

Supreme Court of Kentucky

ORDER

2015-15

IN RE: PROVISIONAL JUVENILE COURT RULES OF PROCEDURE AND PRACTICE (JCRPP) AND AMENDMENTS TO FAMILY COURT RULES OF PROCEDURE AND PRACTICE, PART VIII. STATUS OFFENDERS

Effective July 1, 2015, the Juvenile Court Rules of Procedure and Practice (JCRPP) are adopted as provisional rules for statewide implementation as a pilot project in support of the court's implementation of juvenile justice reform mandated by Senate Bill 200, 2014 Gen. Assemb., Reg. Sess. (Ky. 2014), and as enacted in the Kentucky Unified Juvenile Code of the Kentucky Revised Statutes.

These rules supersede the rules relating to status offenses located in the Family Court Rules of Procedure and Practice, PART VIII. STATUS OFFENDERS, which is amended, effective July 1, 2015. Further, to the extent that the local practices and procedures of any circuit or district are inconsistent or otherwise conflict with these provisional JCRPPs, including but not limited to those practices and procedures contained in Local Rules approved before July 1, 2015, under SCR 1.040(3)(a), these provisional JCRPPs prevail over any such local practices and procedures.

The Supreme Court of Kentucky issues this Order under its authority granted by Section 116 of the Kentucky Constitution to promulgate rules and issue orders of practice and procedure for the Kentucky Court of Justice.

A. PROVISIONAL JUVENILE COURT RULES OF PROCEDURE AND PRACTICE.

I. PURPOSE

These rules embody the policies set forth in KRS 600.010 which include, but are not limited to, the following:

- A. Providing each child a safe and nurturing home;
- B. Using in-home interventions and avoiding out-of-home placement to the extent possible;
- C. Providing treatment reasonably calculated to bring about an improvement in the conditions that brought the child before the court;
- D. Providing fair judicial proceedings that recognize the rights and interests of all parties; and
- E. Serving the best interest of each child.

II. TITLE AND SCOPE OF RULES

JCRPP 1. Title and Scope.

- A. These rules shall be known as the Juvenile Court Rules of Procedure and Practice and shall apply in family and district court. They may be cited as "JCRPP."
- B. The JCRPP specifically apply to KRS Chapter 630 on Status Offenders; KRS Chapter 635 on Public Offenders; KRS Chapter 640 on Youthful Offenders; and the introductory, administrative and procedural matters contained in KRS Chapters 600, 605 and 610.

- C. The Rules of Criminal Procedure shall apply to these juvenile matters as indicated in KRS 610.080(2).
- D. All juvenile cases shall be decided on a case-by-case basis and no local rules, or other orders of the court or local policies may supersede or controvert the JCRPP.

JCRPP 2. Assignment of Cases and Jurisdiction.

- A. In jurisdictions having multiple divisions of district or family court, cases shall be assigned as determined by the chief judge.
- B. As used in the JCRPP, "pending" means a petition has been filed and is on the court's active docket whether the case is pre-disposition or post-disposition.
- C. Duties of family and juvenile court clerk. Upon the filing of a juvenile status or public offense petition in the family or district court, the clerk shall determine if there are pending cases involving the child in order to assign the case as directed in Subsection D. below.
- D. Jurisdiction.
 - 1. Family Court. Pursuant to KRS 23A.100(2)(d), status offense petitions shall be filed and heard in family court, if any, subject to the following:
 - a. Pending public offense case. If a public offense case involving the child is pending in district court at any time a status offense case is pending, the clerk shall assign the status offense case to the district court division presiding over the pending public offense case.
 - b. Transfer of Pending Status Offense.

- 1) If a public offense petition is filed that involves the same child in a status offense case, after notice from the clerk the family court judge presiding over the status offense case shall enter an order transferring the status offense case to the district court division presiding over the public offense case(s).
- 2) Upon entry of such order by a family court judge transferring a status offense case(s) to the district court, the clerk shall consolidate the status offense case and the pending public offense case for purposes of hearing.
- 3) The status offense case shall be scheduled by the clerk on the next available docket of the district judge presiding over the public offense case, and notice of the court date shall be sent to the parties.

c. Interstate Compact on Juveniles. Pursuant to KRS Chapter 615, these cases:

- 1) Shall be processed according to the Compact, and
- 2) The court shall use the appropriate Compact forms.

2. District Court. Pursuant to KRS 610.010, the following cases shall be filed and/or heard in district court:

- a. Public offense cases.
- b. Status offense cases where there is no family court.
- c. Status offense cases where a family court exists, including:

- 1) Any existing status offense case that is consolidated with a pending public offense case.
 - 2) Any status offense case that is filed while a public offense case is pending, and
 - 3) The clerk shall consolidate any status offense case transferred to, or filed in, district court with any pending public offense case on the same child, and set the case for a hearing at the child's next scheduled public offense hearing, if said hearing is set to occur within 15 days; otherwise, the clerk shall set the case on the first available public offense docket of the district judge presiding over that case.
 - 4) The clerk shall send notice of the hearing date to the parties in the public offense case.
- d. Youthful Offenders.
- 1) Prior to indictment,
 - 2) With authority to set bail.
- e. Interstate Compact on Juveniles. Pursuant to KRS Chapter 615, these cases:
- 1) Shall be processed according to the Compact, and
 - 2) The court shall use the appropriate Compact forms.

Commentary

Where a status offense case is transferred to district court from a family court because there is a pending public offense case, the status offense case must be consolidated with the public offense case and placed on the public offense docket to be heard at the same time. Additionally, any court order entered should be effective in both cases. The district court does not need a separate status offense docket. The public offense case has priority over the status offense case on dispositional matters. If the child is placed on probation, then the disposition of the status offense case will continue in the district court. If the child is placed in detention, that will supersede ongoing orders relating to the status offense case. If the child completes detention, returns to the community, and continues the status disposition (the case may not be sent back to family court once transfer has occurred), and if the court resumes monitoring, then the district court will continue to handle that status case. This could occur with a very short detention.

Generally, a court would merge the status offense with the public offense, and the disposition order would dispose of both cases. When such cases are final (there are no continuing court-ordered terms) any new status offense petition will be filed in family court. Conversely, if a case is not final any new status offense petition will be filed in district court because the public offense case is still pending.

District court takes jurisdiction over a specific status case on the transfer and does not assume jurisdiction of the child for any future status offenses unless a public offense case is pending at the time. Since the same resources are used for status and public offense cases, only one court should be making orders about what the child must

do when he or she has both pending at the same time; and, because any public offense order has priority over any status offense order, this avoids confusion and conflicting court orders.

3. Pre-Petition Detention under KRS 610.200 - 610.280. When a peace officer has taken a child into custody on an allegation or belief that the child has committed an offense and has filed a complaint with the court designated worker, a court may order pre-petition detention if it finds that detention is necessary to protect the child or public:
 - a. A child alleged to be a status offender may be detained not more than 24 hours and a child alleged to be a public offender may be detained not more than 48 hours, to allow for a detention hearing pursuant to KRS 610.265.
 - b. A detention hearing shall be held within the relevant detention period to determine whether the child shall be further detained or released.
 - c. At the detention hearing the commonwealth must establish that there is probable cause to believe that the child has committed an offense before the court may order further detention, and the child shall be given the right to confront and cross-examine witnesses.
 - d. If the Commonwealth establishes there is probable cause a petition shall be filed.
 - e. If a detention hearing is not held within the requisite time, or the court determines there is no probable cause to believe the child has committed an offense, the party having custody of the child shall

release the child to the parent(s) or person(s) exercising custodial control or supervision or other persons as appropriate, or the action may proceed as a KRS Chapter 620 or 645 action.

f. If the court finds further detention is necessary for the protection of the child or the community it shall state specific reasons on the record and may order detention. KRS 610.280; 630.080(1).

E. Mandatory Diversion of a Misdemeanor. Any petition filed charging a misdemeanor when the child has no prior adjudications and no prior diversions shall be dismissed by the court for lack of jurisdiction and the record expunged. KRS 635.010(4).

F. A child charged with a status offense may instead be subject to a proceeding under KRS Chapter 620 if the court determines it is in the child's best interest, and the court shall:

1. Amend the petition pursuant to KRS 610.010(13) and order it served, or require a new petition to be filed; and may
2. Direct the Cabinet for Health and Family Services (the Cabinet) to investigate and/or provide services to the child and/or family pursuant to KRS 605.130(3).

Commentary

This rule was previously articulated in FCRPP 37, and has been removed from the Family Court Rules of Procedure and Practice.

G. The court shall not amend a public offense petition to a status offense petition.

Commentary

Pursuant to KRS 610.010(13), a court may only amend a petition to reflect jurisdiction pursuant to the proper chapter of the Kentucky Unified Juvenile Code. If a court has jurisdiction over a public offense case based on alleged facts that constitute a public offense, this offense may not be amended to a status offense because a status offense does not involve conduct that would constitute a crime if committed by an adult. The practice of the court amending down a public offense case to a status offense case has no basis in law.

JCRPP 3. Juvenile Rights.

