF/ID, county attorney, guardian or limited guardian
20 of the resident, if any, or, if none, an immediate family member as listed on the last
21 interdisciplinary report filed by the ICF/ID. The court shall request~~[appoint], and~~
22 the Office of Child and Family Advocacy shall appoint in accordance with
23 Section 4 of this Act, an attorney to represent the resident at the review hearing.
- 24 (2) The review hearing may be informal and held in open court, in chambers, or at the
25 ICF/ID. The hearing shall be held without a jury and the resident shall be entitled to
26 present documentary evidence and witnesses and cross-examine witnesses against
27 the resident.

1 (3) At the conclusion of the review hearing, the court shall make written findings of
2 fact concerning whether the criteria for involuntary admission set forth in KRS
3 202B.040 continue to be satisfied based upon clear and convincing evidence. If the
4 court finds that the involuntary admission criteria continue to be satisfied, the court
5 shall enter an order authorizing the continued care and treatment of the resident at
6 the ICF/ID and shall establish the period within which the next review shall be held.
7 Otherwise, the court shall enter an order requiring the resident to be discharged
8 from the ICF/ID.

9 (4) If at any point during the resident's placement at an ICF/ID it appears that the
10 resident no longer meets the criteria for involuntary admission set forth in KRS
11 202B.040, the resident, the resident's parent, guardian or limited guardian,
12 immediate family member, or attorney may request a review pursuant to this
13 section.

14 ➔Section 12. KRS 209.110 is amended to read as follows:

15 (1) A petition by the cabinet for emergency protective services shall be verified by an
16 authorized representative of the cabinet and shall set forth the name, age, and
17 address of the adult in need of protective services; the nature of the disability of the
18 adult, if determinable; the proposed protective services; the petitioner's reasonable
19 belief, together with the facts supportive thereof, as to the existence of the facts, and
20 the facts showing the petitioner's attempts to obtain the adult's consent to the
21 services and the outcomes of such attempts. The petition and all subsequent court
22 documents shall be entitled: "In the interest of----- , an adult in need of protective
23 services." The petition shall be filed in the court of the adult's residence, or if filed
24 pursuant to KRS 209.130, the court of the county in which the adult is physically
25 located.

26 (2) When a petition for emergency protective services is filed, the court or the clerk
27 shall immediately **request, and the Office of Child and Family Advocacy shall**

1 **immediately** appoint **in accordance with Section 4 of this Act**, a guardian ad litem
2 to represent the interest of the adult. The duties of a guardian ad litem representing
3 an adult for whom a petition for emergency protective services has been filed shall
4 include personally interviewing the adult, counseling with the adult with respect to
5 this chapter, informing him of his rights and providing competent representation at
6 all proceedings, and such other duties as the court may order **or as required by**
7 **Section 4 of this Act**.

8 (3) Following the filing of a petition, a summons shall be issued and served with a copy
9 of the petition, and notice of the time, date and location of the hearing to be held on
10 the petition. Service shall be made upon the adult and his guardian or, if none, his
11 caretaker. Should the adult have no guardian or caretaker, service shall be made
12 upon the adult's guardian ad litem. Notice of the hearing shall be given to the adult's
13 spouse, or, if none, to his adult children or next of kin, unless the court is satisfied
14 that notification would be impractical. Service shall not be made upon any person
15 who is believed to have perpetrated the abuse, neglect, or exploitation. Service of
16 the petition shall be made at least three (3) calendar days prior to the hearing for
17 emergency protective services.

18 (4) The hearing on the petition for an emergency order for protective services shall be
19 heard under the following conditions:

20 (a) The hearing on the petition, in the interests of expedition, may be held in any
21 county within the judicial district or circuit served by the court. The court
22 shall give priority to the holdings of the hearings pursuant to petitions filed
23 under this chapter;

24 (b) The adult or his representative may present evidence and cross-examine
25 witnesses; and

26 (c) The adult or his representative may petition the court to have any order which
27 is entered pursuant to this chapter, set aside or modified for good cause.

1 (5) Where protective services are rendered on the basis of an order pursuant to this
2 section, the cabinet shall submit a report to the court describing the circumstances
3 including the name, place, date, and nature of the services. Such report shall be
4 made at least once or on a monthly basis if protective services are provided the adult
5 for a period of longer than one (1) month.

