

PRECOURSE READING

LEGAL UPDATE: PENAL CODE

JUVENILE

KRS 600.010 Title and intent of KRS Chapters 600 to 645

(1) KRS Chapters 600 to 645 shall be known as the Kentucky Unified Juvenile Code.

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KRS 600.020 Definitions for KRS Chapters 600 to 645 (EDITED)

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

(1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child:

(a) Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;

(b) Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;

(c) Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005(12);

(d) Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;

(e) Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;

(f) Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;

(g) Abandons or exploits the child;

(h) Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child; or

(i) Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) of the most recent twenty-two (22) months;

(3) "Beyond the control of parents" means a child who has repeatedly failed to follow the reasonable directives of his or her parents, legal guardian, or person exercising custodial control or supervision other than a state agency, which behavior results in danger to the child or others, and which behavior does not constitute behavior that would warrant the filing of a petition under KRS Chapter 645;

(4) "Beyond the control of school" means any child who has been found by the court to have repeatedly violated the lawful regulations for the government of the school as provided in KRS 158.150, and as documented in writing by the school as a part of the school's petition or as an attachment to the school's petition. The petition or attachment shall describe the student's behavior and all intervention strategies attempted by the school;

(8) "Child" means any person who has not reached his eighteenth birthday, unless otherwise provided;

(16) "Court-designated worker" means that organization or individual delegated by the Administrative Office of the Courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;

(19) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;

(21) "Detention hearing" means a hearing held by a judge or trial commissioner within twenty-four (24) hours, exclusive of weekends and holidays, of the start of any period of detention prior to adjudication;

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(24) "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in the child's ability to function within a normal range of performance and behavior with due regard to his age, development, culture, and environment as testified to by a qualified mental health professional;

(27) "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;

(28) "Habitual truant" means any child who has been found by the court to have been reported as a truant as defined in KRS 159.150 three (3) or more times during a one (1) year period;

(36) "Motor vehicle offense" means any violation of the nonfelony provisions of KRS Chapters 186, 189, or 189A, KRS 177.300, 304.39-110, or 304.39-117;

(38) "Needs of the child" means necessary food, clothing, health, shelter, and education;

(42) "Parent" means the biological or adoptive mother or father of a child;

(43) "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;

(47) "Public offense action" means an action, excluding contempt, brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;

(50) "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;

(55) "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions in which the parent, guardian, or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;

(59) (a) "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall include:

1. Beyond the control of school or beyond the control of parents;
2. Habitual runaway;

3. Habitual truant;
4. Tobacco offenses as provided in KRS 438.305 to 438.340; and
5. Alcohol offenses as provided in KRS 244.085.

(b) Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of;

(60) "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;

KRS 610.010 District Court jurisdiction of juvenile matters

(1) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the District Court of each county shall have exclusive jurisdiction in proceedings concerning any *child* living or found within the county who has not reached his or her eighteenth birthday or of any person who at the time of committing a public offense was under the age of eighteen (18) years, who allegedly has committed a public offense prior to his or her eighteenth birthday, except a motor vehicle offense involving a child sixteen (16) years of age or older. A child sixteen (16) years of age or older taken into custody upon the allegation that the child has committed a *motor vehicle offense* shall be treated as an adult and shall have the same conditions of release applied to him or her as an adult. A child taken into custody upon the allegation that he or she has committed a motor vehicle offense who is not released under conditions of release applicable to adults shall be held, pending his or her appearance before the District Court, in a facility as defined in KRS 15A.067. Children sixteen (16) years of age or older who are convicted of, or plead guilty to, a motor vehicle offense shall, if sentenced to a term of confinement, be placed in a facility for that period of confinement preceding their eighteenth birthday and an adult detention facility for that period of confinement subsequent to their eighteenth birthday. The term "motor vehicle offense" shall not be deemed to include the offense of stealing or converting a motor vehicle nor operating the same without the owner's consent nor any offense which constitutes a felony;

(2) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the District Court of each county or the family division of the Circuit Court shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his or her eighteenth birthday and who allegedly:

(a) Is beyond the control of the school or beyond the control of parents as defined in KRS 600.020;

(b) Is an habitual truant from school;

(c) Is an habitual runaway from his or her parent or other person exercising custodial control or supervision of the child;

(d) Is dependent, neglected, or abused; or

(e) Has committed an alcohol offense in violation of KRS 244.085;

(f) Has committed a tobacco offense as provided in KRS 438.305 to 438.340; or

(g) Is mentally ill.

(3) Actions brought under subsection (1) of this section shall be considered to be public offense actions.