- A. At the initial appearance the court shall:
 - 1. Inquire whether the child is able to retain counsel, and if not, appoint counsel and order full access to all records.
 - 2. Inform the child of his or her statutory rights provided in KRS 610.060.
 - 3. Before accepting an admission or confession, make a finding on the record that the admission or confession is knowingly, intelligently and voluntarily entered.
- B. Before removing a child from his or her family, the court shall first find on the record that less restrictive alternatives have been attempted, are not available, or are not feasible pursuant to KRS 610.010.

- C. The court shall ensure prompt and fair hearings, and inform the parties that the rights of the child belong to the child individually and may not be waived by any other party, pursuant to KRS 600.010.

III. PROCESS IN STATUS OFFENSE CASES

JCRPP 4. Pre-Petition Process in Status Offense Cases.

- A. Status Offense Complaint. Any status offense complaint shall be received by the court designated worker on AOC-JW-57, Juvenile Complaint (Status Offense), and shall include:
1. The name, address and identifying information of the child, the parent or custodian, and the complainant;
 2. The sworn statement of the complainant, as well as any other information required by KRS 610.020, and
 3. Shall be accompanied by the appropriate AOC forms completed by the complainant:
 - a. Habitual truancy: AOC-JV-41, Affidavit and Truancy Evaluation, in compliance with KRS 159.140.
 - b. Beyond control of school: AOC-JV-38.1, Affidavit and Beyond Control of School Evaluation.
 - c. Beyond control of parent: AOC-JV-38, Affidavit and Beyond Control of Parent Evaluation.

- d. Habitual runaway: AOC-JW-39, Pre-Adjudicative Detention Criteria, with attachments.
- B. Complete Complaint. Any incomplete complaint shall be returned to the complainant by the court designated worker for additional information.
- C. Preliminary Intake Inquiry/Formal Conference. After the complaint is complete, the court designated worker shall conduct a preliminary intake inquiry with the child which shall include administering an evidence-based screening tool, and upon completion may:
 - 1. Determine that no further action be taken and give notice and an opportunity to review that determination to the family accountability, intervention, and response (FAIR) team. KRS 610.030(6); or
 - 2. Conduct a formal conference and enter into a diversion agreement.
- D. Diversion Agreement. A child eligible for diversion may enter into a diversion agreement pursuant to 610.030(6)(d).
 - 1. If the child declines a diversion agreement or the needs of the child require, the court designated worker shall refer the matter to the FAIR team;
 - 2. If the child denies the allegations and demands a formal court hearing or does not qualify for diversion, the court designated worker shall refer the complaint to the county attorney to file a formal petition or to dismiss the case.
 - 3. No petition shall be filed in a diversion case unless:
 - a. The case is referred to the county attorney by the FAIR team,

- b. The child is not diversion eligible, or
- c. The child denies the allegations and demands a formal court hearing.

Commentary

Effective July 1, 2015, the court designated worker shall conduct a preliminary intake inquiry to determine whether further action must be taken in the best interest of the child and public, because the county attorney is no longer authorized to conduct a reasonable grounds review. Public offense cases, on the other hand, still require an initial probable cause, or reasonable grounds, review.

- 4. If the child successfully completes the terms of the diversion agreement the court designated worker shall close the case with no official court record having been created.
- E. Family Accountability, Intervention, and Response (FAIR) Team. The FAIR team shall conduct enhanced case management only upon referral by the court designated worker, as follows:
- 1. When the risk and needs assessment indicates high risk;
 - 2. When the child fails to appear for a preliminary intake inquiry or a later conference;
 - 3. When the child declines to enter into a diversion agreement;
 - 4. When the child fails to complete a diversion agreement; or
 - 5. If appropriate, after consultation with the school's director of pupil personnel (DPP), who shall complete AOC-JV-41 in accordance with the

documentation and assessment requirements of KRS 630.060(2); KRS 159.150(1)(c), (d), and (f); KRS 159.140(3).

JCRPP 5. Status Offense Petition.

- A. A petition may be filed by the county attorney on AOC-JV-1, Juvenile Petition, to initiate formal court proceedings:
 - 1. When the FAIR team so recommends;
 - 2. When a child demands a formal court hearing; or
 - 3. When the child is ineligible for diversion.
- B. The complaint containing the verified signature of the complainant, any supporting documents, and any charging citation shall be attached.

JCRPP 6. First Appearance – Status Offense Case.

- A. Pursuant to KRS 610.060, the judge shall explain, on the record, the child's rights and the charge, and shall present AOC-JV-49, Notice of Juvenile Rights and Consequences.
- B. A public advocate shall be appointed for the child unless private counsel is retained. See also JCRPP 3.A.1.
- C. The court may enter a valid court order placing the child on pendente lite terms which address the child's alleged behavior(s), and may order participation in a service, program or local resource to assist the child.

JCRPP 7. Pretrial Conference – Status Offense Case. A pretrial conference to review the evidence and determine whether an agreement may be reached shall be scheduled by the court upon the request of any party.

JCRPP 8. Adjudication Hearing – Status Offense Case. A record shall be made of all adjudication hearings which shall include the following, as applicable:

- A. Dismissal. Upon motion of the county attorney a status offense case may be dismissed at any time prior to or at the adjudication hearing.
- B. Admission. Prior to accepting an admission or confession from a child to the truthfulness of the allegations in the petition or any amendments thereto, the court shall inform the child of his or her rights on the record and present AOC-JV-49, Notice of Juvenile Rights and Consequences, and shall make a finding that the admission or confession is knowingly, intelligently and voluntarily entered.
- C. Hearing. The court shall conduct an evidentiary hearing unless the case has been dismissed or the court has accepted an admission or confession.
 - 1. The Court shall make a written finding that the allegations in the petition are true and set the case for disposition; or
 - 2. The court shall make a written finding that the allegations in the petition are not proven and the case shall be dismissed.
 - 3. The court shall advise the child of his or her right to have the juvenile court record expunged pursuant to KRS 610.330.
- D. Predisposition Investigation Report. KRS 610.080 and 610.100.
 - 1. The court shall order a predisposition investigation report (PDI) if a suitable prior PDI is not available, unless appropriately waived by the child.

- a. The court shall order the PDI to be prepared by the Cabinet if commitment to the Cabinet is being considered and the PDI may not be waived without consent of the Cabinet; or
- b. At the discretion of the court, the PDI may be prepared by a suitable public or private agency if commitment is not being considered.
- c. The PDI shall be provided to the court and counsel for the parties three (3) days prior to the disposition hearing, unless the three-day period has been waived; and
- d. The parties shall be afforded the opportunity to examine and controvert the report; and
- e. The report shall be filed in the record.

Commentary

A prior report is "suitable" if the court determines on the record that it is both timely and relevant.

JCRPP 9. Disposition Hearing – Status Offense Case.

- A. The court shall consider all relevant information pertaining to the child.
- B. The court shall provide the child, child's attorney, and parent or custodian a written order setting forth:
 1. The conditions of the order,
 2. The consequences of violating the order, and
 3. The duration of the order.

C. Dispositional Alternatives.

1. The court may not commit any child to the Department of Juvenile Justice for a status offense.
2. The court shall first consider all appropriate local remedies to aid the child and the child's family, including:
 - a. Community-based, non-secure residential and nonresidential treatment programs; and
 - b. Non-secure public or private education programs accredited by the Kentucky Board of Education and the Non-Public Schools Commission pursuant to KRS 156.160.
3. Commitment. The court may commit to the Cabinet only after all appropriate resources have been found insufficient to adequately address the needs of the child and family, and any order of removal shall find:
 - a. That removal from the home is in the best interest of the child; and
 - b. That remaining in the home is contrary to the welfare of the child.

Commentary

While there are no time limits on commitment specified in KRS Chapter 630, it is reasonable that the duration of commitment to the Cabinet should not exceed the time limits placed on public offense commitments (12 months for a misdemeanor offense) unless the court makes findings that a longer period of commitment is necessary.

4. A child may be supervised on probation by the parent or custodian, an appropriate third party, or the court, and the terms and duration of probation and consequences for violation shall be in writing provided to the child.

Commentary

While no probation time limits are specified in KRS Chapter 630, it is reasonable that the duration of status offense probation should not exceed the time limits placed on public offense probation (six (6) months, extended to 12 months if necessary for treatment) unless the court makes findings as to the necessity for a longer period of probation.

5. Finality. A status offense case shall be considered final 30 days after the court is no longer re-docketing the case for active review and may not be reopened for any purpose including contempt proceedings.
6. Duties of the clerk. The clerk shall enter information regarding the disposition of the case in the court record, including but not limited to the terms and conditions ordered by the court and the duration of the order.