6 (6) The fee of the guardian ad litem shall be paid by the cabinet not to exceed
7 ~~five[three]~~ hundred dollars ~~(\$300)~~ **(\$500)**. This fee is not to be paid to attorneys
8 employed by government funded legal services programs.

9 ➔Section 13. KRS 311.732 is amended to read as follows:

10 (1) For purposes of this section the following definitions shall apply:

11 (a) "Minor" means any person under the age of eighteen (18);

12 (b) "Emancipated minor" means any minor who is or has been married or has by
13 court order or otherwise been freed from the care, custody, and control of her
14 parents; and

15 (c) "Abortion" means the use of any instrument, medicine, drug, or any other
16 substance or device with intent to terminate the pregnancy of a woman known
17 to be pregnant with intent other than to increase the probability of a live birth,
18 to preserve the life or health of the child after live birth, or to remove a dead
19 fetus.

20 (2) No person shall perform an abortion upon a minor unless:

21 (a) The attending physician or his agent secured the informed written consent of
22 the minor and one (1) parent or legal guardian;

23 (b) The minor is emancipated and the attending physician or his agent has
24 received the informed written consent of the minor; or

25 (c) The minor elects to petition any Circuit or District Court of the
26 Commonwealth pursuant to subsection (3) of this section and obtain an order
27 pursuant to subsection (4) of this section granting consent to the abortion and

1 the attending physician or his agent has received the informed written consent
2 of the minor.

3 (3) Every minor shall have the right to petition any Circuit or District Court of the
4 Commonwealth for an order granting the right to self-consent to an abortion
5 pursuant to the following procedures:

6 (a) The minor or her next friend may prepare and file a petition setting forth the
7 request of the minor for an order of consent to an abortion;

8 (b) The court shall insure that the minor prepares or her next friend is given
9 assistance in preparing and filing the petition and shall insure that the minor's
10 identity is kept anonymous;

11 (c) The minor may participate in proceedings in the court on her own behalf or
12 through her next friend and the court shall request, and the Office of Child
13 and Family Advocacy shall appoint in accordance with Section 4 of this Act,
14 a guardian ad litem for her. The court shall advise her that she has a right to
15 ~~court-appointed~~ counsel and shall request, and the Office of Child and
16 Family Advocacy shall provide in accordance with Section 4 of this Act, her
17 with such counsel upon her request;

18 (d) All proceedings under this section shall be anonymous and shall be given
19 preference over other matters to insure that the court may reach a decision
20 promptly, but in no case shall the court fail to rule within seventy-two (72)
21 hours of the time of application, provided that the seventy-two (72) hour
22 limitation may be extended at the request of the minor; and

23 (e) The court shall hold a hearing on the merits of the petition before reaching a
24 decision. The court shall hear evidence at the hearing relating to the emotional
25 development, maturity, intellect, and understanding of the minor; the nature,
26 possible consequences, and alternatives to the abortion; and any other
27 evidence that the court may find useful in determining whether the minor

1 should be granted majority rights for the purpose of consenting to the abortion
2 or whether the abortion is in the best interest of the minor.

3 (4) The court shall enter a written order, making specific factual findings and legal
4 conclusions supporting its decision as follows:

5 (a) Granting the petition for an abortion if the court finds that the minor is mature
6 and well informed enough to make the abortion decision on her own;

7 (b) Granting consent to the abortion if the court finds that the performance of the
8 abortion would be in the minor's best interest; or

9 (c) Deny the petition, if the court finds that the minor is immature and that
10 performance of the abortion would not be in the minor's best interest.

11 (5) Any minor shall have the right of anonymous and expedited appeal to the Court of
12 Appeals, and that court shall give precedence over other pending matters.

13 (6) No fees shall be required of any minor who declares she has no sufficient funds to
14 pursue the procedures provided by this section.

15 (7) The Supreme Court is respectfully requested to promulgate any rules and
16 regulations it feels are necessary to ensure that proceedings under this section are
17 handled in an expeditious and anonymous manner.

18 (8) The requirements of subsections (2), (3), and (4) of this section shall not apply
19 when, in the best medical judgment of the physician based on the facts of the case
20 before him, a medical emergency exists that so complicates the pregnancy as to
21 require an immediate abortion. A physician who does not comply with subsection
22 (2), (3), or (4) of this section due to the utilization of this exception shall certify in
23 writing the medical indications upon which his judgment was based.

24 (9) A report indicating the basis for any medical judgment that warrants failure to
25 obtain consent pursuant to this section shall be filed with the Cabinet for Health and
26 Family Services on a form supplied by the cabinet. This report shall be confidential.