(4) Actions brought under subsection (2)(a), (b), (c), (e) and (f) of this section shall be considered to be status offense actions.

KRS 610.190 Arrest laws applicable to child taken into custody – Applicability of bail laws – Custody by person other than peace officer

(1) The law relating to the persons by whom and the circumstances under which a person may be arrested for a public offense shall be applicable to children, but the taking of a child into custody under such law shall not be termed an arrest until the court has made the decision to try the child in Circuit or District Court as an adult. The law relating to bail shall not be applicable to children detained in accordance with this chapter unless the child is subject to being tried in Circuit or District Court as an adult.

(2) When a child is taken into custody by a person other than a peace officer, such person shall as soon as possible place the child in the custody of a peace officer.

KRS 610.200 Duties of peace officer

(1) When a peace officer has taken or received a child into custody on a charge of committing an offense, the officer shall immediately inform the child of his constitutional rights and afford him the protections required thereunder, notify the parent, or if the child is committed, the Department of Juvenile Justice or the cabinet, as appropriate, and if the parent is not available, then a relative, guardian, person exercising custodial control or supervision of the child, that the child has been taken into custody, give an account of specific charges against the child, including the specific statute alleged to have been violated, and the reasons for taking the child into custody.

(2) Unless the child is subject to trial as an adult or unless the nature of the offense or other circumstances are such as to indicate the necessity of retaining the child in custody, the officer shall release the child to the custody of his parent or if the child is committed, the Department of Juvenile Justice or the cabinet, as appropriate; or if the parent is not available, then a relative, guardian, person exercising custodial control or supervision or other responsible person or agency approved by the court upon the written promise, signed by such person or agency, to bring the child to the court at a stated time or at such time as the court may order. The written promise, accompanied by a written report by the officer, shall be submitted forthwith to the court or court-designated worker and shall detail the reasons for having taken custody of the child, the release of the child, the person to whom the child was released, and the reasons for the release.

(3) If the person fails to produce the child as agreed or upon notice from the court, a summons, warrant, or custody order may be issued for the apprehension of the person or of the child, or both.

(4) The release of a child pursuant to this section shall not preclude a peace officer from proceeding with a complaint against a child or any other person.

(5) Unless the child is subject to trial as an adult, if the child is not released, the peace officer shall contact the court-designated worker who may:

(a) Release the child to his parents;

(b) Release the child to such other persons or organizations as are authorized by law;

(c) Release the child to either of the above subject to stated conditions; or

(d) Except as provided in subsection (6) of this section, authorize the peace officer to retain custody of the child for an additional period not to exceed twelve (12) hours during which the peace officer may transport the child to a secure juvenile detention facility, a juvenile holding facility, or a nonsecure facility. If the child is retained in custody, the court-designated worker shall give notice to the child's parents or person exercising custodial control or supervision of the fact that the child is being retained in custody.

(6) (a) Except as provided in paragraph (b) of this subsection, no child ten (10) years of age or under shall be taken to or placed in a juvenile detention facility.

(b) Any child ten (10) years of age or under who has been charged with the commission of a capital offense or with an offense designated as a Class A or Class B felony may be taken to or placed in a secure juvenile detention facility or youth alternative center when there is no available less restrictive alternative.

KRS 610.220 Permitted purposes for holding child in custody – Time limitation – Extension separation from adult prisoners

(1) Except as otherwise provided by statute, if an officer takes or receives a child into custody, the child may be held at a police station, secure juvenile detention facility, juvenile holding facility, intermittent holding facility, youth alternative center, a nonsecure facility, or, as necessary, in a hospital or clinic for the following purposes:

(a) Identification and booking;

(b) Attempting to notify the parents or person exercising custodial control or supervision of the child, a relative, guardian, or other responsible person;

(c) Photographing;

(d) Fingerprinting;

(e) Physical examinations, including examinations for evidence;

(f) Evidence collection, including scientific tests;

(g) Records checks;

(h) Determining whether the child is subject to trial as an adult; and

(i) Other inquiries of a preliminary nature.

(2) A child may be held in custody pursuant to this section for a period of time not to exceed two (2) hours, unless an extension of time is granted. Permission for an extension of time may be granted by the court,

trial commissioner, or court-designated worker pursuant to KRS 610.200(5)(d) and the child may be retained in custody for up to an additional ten (10) hours at a facility of the type listed in subsection (1) of this section except for an intermittent holding facility for the period of retention.

(3) Any child held in custody pursuant to this section shall be sight and sound separated from any adult prisoners held in secure custody at the same location, and shall not be handcuffed to or otherwise securely attached to any stationary object.