IV. SUSPECTED RUNAWAYS; HABITUAL RUNAWAY; INTERSTATE COMPACT

JCRPP 10. Initial Contact with Peace Officer

A. After a peace officer has taken a child into protective custody on suspicion of being a runaway the officer shall notify the child's parent, guardian or other person exercising custodial control or supervision of the child; the Cabinet or the Department of Juvenile Justice as appropriate; and the court designated worker as a part of the peace officer's investigation in the attempt to make provisions for the child's release. If the child is not released pursuant to KRS 610.200(2)(d) or (3), and

1. The child is not a habitual runaway as defined by KRS 600.020(30), then the Cabinet shall assist the officer with the temporary placement of the child pursuant to KRS Chapter 620; or
2. The child is a habitual runaway, then the court designated worker shall assist the officer with the release or placement of the child; or
3. The child is currently committed to the Department of Juvenile Justice, then the Department of Juvenile Justice shall assist the officer in the temporary placement of the child; or
4. The child is a suspected runaway from another state, then the child is subject to the Interstate Compact on Juveniles pursuant to KRS 615.010 and
 - a. The court designated worker shall assist the officer with the temporary placement of the child by contacting a judge for an order for secure

detention of the child pending return to the receiving state pursuant to KRS 615.010.

- b. The court shall detain the suspected runaway from another state pursuant to the procedures established to manage the movement of juvenile offenders between states. KRS 615.010, Article I, Subsection 7.
- c. Using the appropriate federal form, the court shall detain the child in a secure facility for up to five (5) days unless an agreement is reached with the home state for longer detention.

Commentary

The peace officer may release the child pursuant to KRS 610.200(2)(d) or (3); and, if the peace officer is unable to release the child, the Cabinet, the court designated worker or the Department of Juvenile Justice can exercise the information and resources at their disposal to keep a child out of custody and avoid court involvement as appropriate. However, detention is appropriate when there is no available placement for a child who is a habitual runaway. If the child is subject to the Interstate Compact on Juveniles, then the child must be detained and the court designated worker shall contact the Interstate Compact Office currently housed within the Department of Juvenile Justice as soon as practicable for further proceedings. The court must use the appropriate Interstate Compact ICJ Form III in order to return the child to the home

state. Failure to properly detain a runaway from another state results in expenses for the child being charged to Kentucky rather than the home state.

B. As necessary, the Cabinet may initiate an ex parte request for an emergency custody order under KRS Chapter 620 on behalf of a runaway, other than a habitual runaway.

C. If the child cannot be released to the parent or is not otherwise placed and the child qualifies as a habitual runaway, the peace officer shall initiate a complaint with the court designated worker to seek an ex parte emergency protective custody order from the court pursuant to KRS 610.012(2), (3).

Commentary

KRS 610.012 creates a new form of emergency custody order, the emergency *protective custody order*, which only applies to habitual runaways. The emergency custody order set forth in KRS Chapter 620 is distinguished from this order as it pertains to emergency custody obtained only under that chapter. KRS 600.020(30) defines “habitual runaway” as a child who has been gone from home for at least three (3) days in a one-year period. Therefore, children who have not been gone from home the requisite three days are simply runaways and are not by definition status offenders. The only route to assist these children is through KRS Chapter 620 relating to dependency, neglect and abuse; KRS 620.029 relating to children who are victims of human trafficking; or, KRS Chapter 17 relating to missing children.

JCRPP 11. Emergency Protective Custody Order. Following an ex parte request for an emergency protective custody order on a suspected habitual runaway:

- A. The court shall first attempt to place the child in the least restrictive placement alternative available, which may include relative or agency placement.
- B. If a less restrictive placement is not available, the court shall next attempt to place the child in a non-secure detention facility for no more than 72 hours, excluding weekends and holidays.
- C. Before the court places a child in a secure detention facility, the court shall make a finding that a non-secure detention facility is not available, and then may place the child in a secure detention facility for no more than 24 hours, excluding weekends and holidays.

JCRPP 12. Emergency Protective Custody Order Hearing on Suspected Habitual Runaway.

- A. A hearing shall be scheduled by the court and held within 24 hours of a child being detained in a secure facility or within 72 hours of a child being detained in a non-secure facility or any less restrictive alternative placement pursuant to KRS 610.012.
- B. At the hearing, the court shall either:
 - 1. Return the child to the parent or custodian, and if the child is a habitual runaway the court designated worker shall initiate a status offense case;
or
 - 2. Issue an emergency custody order pursuant to KRS Chapter 620, place the child with the Cabinet, and the Cabinet shall file a dependency, neglect and abuse action pursuant to KRS 610.012(4) as a new action.
- C. This action shall be final upon entry of the orders set forth in B.1. and B.2. above and the case shall be dismissed.

V. PROCESS IN PUBLIC OFFENSE CASES

JCRPP 13. Pre-Petition Process in Public Offense Cases.

- A. **Public Offense Complaint.** Any public offense complaint received by the court designated worker shall be on AOC-JW-58, Juvenile Complaint (Public Offense), and shall include:
1. The name, address and identifying information of the child, the parent or custodian, and the complainant,
 2. The sworn statement of the complainant, and
 3. Any other information required by KRS 610.020.
- B. **Complete Complaint.** Any incomplete complaint shall be returned to the complainant by the court designated worker for additional information.
- C. **Reasonable Grounds Review – Peace Officer.** If a peace officer has issued a citation or has taken a child into custody, the complaint shall state the charges in the citation and the county attorney shall make a reasonable grounds determination whether the alleged facts constitute a public offense.
1. If reasonable grounds do not exist or the county attorney elects not to proceed, the county attorney shall dismiss the complaint and mark the appropriate box on the complaint form. The court designated worker shall close the complaint file and inform the complainant that no further action will be taken. KRS 635.010.
 2. If reasonable grounds exist and the county attorney elects to proceed with the complaint, the county attorney shall so indicate on the complaint form.

3. Preliminary Intake Inquiry. If the county attorney finds reasonable grounds exist and does not elect to dismiss the complaint, the court designated worker shall conduct a preliminary intake inquiry with the child, including administering an evidence-based screening tool, and make recommendations to the county attorney as follows:
 - a. The child is statutorily entitled (mandatory) to diversion under KRS 635.010(4);
 - b. The child is eligible for diversion for a misdemeanor under KRS 605.030(1)(e) and a diversion agreement is recommended;
 - c. The child is eligible for diversion on a felony offense that did not involve the commission of a sexual offense or the use of a deadly weapon unless the county attorney has objected to diversion in the case in writing on AOC-JW-12, Public Offense Recommendation to County Attorney; or
 - d. The child is not eligible for diversion.
4. Mandatory Diversion. If the child meets the criteria for mandatory diversion, no petition shall be filed unless the child declines diversion, fails diversion, or the child denies the allegations and demands a formal court hearing.
5. Notice of Diversion Recommendation. In all diversion cases the court designated worker shall advise the complainant, any victim, and the law enforcement agency with jurisdiction of the offense of the reasons for the diversion recommendation in writing.

6. Formal Conference. In all diversion cases the court designated worker shall proceed with a formal conference and enter into a diversion agreement with the child; and may make a referral to the FAIR team when appropriate.
- D. Reasonable Grounds Review – Third Party. If a third party who is not a peace officer files a complaint, the court designated worker shall submit the complaint to the county attorney who shall make a reasonable grounds review, and if reasonable grounds exist, determine the appropriate charge(s) as a result of the facts alleged in the complaint, and the court designated worker shall proceed pursuant to Subsection C. above.
 - E. Diversion Agreement.
 1. Mandatory Diversion. If a child is charged with a misdemeanor and has had no prior adjudications and no prior diversions the court designated worker shall enter into a diversion agreement with the child unless the child declines diversion.
 2. Permissive Diversion. If a child is eligible for diversion and the county attorney has not objected to diversion, the court designated worker shall enter into a diversion agreement with the child unless the child declines diversion.

Commentary

The county attorney retains discretion in public offense cases that are not mandatory diversion cases (permissive diversion cases) to object to diversion and file a

petition. If the county attorney does not object to the diversion in writing, and the child enters into a diversion agreement, then diversion is no longer a mere recommendation from the court designated worker, and the child can reasonably rely on the opportunity to complete diversion and have the complaint file closed as diverted.

3. If the child successfully completes the terms of the diversion agreement the court designated worker shall close the case with no official court record having been created.
4. If the child fails to successfully complete the terms of the diversion agreement the court designated worker shall notify the county attorney who shall then determine whether to file a petition. KRS 610.030(9)(b)1.

F. Family Accountability, Intervention, and Response (FAIR) Team. Referral to the FAIR team for enhanced case management may occur:

1. Pre-Petition. When a child who is diversion eligible scores as high-needs on the risk and needs assessment.
2. Post-Petition. When there has been an informal adjustment pursuant to JCRPP 19 but the court refers the case to the court designated worker for diversion under KRS 610.105(3)(a) and the assessment administered by the court designated worker indicates that referral to the FAIR team is appropriate.

Commentary

Diversion through the court designated worker is by definition pre-petition diversion. Only when a child is participating in an informal adjustment and did not participate in a pre-petition diversion agreement may the court refer the child to the court designated worker for diversion if no other diversion programs are available. In the event such a diversion referral is part of an informal adjustment, the court designated worker may refer the case to the FAIR team.

JCRPP 14. Public Offense Petition.