27 (10) Failure to obtain consent pursuant to the requirements of this section is prima facie

1 evidence of failure to obtain informed consent and of interference with family
2 relations in appropriate civil actions. The law of this state shall not be construed to
3 preclude the award of exemplary damages in any appropriate civil action relevant to
4 violations of this section. Nothing in this section shall be construed to limit the
5 common-law rights of parents.

6 ➔Section 14. KRS 353.260 is amended to read as follows:

- 7 (1) Upon the execution of such a consolidation agreement, the guardian shall file with
8 the clerk of the Circuit Court in the county in which the land covered by the lease to
9 be consolidated hereunder, or the greater portion thereof, lies a petition for an order
10 approving such consolidation agreement setting forth a copy of the consolidation
11 agreement and a statement of facts constituting the grounds relied upon to secure
12 the approval of such agreement, and shall submit with the petition the affidavits of
13 not less than three (3) disinterested owners of real estate in the county wherein the
14 proceedings hereunder are brought, as to whether such agreement will be
15 advantageous or beneficial to the minor or minors for whom such guardian is
16 acting, which affidavits shall be filed and preserved as records of the Circuit Court.
- 17 (2) No agreement permitted by KRS 353.240 to 353.260 shall be valid or effective until
18 the judge of said court requests, and the Office of Child and Family Advocacy
19 appoints in accordance with Section 4 of this Act, a guardian ad litem to represent
20 the minor or minors whose interests are sought to be consolidated hereunder. The
21 guardian ad litem shall file an answer and the affidavits of at least three (3)
22 witnesses, proving the advantages or disadvantages of such agreement, and shall
23 make such recommendation to the judge relating to the agreement as he or she
24 believes to be most beneficial to the persons on whose behalf he or she is acting. He
25 or she shall receive for his or her services a fee not to exceed five hundred dollars
26 (\$500)~~reasonable compensation~~, to be allowed by the judge and taxed as costs.
- 27 (3) The judge shall proceed in a summary manner to approve or disapprove the

consolidation agreement, and if he or she approves it he or she shall endorse his or her approval thereon. The order of the judge approving such agreement shall be entered on the civil order book of the circuit clerk's office of the county in which the proceedings hereunder are brought.

➔Section 15. KRS 353.330 is amended to read as follows:

(1) All of the persons in being who have any present or contingent interest in the lands or estate or interest sought to be leased shall be made parties to the proceedings authorized in KRS 353.300 to 353.380, with any infant or infants being represented either by next friend, ~~for~~ statutory guardian, ~~for~~ guardian ad litem **appointed by the Office of Child and Family Advocacy in accordance with Section 4 of this Act**, or, in the case of constructive service of summons, by a warning order attorney appointed as in other cases.

(2) Any person adjudged mentally disabled shall be represented by his guardian or conservator, ~~for by~~ guardian ad litem **appointed by the Office of Child and Family Advocacy in accordance with Section 4 of this Act**, or, in the case of constructive service of summons as in civil actions generally, by a warning order attorney appointed as in other cases.

(3) If the court specifically finds that the welfare or interest of any person or persons not in being requires special representation, the court may appoint a trustee ad litem to represent such unknown parties not in being or each separate class thereof, and such trustee ad litem shall file such pleadings or answer and take such steps as he deems proper, and such unknown persons will be fully bound by the proceedings hereunder. Otherwise, and in the absence of such finding by the court, it shall not be necessary to make parties any persons not in being, either as "unknown defendants" or otherwise, but the persons in being who are parties shall stand for and represent the full title and whole interest in said lands or estate or interest therein, and all parties not in being who might have some contingent or future interest therein, and

1 all persons, whether in being or not in being, having any interest, present, future or
2 contingent, in the property sought to be leased, will be fully bound by the
3 proceedings hereunder. It shall be permissible, however, to make defendants any
4 unknown persons who might have any interest in the land sought to be leased, under
5 the style of "unknown defendants."

6 ➔Section 16. KRS 386B.3-050 is amended to read as follows:

7 (1) If the court determines that an interest is not represented under this subchapter, or
8 that the otherwise available representation might be inadequate because of conflict
9 or otherwise, the court may:

10 (a) Appoint a guardian ad litem to receive notice, give consent, and otherwise
11 represent, bind, and act on behalf of an~~[a minor, incapacitated, or]~~ unborn
12 individual, or a person whose identity or location is unknown; or

13 (b) Request, and the Office of Family Advocacy shall appoint in accordance
14 with Section 4 of this Act, a guardian ad litem to receive notice, give
15 consent, and otherwise represent, bind, and act on behalf of a minor or
16 incapacitated person.