KRS 610.265 Detention of children in specified facilities – Time frame for holding detention hearing

(1) Any child who is alleged to be a status offender or who is accused of being in contempt of court on an underlying finding that the child is a status offender may be detained in a nonsecure facility, a secure juvenile detention facility, or a juvenile holding facility for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays, pending a detention hearing. Any child who is accused of committing a public offense or of being in contempt of court on an underlying public offense may be detained in a secure juvenile detention facility or juvenile holding facility for a period of time not to exceed forty-eight (48) hours, exclusive of weekends and holidays or, if neither is reasonably available, an intermittent holding facility, for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays pending a detention hearing.

KRS 610.300 Evidence in public offense investigations

(1) Physical evidence shall be obtained and utilized in the investigation of public offenses involving children in the same manner as it is obtained and utilized in the investigation of public offenses involving adults.

(2) Except for fingerprint records, all records and physical evidence so obtained shall be surrendered to the court upon motion for good cause shown. All records, including fingerprint records, shall be subject to expungement in the manner provided in KRS 431.076 for circumstances specified therein.

(3) The court shall, upon receipt of physical evidence return any evidence which is not contraband and is not needed for further prosecution, to its lawful owner. The fingerprint cards created pursuant to KRS Chapters 600 to 645 shall be transferred pursuant to KRS 17.110.

KRS 620.030 Duty to report dependency, neglect or abuse

(1) Any person who knows or has reasonable cause to believe that a child is dependent, neglected or abused shall immediately cause an oral or written report to be made to a local law enforcement agency or the Kentucky State Police; the cabinet or its designated representative; the Commonwealth's attorney or the county attorney; by telephone or otherwise. Any supervisor who receives from an employee a report of suspected dependency, neglect or abuse shall promptly make a report to the proper authorities for investigation. If the cabinet receives a report of abuse or neglect allegedly committed by a person other than a parent, guardian or person exercising custodial control or supervision, the cabinet shall refer the matter to the Commonwealth's attorney or the county attorney and the local law enforcement agency or the Kentucky State Police. Nothing in this section shall relieve individuals of their obligations to report.

(2) Any person, including but not limited to a physician, osteopathic physician, nurse, teacher, school personnel, social worker, coroner, medical examiner, child-caring personnel, resident, intern, chiropractor, dentist, optometrist, emergency medical technician, paramedic, health professional, mental health professional, peace officer or any organization or agency for any of the above, who knows or has reasonable cause to believe that a child is dependent, neglected or abused, regardless of whether the person believed to have caused the dependency, neglect or abuse is a parent, guardian, person exercising custodial control or supervision or another person, or who has attended such child as a part of his professional duties shall, if requested, in addition to the report required in subsection (1) of this section, file with the local law enforcement agency or the Kentucky State Police or the Commonwealth's or county attorney, the cabinet or its designated representative within forty-eight (48) hours of the original report a written report containing:

(a) The names and addresses of the child and his parents or other persons exercising custodial control or supervision;

(b) The child's age;

- (c) The nature and extent of the child's alleged dependency, neglect or abuse (including any previous charges of dependency, neglect or abuse) to this child or his siblings;
- (d) The name and address of the person allegedly responsible for the abuse or neglect; and
- (e) Any other information that the person making the report believes may be helpful in the furtherance of the purpose of this section.

KRS 620.040 Duties of prosecutor, police, and cabinet – Prohibition as to school personnel – Multidisciplinary teams

- (5) (a) If, after receiving the report, the law enforcement officer, the cabinet, or its designated representative cannot gain admission to the location of the child, a search warrant shall be requested from, and may be issued by, the judge to the appropriate law enforcement official upon probable cause that the child is dependent, neglected, or abused. If, pursuant to a search under a warrant a child is discovered and appears to be in imminent danger, the child may be removed by the law enforcement officer.
- (b) If a child who is in a hospital or under the immediate care of a physician appears to be in imminent danger if he is returned to the persons having custody of him, the physician or hospital administrator may hold the child without court order, provided that a request is made to the court for an emergency custody order at the earliest practicable time, not to exceed seventy-two (72) hours.
- (c) Any appropriate law enforcement officer may take a child into protective custody and may hold that child in protective custody without the consent of the parent or other person exercising custodial control or supervision if there exist reasonable grounds for the officer to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents or other person exercising custodial control or supervision are unable or unwilling to protect the child. The officer or the person to whom the officer entrusts the child shall, within twelve (12) hours of taking the child into protective custody, request the court to issue an emergency custody order.
- (d) When a law enforcement officer, hospital administrator, or physician takes a child into custody without the consent of the parent or other person exercising custodial control or supervision, he or she shall provide written notice to the parent or other person stating the reasons for removal of the child. Failure of the parent or other person to receive notice shall not, by itself, be cause for civil or criminal liability.