- A. A petition may be filed by the county attorney, on AOC-JV-1, Juvenile Petition, to initiate a formal court proceeding:
 - 1. When a child is eligible for diversion but diversion is not mandatory under KRS 635.010;
 - 2. When a child is not eligible for diversion;
 - 3. When a child has failed to complete a diversion agreement; or
 - 4. When a child declines to enter into a diversion agreement.
- B. The complaint containing the verified signature of the complainant, any supporting documents, and any charging citation shall be attached to the petition.

JCRPP 15. First Appearance – Public Offense Case.

- A. Pursuant to KRS 610.060, at the first appearance the judge shall explain to the child, on the record, his or her rights and the charge, and shall present AOC-JV-49, Notice of Juvenile Rights and Consequences, to the child.
- B. A public advocate shall be appointed for the child unless private counsel is retained. See also JCRPP 3.A.1.
- C. The court may place the child on pendente lite terms which address the child's alleged behavior(s), and may order participation in a service, program or local resource to assist the child.

JCRPP 16. Pretrial Conference – Public Offense Case. A pretrial conference may be scheduled by the court on its own motion or upon the request of any party to allow the county attorney and the parties to discuss the case, review the evidence, and determine whether an agreement may be reached to resolve the case.

JCRPP 17. Adjudication Hearing – Public Offense Case. A record shall be made of all adjudication hearings which shall include the following as applicable:

- A. Dismissal. Upon motion of the county attorney a public offense case may be dismissed at the adjudication hearing.
- B. Admission. Prior to accepting an admission or confession from a child to the truthfulness of the allegations in the petition or any amendments thereto, the court shall inform the child of his or her rights, on the record, as contained in AOC-JV-49, Notice of Juvenile Rights and Consequences, and shall make a finding that the admission is knowingly, intelligently and voluntarily entered.

- C. Adjudication Hearing. The court shall conduct an evidentiary hearing unless the case has been dismissed or the court has accepted an admission or confession.
1. Findings. The court shall make a written finding that the allegations in the petition are true and set the case for disposition; or
 2. The court shall make a written finding that the allegations in the petition are not proven and the case shall be dismissed.
 3. The court shall advise the child of his or her right to have the juvenile court record expunged pursuant to KRS 610.330

Commentary

The Adjudication Hearing referenced in this rule is a specific stage of the proceeding which is followed by Disposition, or resolution of the case. The Juvenile Code also refers to "adjudicatory hearings," which are any hearings where a court considers evidence and enters orders, and should be distinguished from this hearing which is a required step in formal juvenile proceedings.

- D. Risk and Needs Assessment. The court shall not make a disposition without reviewing the results of the risk and needs assessment conducted by the Department of Juvenile Justice; the assessment cannot be waived. KRS 15A.0652(1)(b). KRS 610.110(2).

E. Predisposition Investigation Report.

1. The court shall order a predisposition investigation report (PDI) if a suitable prior PDI is not available, unless appropriately waived by the child.
2. The court shall order the PDI to be prepared by the Department of Juvenile Justice if commitment to the Department is being considered and the PDI may not be waived without the consent of the Department of Juvenile Justice; or
3. At the discretion of the court, the PDI may be prepared by a suitable public or private agency if commitment to the Department is not being considered.
4. The PDI shall be provided to the court and to counsel for the parties three (3) days prior to the disposition hearing, unless the three-day period has been waived; and
5. The parties shall be afforded the opportunity to examine and controvert the report; and
6. The report shall be filed in the record.

JCRPP 18. Disposition Hearing – Public Offense Case.

- A. The court shall consider all relevant information pertaining to the child, including the results of the risk and needs assessment, in order to determine the appropriate dispositional alternatives.

B. Dispositional Alternatives.

1. Restitution or Reparation.

- a. Any restitution or reparation shall be fixed at a reasonable amount and no child under the age of 16 shall be held in contempt if he or she does not have the funds to pay.
- b. The county attorney may request payment of restitution or reparation from the child's parent or legal guardian and shall give notice of the hearing and the amount of restitution sought.
- c. Unless the parent or legal guardian agrees, before ordering restitution or reparation the court shall make the following findings:
 - 1) The child has admitted or has been adjudicated responsible for causing the damage requiring restitution or reparation; and
 - 2) The failure of the child's parent or guardian to exercise reasonable control or supervision over the child is a substantial factor in the child's conduct.

2. Supervision by Parent.

- a. A court may order a child to be supervised by his or her parent upon conditions that the court shall determine, when:
 - 1) Services are not needed;
 - 2) Services are already being provided with the parent/custodian with the child's full cooperation; or
 - 3) Services have already been completed and the child is at a low risk to reoffend.

- b. Parent supervision shall not exceed six (6) months for a violation or misdemeanor, nor more than 12 months for a felony, or until the child reaches age 18, whichever first occurs.
- c. If the child violates written conditions for supervision by parent, on motion of the county attorney with notice to all the parties, graduated sanctions may be imposed.
- d. Graduated sanctions are required prior to imposing detention or commitment, and shall be in writing.

Commentary

Changing probation or supervision from parent-monitored to court-monitored, for example, may be an appropriate graduated sanction. When a court explains the consequences of violating the terms of probation the court may state those consequences generally, such as "community service," but once a violation occurs the sanction imposed should be described with particularity so that the child understands the expected conduct. Graduated sanctions are so termed because the statute requires first using less restrictive sanctions and graduating to more punitive sanctions should violations increase. Ideally, sanctions should be tailored to suit the nature of the violation.

3. Probate with Court Monitoring.
 - a. A court may set the terms of probation to be monitored by the court and according to terms set by the court, and shall include periodic review to ensure compliance.
 - b. The child, parent or guardian and the child's attorney shall be given notice of any review date and shall be advised in writing of any documentation required to be provided to the court as proof of compliance with court-ordered conditions.
 - c. Duration of Court-Monitored Probation.
 - 1) Court monitored probation for a violation shall not exceed 30 days unless as a condition of probation the child enters into a treatment program that extends beyond 30 days, in which case court-monitored probation shall not exceed three (3) months.
 - 2) Court-monitored probation for a misdemeanor other than a juvenile sexual offense, or an offense which involves the use of a deadly weapon, shall not exceed six (6) months unless as a condition of probation the child enters into a treatment program that extends beyond six (6) months. In this event probation shall not exceed 12 months.
 - 3) Court monitored probation for a Class D felony other than a juvenile sexual offense, or an offense which involves use of a deadly weapon, shall not exceed 12 months.

- 4) Court monitored probation for all other felonies and for misdemeanors involving a deadly weapon, but not for juvenile sexual offenses, shall not extend beyond the child's 18th birthday.

4. Detention.

- a. The court may impose detention or probate all or part of an order of detention
- b. Detention shall be:
 - 1) No longer than 45 days for a child who is 14 but less than 16 years of age, and
 - 2) No longer than 90 days for a child who is 16 years of age or over.
- c. Detention shall not be used as a disposition for a child under 14 years of age.

5. Commitment.

- a. A child may be committed to the Department of Juvenile Justice when:
 - 1) The child is adjudicated to have committed what would be a misdemeanor or Class D felony by an adult and:
 - a) The child has at least three (3) prior adjudications consisting of what would be misdemeanors and felonies (not violations) which do not arise from the same course of conduct; or
 - b) The child has at least four (4) prior adjudications of what would be violations which do not arise from the same course of conduct; or

- 2) The child is adjudicated to have committed an offense involving a deadly weapon; what would be a class A, B, or C felony by an adult; or, has been adjudicated as a juvenile sexual offender under KRS 635.510.
- b. If the child is committed to the Department of Juvenile Justice and is ordered to be detained pending placement the court shall determine in the initial court order of commitment whether:
 - 1) It is in the best interest of the child to be removed from his or her home, and
 - 2) It is contrary to the welfare of the child to remain in his or her home.
 - c. If the child is committed but the child is returned to his or her home pending placement or action by the Department of Juvenile Justice, the court shall state in the order of commitment that community placement is authorized until placement is arranged.
 - d. Term of Commitment. Commitment shall not exceed the time limits set forth in KRS 635.060 unless an extension is allowed by statute, as follows:
 - 1) For what would be a misdemeanor if committed by an adult, when the child is not declared to be a juvenile sexual offender or in possession of a deadly weapon, commitment shall not exceed 12 months; KRS 635.060(4)(b)(1)

- 2) For what would be a class D felony if committed by an adult when the child is not declared to be a juvenile sexual offender or in possession of a deadly weapon, commitment shall not exceed 18 months; KRS 635.060(4)(b)(2).
- 3) For what would be a class A, B or C felony if committed by an adult, or any offense in which there is use of a deadly weapon, commitment shall not exceed the child reaching age 18; KRS 635.060(4)(b)(3).
- 4) Juvenile sexual offenders shall be committed as provided in KRS 635.515.