17 (2) A guardian ad litem may be appointed to represent several persons or interests.

18 (3)~~[(2)]~~ A guardian ad litem may act on behalf of the individual represented with
19 respect to any matter arising under this chapter, whether or not a judicial proceeding
20 concerning the trust is pending.

21 (4)~~[(3)]~~ In making decisions, a guardian ad litem may consider general benefit
22 accruing to the living members of the individual's family.

23 ➔Section 17. KRS 387.125 is amended to read as follows:

24 (1) A guardian shall apply the income or principal of the ward's estate to the payment of
25 debts, taxes, claims, charges, and expenses of the guardianship and, in accordance
26 with KRS 387.065, for the support, care, and education of the ward or the ward's
27 dependents.

- 1 (2) A guardian shall take possession of all of the ward's real and personal property.
- 2 (3) A guardian may sell any of the ward's personal property without District Court
3 authorization or confirmation. To sell any of the ward's real property, a guardian
4 shall comply with the provisions of KRS Chapter 389A.
- 5 (4) A guardian shall invest any of the ward's money or property which is not required
6 for the ward's current support, care and education. The investments made of a
7 ward's funds shall be investments authorized by KRS 386.020.
- 8 (5) A guardian may expend the ward's funds to repair and maintain the ward's personal
9 and real property.
- 10 (6) A guardian may institute or defend actions, claims, or proceedings in any
11 jurisdiction for the protection of the ward's estate. Subject to the approval of the
12 court in which the action, claim, or proceeding has been filed, a guardian may settle
13 or compromise the action, claim, or proceeding on behalf of the ward. If the action,
14 claim, or proceeding has not been filed in any court, the District Court of the county
15 where a guardian qualified shall approve the settlement or compromise. Upon
16 approval of a settlement or compromise, a guardian may execute a release on behalf
17 of the ward. A guardian shall receive any proceeds from a settlement for
18 management in accordance with the provisions of this statute.
- 19 (7) A guardian may lease any real property of the ward until the ward reaches majority,
20 but no lease shall be made for a term longer than seven (7) years unless otherwise
21 approved by the District Court.
- 22 (8) A guardian shall obtain approval from the District Court of the county where the
23 guardian qualified for any of the following made on behalf of the ward:
- 24 (a) Any lease of mineral rights;
- 25 (b) Any lease of oil and gas rights;
- 26 (c) Any sale of timber owned by the ward; or
- 27 (d) Any consolidation agreement, as defined by KRS 353.220.

1 To aid it in making the decision on a proposed sale, lease, or consolidation
2 agreement, the court shall **request, and the Office of Child and Family Advocacy**
3 **shall** appoint **in accordance with Section 4 of this Act,** a guardian ad litem for the
4 ward. The guardian ad litem shall report to the court on the suitability of the
5 transaction.

6 (9) A guardian shall comply with the reporting requirements specified in KRS 387.175.

7 ➔Section 18. KRS 387.305 is amended to read as follows:

8 (1) No appointment of a guardian ad litem shall be made until the defendant is
9 summoned, or until a person is summoned for him **or her**, as is authorized by law;
10 nor until an affidavit of the plaintiff, or of his **or her** attorney, be filed in court, or
11 with the clerk, showing that the defendant has no guardian, curator, nor conservator,
12 residing in this state, known to the affiant.

13 (2) A guardian ad litem must be a regular, practicing attorney of the court and may be
14 **requested**~~appointed~~ by the court, **and appointed by the Office of Child and**
15 **Family Advocacy in accordance with Section 4 of this Act,** whether a guardian,
16 curator, or conservator appear for the defendant or not. The guardian ad litem may
17 be **requested**~~appointed~~ upon the motion of the plaintiff or of any friend of the
18 defendant; but neither the plaintiff nor his **or her** attorney shall be appointed, nor be
19 permitted to suggest the name of the proposed guardian ad litem; and the court may
20 **request the Office of Child and Family Advocacy to** change the guardian so
21 appointed whenever the interest of the infant may appear to require such change.