KRS 630.020 Jurisdiction of court

The court shall have exclusive jurisdiction in proceedings concerning any child living, or found within the district, who allegedly:

- (1) Has been an habitual runaway from his parent or person exercising custodial control or supervision of the child;
- (2) Is beyond the control of the school or beyond the control of parents as defined in KRS 600.020;
- (3) Has been an habitual truant from school;
- (4) Has committed a tobacco offense under KRS 438.305 to 438.340; or
- (5) Has committed an alcohol offense under KRS 244.085.

KRS 630.030 Circumstances under which child may be taken into custody by peace officer

Under the provisions of this chapter a child may be taken into custody by any peace officer:

- (1) Pursuant to an order of the court for failure to appear before the court for a previous status offense; or
- (2)

If there are reasonable grounds to believe that the child has been an habitual runaway from his parent or person exercising custodial control or supervision of the child.

KRS 630.040 Duties of person taking child into custody

Any person taking a child into custody, with all reasonable speed, shall in this sequence:

- (1) Deliver the child suffering from a physical condition or illness which requires prompt medical treatment to a medical facility or physician. Children suspected of having a mental or emotional illness shall be evaluated in accordance with the provisions of KRS Chapter 645;
- (2) Contact a court designated worker who shall have the responsibility for determining appropriate placement pursuant to KRS 610.200(5);

KRS 645.020 Definitions for chapter

The definitions in KRS Chapter 600 shall apply to this chapter. In addition, unless the context requires otherwise:

(2) "**Danger to self or others**" means that it is shown by substantial proof that in the near future the child may attempt suicide or may cause substantial physical harm or threat of substantial physical harm to self or others, as evidenced by recent threats or overt acts, including acts by which the child deprives self or others of the basic means of survival, including reasonable shelter, food or clothing. In determining whether a child presents a danger to self, factors to be considered shall include, but shall not be limited to, an established pattern of past dangerous behavior;

(8) "**Mentally ill child**" means that considering the child's age and development, the child has a substantially impaired capacity to use self-control, judgment or discretion in the conduct of the child's affairs and social relations, the child's behavior is maladaptive or the child exhibits recognized emotional symptoms which can be related to physiological, psychological or social factors.

KRS 645.120 Emergency hospitalization

(1) If, as a result of mental illness, a child appears in need of immediate hospitalization for observation, diagnosis, or treatment, a peace officer or any interested person may either take the child to a hospital, mental health facility, or another less restrictive alternative or file a petition for emergency hospitalization. Upon filing a petition, a peace officer may place a child up to twenty-four (24) hours, excluding weekends and holidays, in a hospital or mental health facility or another less restrictive alternative. The peace officer shall notify the court designated worker of the child's placement. Within twelve (12) hours, the peace officer shall, if no other party can be found, file a petition, unless the child has been taken to a hospital. No child held under this section shall be held in a secure juvenile detention facility or juvenile holding facility unless a status offense action or public offense action is also pending.

(2) On the basis of a prompt examination and any other available information concerning a child who is present at or presented at a hospital, an authorized staff physician shall determine within twenty-four (24) hours if the child needs immediate hospitalization after which the child shall be released within seventy-two (72) hours unless the child is held pursuant to other provisions of this chapter.

(a) The hospital may accept physical custody of the child and may request the person who brought the child to remain on the premises until the authorized staff physician makes a determination;

(3) The petition for emergency hospitalization shall state the petitioner's belief, including its factual basis, that the child, as a result of mental illness, needs immediate hospitalization for observation, diagnosis, and treatment. Within twenty-four (24) hours of the filing, exclusive of weekends and holidays, the court shall on an ex parte basis, which may be by telephone:

(a) Deny the petition; or

(b) Issue an order authorizing a peace officer to transport the child to a designated hospital or mental health facility for evaluation for emergency hospitalization, at which time two (2) qualified mental health professionals, at least one (1) of whom is an authorized staff physician, shall follow the procedures specified in subsection (2) of this section. If the child is committed to the cabinet or will be treated by the cabinet, the court shall notify the cabinet of its order at once and shall also advise the cabinet of the sex and condition of the child who is to be transported. The peace officer may, upon agreement of a person authorized by the peace officer, authorize the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the child to a hospital or mental health facility. The cabinet shall pay the transportation costs of the child and the official transporting the child, both to and from the designated hospital or mental health facility, in accordance with an administrative regulation promulgated under KRS Chapter 13A. If, after evaluation, the qualified mental health professional finds that the child does not meet the criteria for involuntary hospitalization, the child shall be released immediately and transported back to the child's home county by an appropriate means of transportation.