6. Probation.

- a. A child may be placed on probation:
 - 1) Under parental supervision in the child's home or other suitable home, on terms set by the court.
 - 2) The court shall explain in terms the child will understand the duration of probation, and the conditions and possible sanctions which may be imposed if the conditions are violated and shall include the duration, conditions and possible sanctions in the written order of probation which shall be given to the child and filed in the record.
- b. A child on probation shall be supervised by a probation officer or the Department of Juvenile Justice.
- c. The probation officer or Department of Juvenile Justice shall impose graduated sanctions prior to asking the court to impose detention.

- d. After graduated sanctions are exhausted, the court may impose a sanction of up to 30 days detention for violation of the conditions of supervision or probation.
- e. Term of probation.
 - 1) For an offense that would be a violation if committed by an adult, not more than 30 days unless court ordered treatment includes a program lasting longer than 30 days to complete;
 - 2) For an offense that would be a misdemeanor if committed by an adult, not more than six (6) months unless a court-ordered substance abuse or treatment program requires more than six (6) months to complete;
 - 3) For an offense that would be a class D felony if committed by an adult, not more than 12 months; or
 - 4) For an offense that would be any other felony if committed by an adult, up to age 18.
- f. Probation Supervision.
 - 1) The Department of Juvenile Justice or probation officer shall:
 - a) Conduct an evaluation of the child;
 - b) Develop a case plan to include individualized treatment goals to address the child's risks and needs; and
 - c) Provide the case plan to the court and all parties.

- 2) The probation plan shall include all conditions imposed by the court and shall not extend beyond the statutory maximum timeframes mandated by KRS 635.060.
 - 3) Prior to a motion for sanctions being filed, the Department of Juvenile Justice or probation officer shall provide to the county attorney:
 - a) The complete terms and conditions of the juvenile's probation;
 - b) The specific violation(s) and any supporting documentation; and
 - c) The graduated sanctions applied prior to seeking court action.
- g. Probation violation.
- 1) The county attorney shall file a motion seeking review for violations of probation, and shall notice the child, the parent or custodian and the child's attorney of the hearing date;
 - a) The child's attorney may present evidence on behalf of the child;
and
 - b) The court shall make a written finding whether the child has violated the court's orders, and if the court imposes detention, shall also
 - i) Make a finding by clear and convincing evidence that graduated sanctions have been applied and failed; or
 - ii) That there are no appropriate graduated sanctions short of detention to address the violation; and

- iii) That the child is an immediate threat to himself or herself or others.
- c) A probation violation shall not result in a commitment to the Department of Juvenile Justice unless the child was previously committed to the Department of Juvenile Justice and the commitment was probated.

Commentary

KRS 635.060 is a substantial change from the previous Juvenile Code and contains several new processes. This section establishes the options the court has at the dispositional hearing. The juvenile court must first find that the child falls under this chapter and then may impose any combination of the dispositional options so long as the detention time allowed for various dispositions is not exceeded. For example, a child could be placed in detention for 10 days, and then placed on probation for a period not to exceed one (1) year. If a child is placed in detention for the statutory maximum, 45 days for ages 14 to 16 or 90 days for over age 16, then the dispositional options are complete as far as detention time is concerned unless there is a contempt proceeding.

There are multiple options at disposition, including ordering restitution or reparation in conjunction with another disposition which is too varied to set forth in a rule. The court and practitioners must carefully read KRS 635.060 to determine how these dispositional options may be applied.

One specific option includes giving credit for time a child spends in out of home placement for violating the conditions of a probated or suspended commitment against the maximum time of commitment not to exceed 12 months if the offense would be a misdemeanor if committed by an adult; not to exceed 18 months if the offense would be a class D felony if committed by an adult; or not to exceed up to age 18 if the offense would be any other felony if committed by an adult. This provision does not apply to a child who has been declared a juvenile sexual offender or who committed an offense involving a deadly weapon. These categories of offenses are addressed by other statutes. Successful completion of probation or a commitment shall terminate proceedings on the instant charge(s).

7. Fines. Pursuant to KRS 635.085, a fine may be imposed in lieu of commitment to the Department of Juvenile Justice in the best interest of the child and to aid in his or her rehabilitation, if the child is financially able to pay a fine as follows:
 - a. Fine amounts
 - 1) For a felony offense, not to exceed \$500;
 - 2) For a misdemeanor offense, not to exceed \$250;
 - 3) For a violation, not to exceed \$100.
 - b. The court shall allow a reasonable time for payment; otherwise fine payment is due immediately.

C. Juvenile Sexual Offenders.

1. Upon adjudication, the court shall order a juvenile sexual offender assessment be conducted by the Department of Juvenile Justice or other qualified professional.
2. A copy of the assessment and recommendations shall be provided to the court, the child's attorney and the county attorney not less than three (3) days prior to the disposition; these copies are confidential and shall be returned to the court at the disposition hearing.
3. A child may be classified as a juvenile sexual offender based on the assessment and the recommendations and other relevant factors and if it is in the best interest of the child to be so classified.
4. If the court finds that the child is a juvenile sexual offender and is not actively psychotic or intellectually disabled as defined by KRS 635.505, the child shall be committed to the Department of Juvenile Justice.

D. Finality. A public offense case shall be considered final 30 days after the court is no longer re-docketing the case for active review and may not be reopened for any purpose including contempt proceedings.

E. Duties of the clerk. The clerk shall enter in the court record information regarding the disposition of the case, including but not limited to the terms and conditions ordered by the court and the duration of the order.

JCRPP 19. Informal Adjustment - Status and Public Offense Cases.

A. Upon the motion of any party, as an alternative to formal proceedings and after finding that it is in the best interest of the child, a case may be resolved

by informal adjustment as defined under KRS 600.020(34) and authorized by KRS 610.105.

- B. The moving party shall give notice of the motion for informal adjustment to the child, child's attorney, county attorney, victim, and any other persons entitled to notice pursuant to KRS 610.070 as appropriate.
- C. The court shall explain to the child on the record his or her rights and the charge, and shall have the child sign as received the Notice of Juvenile Rights and Consequences, AOC-JV-49.
- D. The parties must enter an agreement setting forth the required actions of the child and consequences for failure to comply. KRS 600.020(34).
- E. If an informal adjustment occurs after adjudication but prior to disposition, the court shall set the adjudication aside and proceed with the informal adjustment. KRS 610.105.

Commentary

The definition section of KRS 610.010 states that an informal adjustment must occur prior to formal adjudication *and disposition*. However, KRS 610.105, a new amendment to the Juvenile Code states that informal adjustment may occur after adjudication. Thus it is now clear that informal adjustment can be an alternative disposition any time prior to formal disposition, including after formal adjudication. Therefore, if an adjudication has occurred in a case which the parties have agreed to informally adjust, the formal adjudication must be set aside as per the above rule.

- F. An informal adjustment order may include, in the best interest of the child, any terms appropriate to resolve the issues before the court, including but not limited to:
1. Placing the child on community supervision or monitoring by the court, not to exceed six (6) months unless waived by the child; or
 2. Referral of the case to diversion other than any diversion program in which the child has participated prior to the filing of the petition.
 3. An informal adjustment case can only be referred to the court designated worker diversion program if the child has not previously entered into a pre-petition diversion agreement on the current charge and no other diversion programs are available; the court designated worker may refer the case to the FAIR team as appropriate.
 4. If the informal adjustment includes diversion, which is unsuccessful, the case shall be returned to the court for further action.
- G. The child shall be returned to the court upon failure to complete an informal adjustment agreement for imposition of graduated sanctions or the agreed upon consequences.
- H. Unless otherwise ordered by the court, the informal adjustment shall be re-docketed six (6) months after entry of the informal adjustment agreement order for review to determine if the terms of the informal adjustment are complete.

- I. Upon completion of the terms of the informal adjustment, an order shall be entered stating that the case has been informally adjusted and is dismissed.

Commentary

Diversion through the court designated worker is by definition pre-petition diversion. Only when a child is participating in an informal adjustment and did not participate in a pre-petition diversion agreement may the court refer the child to the court designated worker for diversion if no other diversion programs are available. In the event of such a diversion referral as part of an informal adjustment, the court designated worker may refer the case to the FAIR team. The rationale behind this is that the court designated worker diversion program is a limited resource that is designed to divert children from ever entering the formal court process. For that reason, it should be used in a very limited manner, as set forth in these rules, for post-petition matters.

Also, mere failure to complete the terms of an informal adjustment agreement does not automatically rise to the level of contempt. While the court may still detain for violation of a valid court order, the court is required to use graduated sanctions before it may detain a child. Logically this means that contempt orders are reserved for direct contempt for acts of actual defiance or disrespect for the court.

JCRPP 20. Youthful Offenders.

- A. For a child who qualifies and is proceeded against as a youthful offender pursuant to KRS 635.020(2–8) and KRS 640.010, the district court shall conduct

a hearing to determine if the child should be transferred to circuit court for grand jury proceedings.