22 (3) It shall be the duty of the guardian ad litem to attend properly to the preparation of
23 the case; and in an ordinary action he **or she** may cause as many witnesses to be
24 subpoenaed as he **or she** may think proper, subject to the control of the court; and in
25 an equitable action he **or she** may take depositions, not, however, exceeding three
26 (3), without leave of the court.

27 (4) The court shall allow to the guardian ad litem a~~reasonable~~ fee **not to exceed five**

1 **hundred dollars (\$500)** for his **or her** services, to be paid by the plaintiff and taxed
2 in the costs. The affidavit of such guardian, or of another person, or other competent
3 evidence, is admissible to prove the services rendered, but not to prove their value.
4 The court must decide concerning such value, without reference to the opinions of
5 parties or other witnesses.

6 (5) Whether appointed pursuant to this statute or pursuant to a provision of the
7 Kentucky Unified Juvenile Code, the duties of a guardian ad litem shall be to
8 advocate for the client's best interest in the proceeding through which the guardian
9 ad litem was appointed. Without an appointment, the guardian ad litem shall have
10 no obligation to initiate action or to defend the client in other proceedings.

11 ➔Section 19. KRS 387.560 is amended to read as follows:

12 (1) Unless an appearance has been entered on behalf of the respondent, the court shall
13 **request, and the Office of Child and Family Advocacy shall** appoint **in**
14 **accordance with Section 4 of this Act,** counsel for the respondent within one (1)
15 week of the filing of a petition for determination of disability under KRS 387.500 to
16 387.770.

17 (2) Appointed counsel shall be **paid a fee not to exceed five hundred dollars (\$500) for**
18 **his or her** ~~[entitled to compensation for]~~ services. If counsel is appointed for a poor
19 person as defined in KRS 453.190, the **fee**~~[court]~~ shall ~~[prescribe reasonable~~
20 ~~compensation to]~~ be paid by the county~~[in which the proceeding is held in~~
21 ~~accordance with the complexity of the issues, the time involved, and other relevant~~
22 ~~considerations, except that appointed counsel shall not be compensated at a rate~~
23 ~~higher than sixty dollars (\$60) an hour for time spent in court and no higher than~~
24 ~~forty dollars (\$40) an hour for time spent out of court]~~. If the petition is found to be
25 frivolous or not brought in good faith, counsel fees shall be charged to the
26 petitioner.

27 (3) In all proceedings under KRS 387.500 to 387.770, it shall be the duty of the county

1 attorney to assist the petitioner, to represent the interest of the Commonwealth, and
2 to assist the court in its inquiry by the presentation of evidence.

3 ➔Section 20. KRS 387.880 is amended to read as follows:

4 The petition shall be docketed with the court and set for hearing unless the court shall
5 otherwise determine. Notice of the hearing shall be given to each interested party not less
6 than fourteen (14) days in advance, in accordance with KRS 386B.1-070, unless waived
7 in writing. The court may request, and the Office of Child and Family Advocacy assign
8 in accordance with Section 4 of this Act, a guardian ad litem to advise the court with
9 respect to the suitability of the special needs trust.

10 ➔Section 21. KRS 388.250 is amended to read as follows:

11 Notwithstanding the provisions of existing law for adjudication of mental disability and
12 appointment of a guardian or conservator upon the inquest of a jury, where a petition is
13 filed for the appointment of a guardian or conservator for a mentally disabled beneficiary
14 of the Veterans Affairs under the provisions of this chapter, who is found within this
15 state, whether or not a resident thereof, a certificate of the administrator of Veterans
16 Affairs or his duly authorized representative, accompanying such petition setting forth the
17 fact that such beneficiary has been rated incompetent by the Veterans Affairs on
18 examination in accordance with the laws and regulations governing such Veterans
19 Affairs, and that the appointment of a guardian or conservator is a condition precedent to
20 the payment of any moneys due each beneficiary by the Veterans Affairs, shall be prima
21 facie evidence of the necessity for such appointment. Provided, however, that some
22 member of the bar shall be requested~~[appointed]~~ by the court, and appointed by the
23 Office of Child and Family Advocacy in accordance with Section 4 of this Act, to
24 represent and protect the interests and rights of such mentally disabled beneficiary as
25 provided under existing law, and further that the right of any such mentally disabled
26 beneficiary or any person interested in such beneficiary to demand a trial by jury shall not
27 be denied.