(4) An emergency hospitalization of a child may not exceed seven (7) days, exclusive of weekends and holidays, unless a certification petition is filed before the seven (7) days expire.

KRS 645.280 Place where child to be held

(1) No child held under the provisions of this chapter shall be held in a secure juvenile detention facility or juvenile holding facility unless a status offense action or public offense action is also pending. No peace officer or any other person shall bring a status offense action or a public offense action against a child who is mentally ill and in need of hospitalization pursuant to this chapter solely or primarily for the purpose of avoiding transporting the child to a hospital, mental health facility, or other less restrictive alternative.

(2) If, after evaluation, the qualified mental health professional finds that the child does not meet the criteria for involuntary hospitalization and the peace officer has reason to believe that the child has committed a status offense or public offense, the peace officer may proceed in accordance with KRS 610.190 to 610.290.

DOMESTIC VIOLENCE

KRS 431.005 Arrest by peace officers – By private persons

(2) (a) Any peace officer may arrest a person without warrant when the peace officer has probable cause to believe that the person has intentionally or wantonly caused physical injury to a family member or member of an unmarried couple.

(b) For the purposes of this subsection, the term "family member" has the same meaning as set out in KRS 403.720(2).

(c) For the purpose of this subsection, the term "member of an unmarried couple" has the same meaning as set out in KRS 403.720(4).

EDITOR'S NOTE: The Kentucky Court of Appeals ruled that "member of an unmarried couple" includes homosexual couples, but not roommates unless engaged in an intimate (i.e., sexual) relationship. Ireland v. Davis, 957 S.W.2d 310 (Ky Ct. App. 1997).

(5) If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with KRS 431.064 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

(7) If a law enforcement officer has probable cause to believe that a person has violated a restraining order issued under KRS 508.155, then the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

KRS 403.720 Definitions for KRS 403.715 to 403.785

As used in KRS 403.715 to 403.785:

(1) "Domestic violence and abuse" means physical injury, serious physical injury, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple;

(2) "Family member" means a spouse, including a former spouse, a grandparent, a parent, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim;

(3) "Global positioning monitoring system" means a system that electronically determines a person's location through global positioning satellite technology, radio frequency technology, or a combination thereof and reports the location of an individual through the use of a transmitter or similar device worn by that individual and that transmits latitude and longitude data to a monitoring entity. The term does not include any system that contains or operates global positioning system technology, or any other similar technology, that is implanted or otherwise invades or violates the individual's body; and

(4) "Member of an unmarried couple" means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together.

EDITOR'S NOTE: In Ireland v. Davis, 957 S.W.2d 310 (Ky App 1997), the Kentucky Court of Appeals ruled that "KRS 403.715 - .785 affords protection to same-sex couples just as they do to the others enumerated therein." The court also stated that "'couples' . . . refers to two people engaged in an intimate relationship and would not include roommates." Although this latter statement is "mere dicta", the court thus gave indication as to how it might rule in a case involving roommates not in an intimate (i.e., sexual) relationship. The court would probably rule the same way in a case involving KRS 431.005.

KRS 403.725 Petition, who may file – Protective orders

(1) Any family member or member of an unmarried couple who is a resident of this state or has fled to this state to escape domestic violence and abuse may file a verified petition in the District Court of the county in which he resides. If the petitioner has left his usual place of residence within this state in order to avoid domestic violence and abuse, the petition may be filed and proceedings held in the District Court in the county of his usual residence or in the District Court in the county of current residence. Any family member or member of an unmarried couple who files a petition for an emergency protective order in District or Circuit Court shall make known to the court any custody or divorce actions, involving both the petitioner and the respondent, that are pending in any Circuit Court in the Commonwealth. The petition shall also include the name of the court where filed.

(2) Any family member or any member of an unmarried couple, as those terms are defined in KRS 403.720, may file for and receive protection under KRS 403.715 to 403.785, notwithstanding the existence of or intent to file an action in the Circuit Court by either party under the provisions of this chapter.

(3) A petition filed pursuant to subsection (1) of this section may be filed by the family member or member of an unmarried couple seeking relief or by an adult family member or member of an unmarried couple on behalf of a minor family member.