- B. Upon request by the child, the court shall order discovery in the manner provided by RCr 7.24 and 7.26.
- C. The court shall conduct an evidentiary hearing based upon competent evidence to determine whether probable cause exists to believe that the child has committed an offense which qualifies him or her for transfer to circuit court as a youthful offender.
- D. If the district court finds that the child qualifies as a youthful offender and transfers the case for grand jury proceedings, the district court shall:
 - 1. First determine whether the child is entitled to release or bail pursuant to Chapter 431, and
 - 2. Set bail or the conditions of release accordingly.
- E. Any child that is not released on bail or conditions of release shall be detained in a secure juvenile detention facility or juvenile holding facility, unless the juvenile is 18 years of age or older.
- F. The District Court shall retain jurisdiction until the return of an indictment by a grand jury.
- G. If a child is transferred to circuit court for grand jury proceedings and the grand jury does not indict the child as a youthful offender, and
 - 1. Finds that there is probable cause to believe the child committed another criminal offense, then

2. The child shall be returned to district court to be proceeded against as a public offender, and
3. The case shall remain confidential.

Commentary

While KRS 640.010 referring to preliminary hearings does not mention KRS 635.020(4) relating to use of a firearm in a felony, the latter section states that a preliminary hearing is required to determine whether there is probable cause to believe that the child committed a felony using a firearm, and that the child was over 14 years of age at the time of the commission of the felony, before the court may transfer the case for grand jury proceedings. Therefore, there is no “automatic transfer” of a firearms felony offense absent a finding of probable cause to believe that the child has committed such an offense. See *K.R. v. Commonwealth*, 360 S.W.3d 179, 185 (Ky. 2012).

JCRPP 21. Violations of the Conditions; Contempt Proceedings.

A. Conditions in Status Offense Cases.

1. A court may issue a valid court order or orders setting conditions pending further hearing; as part of an informal adjustment; or for any other reason during the pendency of a case.
2. A “valid court order” as defined in KRS 600.020(66) only applies in a status offense case when
 - a. The child is before the court;

- b. The order regulates future conduct;
 - c. The child was given written and verbal warning of the consequences of violation at the time the order was issued;
 - d. The child's attorney or parents or legal guardian was provided with written notice of the consequences of violation of the order; and
 - e. The child was given full due process rights guaranteed by the Constitution of the United States.
3. Prior to ordering a child to be securely detained because he or she violated a valid court order pursuant to KRS 610.265(3)(d), the court shall:
- a. Conduct a hearing and make a finding that the child violated the valid court order;
 - b. Order a written report prepared by an appropriate public agency concerning the behavior of the child, why he or she was brought before the court, and states that all alternatives short of secure detention have been exhausted or are inappropriate.
 - c. The above information shall be included in the court's written detention order.

B. Contempt in Status Offense Cases.

- 1. Violation of a court order of conditions shall be addressed pursuant to Subsection A. above and is not subject to a finding of contempt.
- 2. A finding of contempt shall issue for direct contempt or acts of defiance or inappropriate conduct toward the court.

C. Conditions in Public Offense Cases.

1. A court may issue an order or orders setting conditions as part of release pending further hearing; as part of an informal adjustment; as part of a grant of probation; as part of a probated commitment; as part of court-monitored probation; or for any other reason during the pendency of a case.
 2. If a child is placed on probation,
 - a. A court may not impose detention for failing to perform a term of probation until the court has first levied graduated sanctions. KRS 635.060(2)(b)(2).
 - b. A finding of contempt shall issue for direct contempt or acts of defiance or inappropriate conduct toward the court.
 - c. Any detention imposed shall not exceed 30 days.
 3. If the child's case is informally adjusted then,
 - a. Violations of the conditions of informal adjustment shall be subject to the consequences agreed upon when the court entered the terms for the informal adjustment, and shall not be subject to contempt.
 - b. A finding of contempt shall issue for direct contempt or acts of defiance or inappropriate conduct toward the court.
 - c. Any detention shall not exceed 30 days. KRS 600.060.
- D. Contempt during the pendency of the case.
1. A court may not impose detention for failing to perform conditions set during the pendency of a case until the court has first levied graduated sanctions.
 2. A finding of contempt shall issue for direct contempt or acts of defiance or inappropriate conduct toward the court.

3. A contempt sanction shall not exceed 30 days of detention. KRS 600.060.

Commentary

The inherent contempt power of the court is not diminished by the statutes referenced in the JCRPP because the statutory language simply defines the process to be applied in a dispositional option under KRS 635.060, and sets a timeframe for the imposition of detention for contempt. The statute does not require graduated sanctions on pendente lite orders, but it is unreasonable not to allow the same considerations to children who have not yet been adjudicated as having committed a public offense as we allow for children on probation.

JCRPP 22. Expungement of Juvenile Cases.

- A. Any child who has been adjudicated as a status offender or has admitted to committing what would be a misdemeanor or violation if committed by an adult may petition the court for expungement of the record of those offenses:
 1. No sooner than two (2) years after the date of termination of the court's jurisdiction over the child, or
 2. Two (2) years after the child's release from any commitment.
 3. This time restriction may be waived by the court.
- B. The child shall be informed of the right to expungement at the time of adjudication if eligible.

- C. If the court grants the order of expungement sealing the record, all index references shall be deleted, unless otherwise ordered by the court.

B. AMENDMENTS TO THE FAMILY COURT RULES OF PROCEDURE AND PRACTICE (FCRPP).

I. Title and Scope of Rules

FCRPP 1 Title and Scope

(1) Pursuant to KRS 403.130, these rules constitute a separate section of the civil rules and shall be known as the Kentucky Family Court Rules of Procedure and Practice.

They may be cited as such, or by the abbreviation "FCRPP."

(2) These Rules shall be applicable to the procedure and practice in all actions pertaining to dissolution of marriage; custody and child support; visitation and timesharing; property division; maintenance; domestic violence; paternity; dependency; neglect or abuse; termination of parental rights; adoption; and status offenses, or any other matter exclusively within family law jurisdiction, except for any special statutory proceedings, which shall prevail over any inconsistent procedures set forth in these Rules.

(3) Self represented litigants shall be held to knowledge of these rules the same as parties represented by counsel.

(4) The Rules of Civil and Criminal Procedure shall apply to family law matters to the extent they are not inconsistent with these Rules.

II. Dissolutions and Property Division

FCRPP 2 Preliminary Matters

(1) Original Pleadings. All original pleadings, including forms, in a dissolution action shall be signed by the preparer, filed with the clerk of the court, and if applicable, shall include, unless otherwise ordered by the court, the following:

- (a) A verified petition;
- (b) Proof of service;
- (c) A verified response, or a verified entry of appearance in lieu of a response;
- (d) Unless waived by the court pursuant to KRS 403.180(4)(b), a verified separation agreement;
- (e) The Final Verified Disclosure Statement;
- (f) A verified waiver of notice of final hearing;
- (g) A verified deposition or interrogatories for proof of the allegations of the petition if done without a hearing;
- (h) A divorce education certificate; and
- (i) A child support work sheet.

(2) Multiple Actions. When actions concerning the same subject matter are filed in different circuits, the first action filed shall be the controlling action, subject to transfer by the court of that circuit on a motion for forum non conveniens or other appropriate legal grounds. A motion for transfer shall be filed prior to or with the response. On notice to the parties, the courts in both circuits may confer concerning the proper venue.

(3) Preliminary Mandatory Disclosure. A preliminary verified disclosure statement which contains the contents of the official AOC form, AOC-238, Preliminary Verified

Disclosure Statement, shall be exchanged between the parties within 45 days of service of the petition on the respondent, and objections thereto shall be exchanged 20 days thereafter but the disclosures shall not be filed in the record unless ordered by the court or required by local rule. The official AOC form, AOC-238, is available for use in compliance with this rule.

(4) Exchange of Information and Documents. The parties shall sign and return specific releases for relevant information and documents unless objected to in writing. Such releases shall contain a provision directing that any information and/or documents provided in writing to the requesting counsel or pro se party shall simultaneously be transmitted to the other counsel or pro se party, at requesting party's expense. Upon objection, the requesting party may file a motion to compel.

(5) Status Quo Orders. Without limiting a party's relief under CR 65, upon notice and opportunity to be heard, a court may enter a status quo order regarding disposition of the marital estate. Any such order may be entered on the AOC-237. A status quo order may include but not be limited to the following:

(a) Neither party shall, except as necessary to pay reasonable living expenses, incur unreasonable debt, sell, encumber, gift, bequeath or in any manner transfer, convey or dissipate any property, cash, stocks or other assets currently in their possession or in the control of another person, company, legal entity or family member without permission of the court or an agreed order signed by both parties or their attorneys.

(b) Neither party shall allow the cancellation or lapse of any health, life, automobile, casualty or disability insurance currently covering themselves or a family member or

change the named beneficiaries on such policies prior to receiving permission of the court or filing an agreed order signed by both parties or their attorneys.

(6) Case Management.

(a) Mediation.

(1) The parties may agree to mediate at any time. After notice and opportunity to be heard and unless prohibited by KRS 403.036 (domestic violence), the parties may be ordered to mediate any issues before further proceedings.

(2) Within 10 days of a final mediation, if the parties have been unable to resolve all issues, the petitioner shall file a motion for a case management conference or final hearing date, unless previously scheduled by the court.

(b) Case Management Conference.