1 ➔ Section 22. KRS 389A.030 is amended to read as follows:

- 2 (1) When two (2) or more persons other than tenants by the entirety in residential
3 property actually occupied by them as a principal residence share title to real estate
4 in such manner that a conveyance by them jointly would pass a fee simple title, any
5 one (1) or more of them may bring an action for the sale or division thereof in the
6 Circuit Court of the county in which the land, or the greater part thereof, lies,
7 making parties defendant those owners who have not joined as plaintiffs. A
8 fiduciary possessing a power of sale may institute such an action against owners of
9 interests not represented by him. Defendant owners shall be brought before the
10 court in the manner provided by the civil rules whether or not a fiduciary possesses
11 a power of sale of the defendant's interest, but any fiduciary possessing such a
12 power shall also be made a defendant. The case shall be tried without a jury.
- 13 (2) A defendant who is under disability and for whom no fiduciary is acting shall be
14 represented in the action by a guardian ad litem **appointed by the Office of Child**
15 **and Family Advocacy in accordance with Section 4 of this Act**, but in the event of
16 sale of such defendant's interest the court shall retain control of the proceeds of such
17 interest until a duly appointed and adequately bonded fiduciary or custodian
18 pursuant to a court order makes claim to the funds.
- 19 (3) In all such actions indivisibility of the real estate shall be presumed unless an issue
20 in respect thereto is raised by the pleading of any party, and if the court is satisfied
21 from the evidence that the property is divisible, without materially impairing the
22 value of any interest therein, division thereof pursuant to KRS 381.135 shall be
23 ordered.
- 24 (4) If a sale of all or any part of the real estate shall be ordered, the court shall refer the
25 matter to the master commissioner or appoint a commissioner to conduct a public
26 sale and convey the property upon terms of sale and disposition of the net proceeds
27 as may have been determined by the court.

1 (5) The death of any party pending the action and prior to distribution of the proceeds
2 of sale or setting apart a divisible share shall not affect the action but the court may
3 direct distribution or apportionment to the successors in interest of the decedent
4 upon application therefor.

5 (6) If the interest of any party be one for life, or other term, in any portion of the real
6 estate, the court shall determine the value of such interest and direct that such party
7 receive a portion of the net sale proceeds or portion of the property if divisible, in
8 fee in satisfaction of such interest, but if any party to the action objects to such
9 procedure, and if the court finds that such procedure would defeat the objects and
10 purpose of a person not a party to the action, such as a testator, grantor or settlor,
11 but that sale or division is nevertheless desirable, the court shall order that the
12 interest of the life or term tenant shall continue as to his portion of the real estate or
13 the net proceeds of the sale thereof, in the latter case by directing that the funds
14 derived from the sale of that portion of the real estate in which the life or term
15 interest existed be paid to a trustee, appointed by and accountable to the District
16 Court, for reinvestment and distribution of income and principal in a manner
17 consistent with the instrument under which the life or term estate was created.

18 ➔Section 23. KRS 392.140 is amended to read as follows:

19 Whenever a married person has become a confirmed mentally disabled person, the Circuit
20 Court of the county in which is situated land belonging to the spouse of such disabled
21 person may, upon the petition of the spouse of the mentally disabled person, adjudge the
22 sale and conveyance, or the mortgage, of the inchoate right of dower or curtesy of the
23 person under disability. The mentally disabled person and his guardian or conservator, if
24 he has one, shall be made defendants to the action; if he has no guardian or conservator,
25 the court shall **request, and the Office of Child and Family Advocacy shall** appoint **in**
26 **accordance with Section 4 of this Act,** an attorney to defend for him, to whom the court
27 shall ~~make a reasonable allowance to~~ be paid by the spouse of the mentally disabled

1 person a fee not to exceed five hundred dollars (\$500) for his or her services. A
2 description of the land shall be given in the petition and the evidence of title of the spouse
3 of the mentally disabled person filed therewith. If the court is satisfied by the proof that
4 the mentally disabled spouse is a confirmed mentally disabled person, it may adjudge the
5 sale and conveyance, or mortgage, of her inchoate right of dower or his inchoate right to
6 curtesy in said land, and if the mentally disabled spouse has a guardian or conservator, the
7 court may direct that he or she unite with the spouse of the mentally disabled person in
8 the deed or mortgage; if the mentally disabled spouse has no guardian or conservator, the
9 court shall appoint a commissioner who shall unite with the spouse of the mentally
10 disabled person in the deed or mortgage. Before any judgment pursuant to this section
11 shall be rendered, the spouse of the mentally disabled person, with at least two (2) good
12 sureties, shall execute before the court a covenant to the Commonwealth for the benefit of
13 the mentally disabled spouse, to be approved by the court, that the mentally disabled
14 spouse will be paid the value of his right of dower or curtesy in the land should such right
15 thereafter become complete.