(4) If a family member files an action for dissolution of marriage or child custody in Circuit Court, the Circuit Court shall have jurisdiction to issue a protective order upon the filing of a verified motion therein either at the commencement or during the pendency of the action in Circuit Court pursuant to the provisions of KRS 403.730 to 403.785.

(5) No Circuit or District Court shall require mediation, conciliation, or counseling prior to or as a condition of issuing an emergency protective order or domestic violence order.

(6) When the elected, appointed, or special judge of the district is absent from the district, otherwise unavailable, or unable to act, any Circuit Judge shall have the authority to issue an emergency protective order pursuant to KRS 403.730 to 403.785. If a Circuit Judge issues an emergency protective order, except as otherwise provided in this section, that judge shall conduct the hearing as required by KRS 403.745 and any order issued shall be enforced as provided in this chapter.

(7) During any hearing in Circuit Court on dissolution of marriage, child custody, or visitation, at which both parties are present or represented by counsel, the Circuit Judge shall have the authority to issue a protective order pursuant to KRS 403.730 to 403.785.

(8) Following the issuance of a protective order under this section, if the judge who issued the order is absent from the district, otherwise unavailable, or unable to conduct proceedings regarding the enforcement, violation, or modification of the order within a reasonable time, the proceedings shall be conducted by any District or Circuit Judge.

KRS 403.735 Review by court – Access to emergency protective orders – Local protocol in domestic violence matters – Time at which orders of protection take effect

(1) Upon the filing of a petition, as provided for in KRS 403.725, the court, after review of the petition and determining that domestic violence and abuse exists, without a jury, shall utilize one (1) of the alternatives provided for in KRS 403.740 or 403.745.

(2) A court may issue mutual protective orders only if a separate petition is filed by the respondent. Pursuant to KRS 403.740 and 403.750, the court shall then provide orders, sufficiently specific to apprise any peace officer as to which party has violated the order if there is probable cause to believe a violation of the order has occurred.

(3) (a) All courts shall provide twenty-four (24) hour access to emergency protective orders.

(b) Each court shall submit written procedures for twenty-four (24) hour accessibility to be reviewed and approved by the Kentucky Supreme Court.

(c) Each court shall establish the local protocol in domestic violence matters in which there may be joint jurisdiction between District and Circuit Court. Each court shall submit the written procedures to be reviewed and approved by the Kentucky Supreme Court.

(d) All amendments or revisions to the local procedures required pursuant to this section shall be submitted to the Kentucky Supreme Court for review and approval.

(6) An order of protection issued under the provisions of KRS 403.715 to 403.785 shall become effective and binding on the respondent at the time of personal service or when the respondent is given notice of the existence and terms of the order by a peace officer or the court, whichever is earlier. After notice of the existence and terms of the order is given to the respondent, a peace officer or the court may enforce the terms of the order, and act immediately upon any violation of the order. After notice of the order, all reasonable efforts shall be made by the peace officer or the court to arrange for personal service of the order upon the respondent.

KRS 403.740 Emergency protective orders

(1) If, upon review of the petition, as provided for in KRS 403.735, the court determines that the allegations contained therein indicate the presence of an immediate and present danger of domestic violence and abuse, the court shall issue, upon proper motion, ex parte, an emergency protective order:

(a) Restraining the adverse party from any contact or communication with the petitioner except as directed by the court;

(b) Restraining the adverse party from committing further acts of domestic violence and abuse;

(c) Restraining the adverse party from disposing of or damaging any of the property of the parties;

(d) Restraining the adverse party from going to or within a specified distance of a specifically described residence, school, or place of employment of the petitioner, minor child of the petitioner, family member, or member of an unmarried couple protected in the order;

(e) Directing the adverse party to vacate the residence shared by the parties to the action;

(f) Utilizing the criteria set forth in KRS 403.270, 403.320, and 403.420, grant temporary custody;

(g) Restraining the adverse party from approaching the petitioner or a minor child of the petitioner within a distance specified in the order, not to exceed five hundred (500) feet; or

(h) Enter other orders the court believes will be of assistance in eliminating future acts of domestic violence and abuse; or any combination thereof, except that the use of a global positioning system shall not be ordered.