(1) Unless notice is given to the court that a case is being mediated, within 60 days of service of the petition upon the respondent, the petitioner shall file a motion for a case management conference.

(2) Both parties and their counsel shall attend the conference, unless otherwise ordered by the court.

(3) Each party shall file the following documents at least 7 days prior to the conference:

(i) Any related motions; and

(ii) Any stipulations or agreements reached.

(4) In the event of failure of a party or parties to appear at the conference, the court may, in accordance with its order, conduct a hearing in which proof may be taken or the case dismissed, as the court may determine appropriate.

(7) Trial. The trial shall not be continued except as otherwise ordered for good cause shown on the record.

(8) Temporary Motions.

(a) Any ex parte motion shall be accompanied by a supporting affidavit sufficient to state grounds for injunctive relief, and if granted, shall be set for hearing with all parties at the earliest available date.

(b) Any pendente lite motions shall be served on the opposing party and set for a hearing before the court unless otherwise agreed to by the parties.

FCRPP 3 Obtaining a Decree of Dissolution

(1) Matters Not Requiring a Trial.

(a) If the parties reach an agreement on all issues, a decree of dissolution may be obtained without a trial by filing a motion or agreed order to submit for decree of dissolution of marriage, and the parties shall further comply with any local rule requiring additional filings.

(b) A decree shall not be final until the original is signed by the court and entered by the clerk.

(c) If the parties reach an agreement on individual issues short of settling the entire case, the agreement, signed by both parties, may be submitted to the court for approval and entry.

(2) Default cases.

In all cases of default, the motion to submit for decree shall state the following:

(a) That no answer or pleadings have been received by the moving party or counsel;

(b) That the respondent was personally served and 20 days have elapsed since service, or that a warning order attorney was appointed, has filed a report and affidavit and that 50 days have elapsed since appointment of the warning order attorney; and,

(c) Shall include certification that the motion and notice of trial or submission has been served on the opposing party at the party's last known address; and if the party is on active military duty, that the provisions of the Servicemembers' Civil Relief Act have been followed.

(3) Matters Requiring a Trial.

(a) If the parties do not reach an agreement on any or all issues, a trial shall be held, on motion, as set by the court.

(b) No later than 5 days prior to the trial, the parties shall file a final verified disclosure statement in the record if property matters are in dispute at that trial; or the parties may file an affidavit that there are no changes in circumstance since the completion of the preliminary verified disclosure statement, if filed. The final verified disclosure statement shall contain the contents of the official AOC form, AOC-239, Final Verified Disclosure Statement, which is available for use in compliance with this rule. Further, any affidavit filed in lieu of the final verified disclosure statement shall contain the content of the official AOC form, AOC-239.2, Affidavit of No Change in Circumstances Requiring the Filing of a Final Verified Disclosure Statement, which is also available for use in compliance with this rule.

(c) A copy of final verified disclosure statement or the affidavit in (b) above, together with any supporting documentation, shall be provided to the opposing party 15 days prior to trial unless otherwise ordered by the court.

(4) Evidence and Exhibits.

(a) A court-appointed expert's report shall be in lieu of live testimony, unless either party subpoenas the expert to testify or unless the court orders otherwise. The party who subpoenas the expert shall be responsible for paying the expert's fee for appearance at trial, unless otherwise ordered by the court.

(b) In the trial order, the court shall order parties to exchange the list of exhibits to be submitted at trial. Absent good cause shown, failure to provide an exhibit list may result in the exclusion of such exhibit at trial.

(c) Originals of depositions, interrogatories or requests for admissions, shall not be filed in the court record unless offered as proof. The attorney who noticed the taking of a deposition, or propounded the interrogatories or requests for admissions, shall be the custodian of the record for the originals, and shall present them when directed by the court or at the request of any party.

(5) Post-Decree Litigation.

A fee of \$50.00 shall be paid by the movant in domestic relations cases reopened after 6 months from the entry of the decree for the purpose of modifying the decree. This does not include motions in 42 U.S.C. Title IV-D cases for child support enforcement. The clerk shall collect any fee upon the filing of the motion, unless the movant files a motion to proceed in forma pauperis.

(a) Reopening for purposes of this rule means any motion for modification of an order filed more than 6 months after entry of the order. A case is considered reopened until all matters in the motion are resolved.

(b) Once a case is reopened and the fee is paid, another fee will not be required unless 6 months or more have elapsed since entry of the order on the motion that re-opened the case.

(c) This fee shall not be required for motions to enforce an order and which are so titled.

FCRPP 4 Procedures Before the Domestic Relations Commissioner

(1) In jurisdictions having no family court, the circuit judge may appoint a domestic relations commissioner, who shall serve at the pleasure of the court. The court may refer domestic relations matters under KRS Chapter 403 to the domestic relations commissioner, except for domestic violence proceedings, contempt proceedings and injunctive relief proceedings. Any local rules relating to domestic relations commissioners shall be approved by the Chief Justice and be uniform in all divisions of circuit court within each county of each circuit.

(2) Each domestic relations commissioner shall have been licensed to practice law for at least eight years at the time of appointment, unless otherwise authorized by the Chief Justice, and shall satisfy the annual continuing legal education minimum requirement with domestic relations law education. Additionally, each domestic relations commissioner shall attend a training program, at least once every two years, which focuses on the dynamics and effects of domestic violence including the availability of community resources, victims' services and reporting requirements. Domestic relations commissioners shall not otherwise engage in the practice of domestic relations law.

(3) The domestic relations commissioner shall hear all matters and file a report promptly pursuant to KRS 454.350(2). Testimony may be heard orally before the commissioner or by deposition or interrogatory. All actions involving indigents shall be heard by the

commissioner without fee. Proceedings before the commissioner shall be recorded by audio or video and a recording log shall be kept. The domestic relations commissioner shall file the recorded hearings and the recording log in the record with the clerk of the court. Transcriptions shall not be required for any purpose within this Rule.

(4) The domestic relations commissioner shall have the authority to make recommendations to the judge regarding motions for temporary orders of custody, support and maintenance. All temporary and final decrees and orders shall be entered by the court upon review of the recommendations of the domestic relations commissioner as set forth below:

(a) Within 10 days after being served with a copy of the commissioner's recommendations, any party may file written objections thereto with the court. After hearing the court may adopt the recommendations, modify them, or reject them in whole or in part, or may receive further evidence or may recommit them for further hearing.

(b) The circuit court shall sign any recommended temporary or post-decree order within 10 days after the time for filing exceptions has run unless a motion for a hearing on the exceptions has been filed. All temporary recommendations of the domestic relations commissioner which become orders of the court shall be without prejudice and subject to the court's de novo review on final hearing.

(c) If the parties stipulate that the commissioner's findings of fact shall be final, only questions of law arising upon the recommendations shall thereafter be considered.

(d) All final decrees shall be entered by the court within 20 days of submission if no exceptions have been filed. If exceptions have been filed, entry of the final decree shall occur within 10 days of disposition of the exceptions.

(5) For any case assigned, the domestic relations commissioner shall receive a fee of \$60 per hour, assessed at a rate of \$15.00 for each quarter hour or part thereof. Such fees shall be paid through the office of circuit court clerk to the commissioner and shall be due on the fifth working day following the conclusion of the hearing. No more than \$600 shall be assessed in any case regardless of the number and length of hearings unless recommended by the circuit judge and approved by the Chief Justice for extraordinary circumstances shown. If a case is reopened additional fees totaling not more than \$200 may be assessed. No more than \$15 shall be assessed in any uncontested divorce.

(6) The compensation of domestic relations commissioners shall be by fee charged upon the parties, or paid out of any fund or subject matter of the action which is in the custody or control of the circuit court. This compensation shall be paid to the circuit court clerk, who shall issue payment to the commissioner.

(7) All domestic relations commissioners shall be limited in their total personal compensation derived from fees to not more than \$48,000 per annum unless approved by the Chief Justice. Fees in excess of the personal compensation of the commissioner shall be remitted to the Administrative Office of the Courts with the annual accounting for all amounts received.

(8) The Administrative Office of the Courts shall establish audit and accounting standards, prescribe bookkeeping and accounting practices and procedures, and otherwise perform audits and oversee the financial accounts of domestic relations commissioners. A copy of any audit shall be submitted by the Administrative Office of

the Courts to the chief judge of the circuit. In the event that the audit reveals an accounting or other irregularity, a copy shall also be submitted to the Chief Justice.

(9) The commissioner shall not retain his or her recommendations as security for his or her compensation. When the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, that party may be subject to civil contempt.

FRCPP 5. Maintenance.

(1) A motion for temporary maintenance shall be accompanied by copies of the movant's last three pay stubs or, if movant is self-employed, proof of the movant's current income, and by an affidavit setting forth movant's monthly expenses and income and the monthly income of the party from whom maintenance is sought.

(2) The notice of hearing accompanying a motion for temporary maintenance shall contain the following statement: "You must file with the Court, at least 24 hours prior to the time of the hearing, a responsive affidavit setting forth your net monthly income and expenses and attach copies of your last three pay stubs or, if self-employed, proof of your current income."