16 ➔Section 24. KRS 394.190 is amended to read as follows:

17 Any person interested in such probate may be summoned, or proceeded against by
18 warning order, and if an infant or mentally disabled person, a guardian ad litem shall be
19 appointed by the Office of Child and Family Advocacy in accordance with Section 4 of
20 this Act.

21 ➔Section 25. KRS 620.100 is amended to read as follows:

22 (1) If the court determines, as a result of a temporary removal hearing, that further
23 proceedings are required, the court shall advise the child and his parent or other
24 person exercising custodial control or supervision of their right to appointment of
25 separate counsel:

26 (a) The court shall request, and the Office of Child and Family Advocacy shall
27 appoint in accordance with Section 4 of this Act, counsel for the child to be

1 paid for by the Finance and Administration Cabinet. Counsel shall document
2 participation in training on the role of counsel that includes training in early
3 childhood, child, and adolescent development. The clerk of the court shall
4 arrange for service on all parties, including the local representative of the
5 Cabinet for Health and Family Services, of the order appointing counsel. The
6 fee to be fixed by the court shall not exceed five hundred dollars (\$500);
7 ~~however, if the action has final disposition in the District Court, the fee shall~~
8 ~~not exceed two hundred fifty dollars (\$250)];~~

9 (b) The court shall appoint separate counsel for the parent who exercises custodial
10 control or supervision if the parent is unable to afford counsel pursuant to
11 KRS Chapter 31. The clerk of the court shall arrange for service on all parties,
12 including the local representative of the Cabinet for Health and Family
13 Services, of the order appointing counsel. The parent's counsel shall be
14 provided or paid for by the Finance and Administration Cabinet. The fee to be
15 fixed by the court shall not exceed five hundred dollars (\$500); ~~however, if~~
16 ~~the action has final disposition in the District Court, the fee shall not exceed~~
17 ~~two hundred fifty dollars (\$250)];~~

18 (c) The court shall appoint separate counsel for a person claiming to be a de facto
19 custodian, as defined in KRS 403.270, if the person is unable to afford
20 counsel pursuant to KRS Chapter 31. The clerk of the court shall arrange for
21 service on all parties, including the local representative of the Cabinet for
22 Health and Family Services, of the order appointing counsel. The person's
23 counsel shall be provided or paid for by the Finance and Administration
24 Cabinet. The fee to be fixed by the court shall not exceed five hundred dollars
25 (\$500); ~~however, if the action has final disposition in the District Court, the~~
26 ~~fee shall not exceed two hundred fifty dollars (\$250)];~~

27 (d) The court may, in the interest of justice, appoint separate counsel for a

1 nonparent who exercises custodial control or supervision of the child, if the
2 person is unable to afford counsel, pursuant to KRS Chapter 31. The clerk of
3 the court shall arrange for service on all parties, including the local
4 representative of the Cabinet for Health and Family Services, of the order
5 appointing counsel. Counsel for the person shall be provided or paid for by the
6 Finance and Administration Cabinet. The fee to be fixed by the court shall not
7 exceed five hundred dollars (\$500); ~~however, if the action has final~~
8 ~~disposition in the District Court, the fee shall not exceed two hundred fifty~~
9 ~~dollars (\$250)); and~~

10 (e) The court may, in the interest of justice, appoint a court-appointed special
11 advocate volunteer to represent the best interests of the child pursuant to KRS
12 620.500 to 620.550. The clerk of the court shall arrange for service on all
13 parties, including the local representative of the cabinet, of the order
14 appointing the court-appointed special advocate volunteer.

15 (2) If the court determines that further proceedings are required, the court also shall
16 advise the child and his parent or other person exercising custodial control or
17 supervision that they have a right to not incriminate themselves, and a right to a full
18 adjudicatory hearing at which they may confront and cross-examine all adverse
19 witnesses, present evidence on their own behalf and to an appeal.

20 (3) The adjudication shall determine the truth or falsity of the allegations in the
21 complaint. The burden of proof shall be upon the complainant, and a determination
22 of dependency, neglect, and abuse shall be made by a preponderance of the
23 evidence. The Kentucky Rules of Civil Procedure shall apply.