(4) An emergency protective order issued in accordance with this section shall be effective until the full hearing provided for in this subsection or in KRS 403.745, or until withdrawn by the court. Upon the issuance of an emergency protective order, the court shall set a date and time for a full hearing, within fourteen (14) days as provided for in KRS 403.745, and shall summon the adverse party to appear. If, at the hearing, the adverse party is not present and has not been served, the emergency protective order shall remain in place, and the court shall direct the issuance of a new summons for a hearing set not more than fourteen (14) days in the future. If service has not been made on the adverse party prior to seventy-two (72) hours before that hearing or a subsequent hearing, the emergency protective order shall remain in place and the court shall continue the hearing and issue a new summons with a new date and time for the hearing to occur, which shall be within fourteen (14) days of the originally scheduled date for the continued hearing. Before issuing the new summons, the court shall note the length of time that has passed since the issuance of the emergency protective order, during which the adverse party has not been served. The court shall repeat the process of continuing the hearing and reissuing a new summons after noting the lapse of time since the issuance of the emergency protective order until the adverse party is served at least seventy-two (72) hours in advance of the scheduled hearing. In issuing the summons, the court shall simultaneously transmit a copy of the summons or notice of its issuance and provisions to the petitioner.

(5) The adverse party shall be personally served with a copy of the emergency protective order, a copy of the notice setting the full hearing, and a copy of the petition. Service may be made in the manner and by the persons authorized to serve subpoenas under the provisions of Rule 45.03 of the Rules of Civil Procedure. No service fee shall be assessed to the petitioner.

KRS 403.750 Court orders – Amendment

(1) Following the hearing provided for under KRS 403.740 and 403.745, the court, if it finds from a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred and may again occur, may:

- (a) Restrain the adverse party from any contact or communication with the petitioner except as directed by the court;
 - (b) Restrain the adverse party from committing further acts of domestic violence and abuse;
 - (c) Restrain the adverse party from disposing of or damaging any of the property of the parties;
 - (d) Restrain the adverse party from going to or within a specified distance of a specifically described residence, school, or place of employment of the petitioner, minor child of the petitioner, family member, or member of an unmarried couple protected in the order;
 - (e) Direct the adverse party to vacate the residence shared by the parties to the action;
 - (f) Utilizing the criteria set forth in KRS 403.270, 403.320, and 403.420, award temporary custody;
 - (g) Utilizing the criteria set forth in KRS 403.211, 403.212, and 403.213, award temporary support;
 - (h) Direct that either or both parties receive counseling services available in the community, except that the court shall not order or refer the parties to participate in mediation for resolution of the issues alleged in the petition filed pursuant to KRS 403.715 to 403.785;
 - (i) Restrain the adverse party from approaching the petitioner or a minor child of the petitioner within a distance specified in the order, not to exceed five hundred (500) feet; or
 - (j) Except for ordering the use of a global positioning monitoring system, which shall not be utilized until after a court determines that a substantial violation of a domestic violence order has occurred, enter other orders the court believes will be of assistance in eliminating future acts of domestic violence and abuse.
- (2) Any order entered pursuant to this section shall be effective for a period of time, fixed by the court, not to exceed three (3) years and may be reissued upon expiration for an additional period of up to three (3) years. The number of times an order may be reissued shall not be limited. With respect to whether an order should be reissued, any party may present to the court testimony relating to the importance of the fact that acts of domestic violence or abuse have not occurred during the pendency of the order.
- (3) Upon proper filing of a motion, either party may seek to amend a domestic violence order.

(5) Any order entered pursuant to this section restraining a party or parties to an action shall be issued without bond being required of the petitioner.

KRS 403.7521 Foreign protective orders – Filing – Affidavit certifying validity – Uncertified orders

(1) In KRS 403.715 to 403.785, "foreign protective order" means any judgment, decree, or order of protection issued by a court of a state of the United States or of any other court which is entitled to full faith and credit in this state pursuant to 18 U.S.C. sec. 2265.

(2) A copy of any foreign protective order entitled to full faith and credit in this state in accordance with the Act of Congress or the statutes of this state may be filed in the office of the clerk of any court of competent jurisdiction of this state. A foreign protective order so filed shall have the same effect and shall be enforced in the same manner as an emergency protective order issued by a court of this state.

KRS 403.7527 Enforcement of foreign protective orders

A court of this state shall enforce a foreign protective order authenticated pursuant to KRS 403.737, 403.7521, and 403.7524, including an order which grants relief to a person who is not eligible for a protective order in this state. A court of this state shall enforce all provisions of a foreign protective order including provisions which grant relief that is not available in this state. Any foreign protective order that has been properly authenticated and that comes within the purview of KRS 403.7524 shall be effective for the period of time fixed by the issuing court.