24 (4) The disposition shall determine the action to be taken by the court on behalf of the
25 child and his parent or other person exercising custodial control or supervision.

26 (5) Foster parents, preadoptive parents, or relatives providing care for the child shall
27 receive notice of, and shall have a right to be heard in, any proceeding held with

1 respect to the child. This subsection shall not be construed to require that a foster
2 parent, preadoptive parent, or relative caring for the child be made a party to a
3 proceeding solely on the basis of the notice and right to be heard.

4 ➔Section 26. KRS 625.041 is amended to read as follows:

5 (1) The parties to an action for voluntary termination of parental rights shall be the
6 parent seeking termination, whose presence is not required if represented by counsel
7 for the parent when an appearance-waiver and consent-to-adopt form is filed with
8 the court, but the court shall **request, and the Office of Child and Family Advocacy**
9 **shall** appoint **in accordance with Section 4 of this Act,** a guardian ad litem to
10 represent the best interest of the child.

11 (2) The guardian ad litem shall be paid a fee to be fixed by the court, not to exceed five
12 hundred dollars (\$500), to be paid by the petitioner, except if the Cabinet for Health
13 and Family Services receives custody of the child, the guardian ad litem shall be
14 paid by the Finance and Administration Cabinet.

15 (3) The parent may sign an appearance-waiver and consent-to-adopt form when the
16 parent chooses not to attend a voluntary termination of parental rights proceedings.
17 This form, prescribed by the Administrative Office of the Courts, shall:

18 (a) Contain a statement of acknowledgment and agreement, regarding the
19 appearance at the proceeding, signed by the parent, counsel for the parent, and
20 the cabinet. If the parent is a minor, the form shall also be signed by the
21 guardian of the minor parent;

22 (b) Contain the parent's notarized signature;

23 (c) Contain any address to which the parent requests the final judgment be served.

24 (4) If a joint petition is filed, counsel shall be designated as attorney for both parties.

25 ➔Section 27. KRS 625.080 is amended to read as follows:

26 In any involuntary action for termination of parental rights:

27 (1) The Circuit Court shall conduct a private hearing. An official stenographic or

1 mechanical record shall be made of the proceedings and retained for a period of five
2 (5) years. The court shall make findings of fact and conclusions of law, which may
3 be made on the record, to support its judgment;

4 (2) Any child to whom an involuntary action directly relates shall be made a party to
5 the action and a guardian ad litem shall be appointed **by the Office of Child and**
6 **Family Advocacy in accordance with Section 4 of this Act** to represent the best
7 interests of the child. The person appointed as a guardian ad litem shall be paid a
8 fee not to exceed five hundred dollars (\$500), to be paid by the Finance and
9 Administration Cabinet when the cabinet is the proposed custodian. When the
10 cabinet is not the proposed custodian, the court may order the cost to be paid by the
11 proposed adoptive parent, parents, agency, or the petitioner. Upon motion of any
12 party, the child may be permitted to be present during the proceedings and to testify
13 if the court finds such to be in the best interests of the child. In its discretion, the
14 Circuit Court may interview the child in private, but a record of the interview shall
15 be made, which, in the discretion of the court, may be sealed to be used only by an
16 appellate court;

17 (3) The parents have the right to legal representation in involuntary termination actions.
18 The Circuit Court shall determine if the parent is indigent and, therefore, entitled to
19 counsel pursuant to KRS Chapter 31. If the Circuit Court so finds, the Circuit Court
20 shall inform the parent; and, upon request, if it appears reasonably necessary in the
21 interest of justice, the Circuit Court shall appoint an attorney to represent the parent
22 pursuant to KRS Chapter 31 to be provided or paid for by the Finance and
23 Administration Cabinet a fee to be set by the court and not to exceed five hundred
24 dollars (\$500);

25 (4) If the parent is currently authorized to visit with the child, the court may continue to
26 permit the parent to visit the child pending the final hearing unless it finds that
27 visitation would not be in the best interest of the child.

1 (5) The hearing under this chapter shall be held within sixty (60) days of the motion by
2 a party or the guardian ad litem for a trial date.

3 ➔Section 28. Sections 4 to 27 of this Act take effect July 1, 2021.

4 ➔Section 29. Any guardian ad litem or court-appointed counsel appointed prior to
5 July 1, 2021, shall continue to represent his or her client until released from that duty by
6 the court. After July 1, 2021, guardians ad litem and counsel shall be appointed pursuant
7 to Sections 4 to 27 of this Act.