KRS 403.7529 Presumption of validity – Enforcement by peace officers

(2) All peace officers shall treat a foreign protective order as a legal document, valid in Kentucky, and shall make arrests for a violation thereof in the same manner as for a violation of an emergency protective order or domestic violence order issued in Kentucky.

(3) The fact that a foreign protective order has not been entered into the Law Information Network of Kentucky shall not be grounds for a peace officer not to enforce the provisions of the order unless it is readily apparent to the peace officer to whom the order is presented that the order has either expired according to a date shown on the order, or that the order's provisions clearly do not prohibit the conduct being complained of. Officers acting in good faith shall be immune from criminal and civil liability.

(4) In the event that the order has expired or its provisions do not prohibit the conduct being complained of, the officer shall not make an arrest unless the provisions of a Kentucky statute have been violated, in which case the peace officer shall take the action required by Kentucky law.

KRS 403.755 Enforcement by law enforcement agency

(1) Upon the issuance of an order authorized by KRS 403.740 or 403.750, the court shall direct the appropriate law enforcement agency to assist the petitioner in having the provisions of the order complied with.

(2) Orders issued under the provisions of KRS 403.740 or 403.750, whether an emergency protective order or an order following a hearing, shall be enforced in any county of the Commonwealth. Officers acting in good faith shall be immune from criminal and civil liability.

KRS 403.760 Contempt of court

(1) Violation of the terms or conditions of an order issued under the provisions of KRS 403.740 or 403.750, whether an emergency protective order, or an order following hearing, after service of the order on the respondent, or notice of the order to the respondent, shall constitute contempt of court.

(2) Any peace officer having probable cause to believe a violation has occurred of an order issued under the provisions of KRS 403.740 or 403.750, whether an emergency protective order or an order following a hearing, and after service on the respondent or notice to the respondent as provided under KRS 403.735, shall arrest the respondent without a warrant for violation of a protective order pursuant to KRS 500.020, 403.715, and 403.740. Following a hearing the District Court in the county in which the peace officer made the arrest for the violation may punish the violation of a protective order as a violation of a protective order.

(3) Court proceedings for contempt of court, under KRS 403.715 to 403.785, shall be held in the county where the order, whether an emergency protective order or order following hearing, was issued.

(4) Nothing in this section shall preclude the Commonwealth from prosecuting and convicting the respondent of criminal offenses other than violation of a protective order.

(5) Civil proceedings and criminal proceedings for violation of a protective order for the same violation of a protective order shall be mutually exclusive. Once either proceeding has been initiated the other shall not be undertaken regardless of the outcome of the original proceeding.

KRS 403.761 Substantial violation of domestic violence order – Hearing – Imposition of global positioning monitoring in lieu of imprisonment – Cost to be paid by respondent – Exceptions – Violation of global positioning monitoring requirements

(11) (a) A respondent who has been ordered by a court to wear a global positioning monitoring system monitoring device pursuant to this section shall not, without written permission from the court issuing the order or a higher court to which the issuance of the order has been appealed:

1. Fail to wear the device;
2. Remove a device that the respondent has been ordered to wear; or
3. Tamper with or destroy a device that the respondent has been ordered to wear.

(b) A respondent who violates paragraph (a) of this subsection shall be guilty of a Class D felony.

(c) The provisions of this section shall not apply to a respondent who, upon the expiration of the order that required the respondent to wear the global positioning monitoring system device, permits the entity providing the monitoring to remove the device.

KRS 403.763 Criminal penalty for violation of protective order

(1) A person is guilty of a violation of a protective order when he intentionally violates the provisions of an order issued pursuant to KRS 403.715 to 403.785 with which he has been served or has been given notice.

(2) Violation of a protective order is a Class A misdemeanor.

KRS 403.785 Duties of law enforcement agencies

(1) Each law enforcement agency shall report all incidents of actual or suspected domestic violence and abuse within their knowledge to the Cabinet for Families and Children, Department for Community Based Services, within forty-eight (48) hours of learning of the incident or of the suspected incident.

(2) When a law enforcement officer has reason to suspect that a family member, member of an unmarried couple, or household member has been the victim of domestic violence and abuse, the officer shall use all reasonable means to prevent further abuse, including but not limited to:

(a) Remaining at the location of the domestic violence and abuse so long as the officer reasonably suspects there is danger to the physical safety of individuals present without the presence of a law enforcement officer;

(b) Assisting the victim of domestic violence and abuse in obtaining medical treatment, including transporting the victim to the nearest medical facility capable of providing the necessary treatment; and

(c) Advising the victim immediately of the rights available to them, including the provisions of KRS 403.715 to 403.785.