(3) Motions to Establish or Modify Permanent Maintenance

(a) All motions to establish or modify permanent maintenance shall be accompanied by the following:

- (i) A statement from movant setting forth the amount of maintenance requested.
- (ii) Copies of the movant's last three pay stubs or, if movant is self-employed, proof of the movant's current income.

(iii) An affidavit setting forth movant's monthly expenses and income and the monthly income of the party against whom the motion is brought, if known.

(iv) The most recently filed federal and state income tax return.

(b) The respondent shall file the above financial information with the court and serve it on the opposing party 5 days prior to the hearing.

(c) The notice of hearing accompanying a motion to establish or modify permanent maintenance shall contain the following statement: "You must file with the court, at least 24 hours prior to the time of the hearing, copies of your last three pay stubs, or if self-employed, proof of your current income and by an affidavit setting forth your monthly expenses and income, and the most current federal and state tax returns."

III. Custody, Shared Parenting, Visitation and Support

FCRPP 6 General Provisions

(1) The provisions of this section shall apply to all actions in which there are disputes regarding custody, shared parenting, visitation or support.

(2) A parent or custodian may move for, or the court may order, one or more of the following, which may be apportioned at the expense of the parents or custodians:

(a) A custody evaluation;

(b) Psychological evaluation(s) of a parent or parents or custodians, or child(ren);

(c) Family counseling;

(d) Mediation;

(e) Appointment of a guardian *ad litem*;

(f) Appointment of such other professional(s) for opinions or advice which the court deems appropriate; or,

(g) Such other action deemed appropriate by the court.

(3) The court or domestic relations commissioner shall conduct a hearing on any motion for temporary custody, time sharing, visitation or child support, within 60 days of the filing of the motion except for good cause stated on the record. Nothing herein prevents the parties from entering into an agreement on these issues.

(4) In all proceedings for the dissolution of marriage in which children of the marriage are minors, or in any custody proceedings, the court may order the parents or custodians and children to participate in counseling or divorce education on a case-by-case basis, which shall be at the expense of the parties.

FCRPP 7 Custody

(1) Unless otherwise ordered by the court, in any action in which the permanent custody or time-sharing of the child(ren) is in issue, each party shall, not less than 14 days prior to the day set for hearing, provide the other party(ies) with a list of the names and addresses of every person and a short statement of the subject of their testimony, other than a parent or the child(ren) of the parents, expected to be called as a witness, as well as a list of exhibits to be entered.

(2) Relocation.

(a) Before a joint custodian seeks to relocate, written notice shall be filed with the court and notice shall be served on the non-relocating joint custodian. Either party may file a motion for change of custody or time-sharing within 20 days of service of the notice if the custodians are not in agreement; or, the parties shall file an agreed order if the time sharing arrangement is modified by agreement. See *Pennington v. Marcum*, 266 S.W.3d 759 (Ky. 2008) and *Wilson v. Messinger*, 840 S.W.2d 203 (Ky. 1992).

(b) Before a sole custodian seeks to relocate, written notice shall be filed with the court and notice shall be served on the non-custodial parent. If the court ordered visitation is affected by the relocation, the non-custodial parent may file a motion contesting the change in visitation within 20 days of service of the notice.

SUPREME COURT STANDING COMMITTEE ON THE FCRPP (2012)

COMMENTARY

Pursuant to KRS 403.770, if the relocating custodian has an active Emergency Protective Order or Domestic Violence Order against the other parent or custodian, the relocating custodian must not be required to disclose to the other party the relocation destination. The court and clerks will strictly comply with the statutory mandates set forth in KRS 403.770. If the domestic violence action is not pending in the same circuit, the court may require the relocating custodian to disclose the relocation destination provided only if the location is filed under seal, with strict confidentiality maintained by the court and clerk, and the location is not disclosed to the opposing party.

FCRPP 8 Time-Sharing/Visitation

(1) A parent shall be entitled to time-sharing/visitation as ordered by the court, which may be in accordance with the Model Time-Sharing/Visitation Guidelines, unless otherwise agreed to by the parties or ordered by the court.

(2) Model Time-Sharing/Visitation Guidelines are set forth in Appendix A to these Rules or other guidelines may be applied and set forth in local rules.

FCRPP 9 Support

(1) Once support has been set by the court, it shall continue in full force and effect unless modified by the court, or ended by operation of law.

(2) An order directing the payment of child support shall be entered utilizing the AOC-152, Uniform Child Support Order and/or Wage/Income Withholding Order which is the form prescribed by the Administrative Office of the Courts pursuant to KRS 205.713 and KRS 205.802. This form shall be located on the Court of Justice website and shall include the following:

(a) The amount and frequency of the support payments;

(b) That the payment shall be paid

(i) By wage/income withholding, to begin immediately; or,

(ii) If wage/income withholding is not ordered to begin immediately for good cause shown, as ordered by the court and as directed in KRS 403.215; or,

(iii) According to a written agreement reached between both parties which provides for an alternative arrangement to wage/income withholding.

(c) In non-IV-D cases the federal Income Withholding [\[FN1\]](#) for Support (IWO) form OMB 0970-0154, and in IV-D cases the state CS-89, shall be utilized to notify the employer/income withholder of any wage/income withholding ordered by the court.

(d) The party responsible for medical and other ordered expenses of the child(ren); and,

(e) The social security numbers of the parties and child(ren), CR 7.03 notwithstanding.

(3) Notice of any wage/income withholding shall be served upon the employer and the employee as follows:

(a) In non-IV-D cases, the OMB 0970-0154 shall be accompanied by the underlying AOC-152.

(b) In IV-D cases, the CS-89 shall be utilized.

(4) Motions to Establish or Modify Child Support.

(a) A motion to establish or modify child support shall be accompanied by the following:

- (1) A completed child support guidelines worksheet.
- (2) Copies of the movant's last three pay stubs or, if movant is self-employed, proof of the movant's current income.
- (3) The most recently filed federal and state income tax returns.
- (4) Verification of the cost of health insurance for the child(ren) only.
- (5) A notice of hearing accompanying a motion for child support which shall

contain the following statement: "You must file with the Court, at least 24 hours prior to the time of the hearing, a completed child support guidelines worksheet and copies of your last three pay stubs or, if self-employed, proof of your current income and the most current federal and state tax returns."

(b) The responding party is to similarly file this financial information at least 24 hours prior to the hearing.

(c) All parties shall exchange said information 10 days prior to the hearing.

(d) In addition, counsel shall certify, prior to the hearing being held, that reasonable efforts were made to resolve all the issues in dispute.

IV. Domestic Violence

FCRPP 10 Issuance of Summons

(1) If an emergency protective order is not issued due to an insufficient relationship as identified in KRS 403.720(2) or (4), or for failure to state an act or threat of domestic violence between the parties, the finding of the insufficient relationship or failure to state

an act or threat of domestic violence shall be noted on the petition by the judge, and no summons shall be issued.

(2) If the relationship is one recognized under KRS 403.720(2) or (4) and there is a finding of domestic violence and abuse and a finding of immediate and present danger, an emergency protective order shall be issued.

(3) If there is no finding of an immediate and present danger of domestic violence and abuse, when the relationship is one recognized under KRS 403.720(2) or (4), but the court determines that domestic violence and abuse exists, a summons shall be issued and a hearing shall be held to determine if a domestic violence order should be issued. Any finding at the hearing shall constitute an appealable order.

FCRPP 11 Contempt Proceedings

(1) No petitioner shall be held in contempt for failure to appear at a domestic violence hearing or for failing to prosecute a civil or criminal contempt violation of a protective order except for good cause shown on the record. Failure to appear may result in denial of the petition.

(2) When the court conducts contempt proceedings in domestic violence actions, the party subject to contempt shall be represented by counsel, unless waived, and an attorney shall be appointed by the court if the party qualifies as an indigent.

FCRPP 12 Reissuance of Emergency Protective Order Upon Transfer to Another Circuit

When the local domestic violence protocol requires that a case be transferred to another circuit due to a pending dissolution case, an emergency protective order shall continue and the summons shall be re-issued by the initiating court, pursuant to KRS 403.740(4), for a period not to exceed 14 days if service has not been made on the

adverse party by the date of transfer, or as the court determines is necessary for the protection of the petitioner. Thereafter, reissuance of the summons shall occur as needed in the court of transfer.

FCRPP 13 Domestic Violence Protocols

- (1) Domestic violence cases shall be conducted according to the local domestic violence protocol.
- (2) The court shall not limit or restrict a victim's access to seek a protective order for domestic violence.
- (3) The court shall provide 24-hour access to protection from domestic violence.
- (4) Domestic violence cases shall retain the domestic violence case file number even if heard with another matter.
- (5) The court shall establish schedules for domestic violence hearings and shall provide them to anyone authorized to verify domestic violence petitions.
- (6) The court shall inform the respondent regarding the purchase of a firearm, and the surrender of same, in compliance with 18 U.S.C. Section 922(g)(8), during the pendency of an emergency protective order or domestic violence order, and shall inform the respondent regarding the confiscation, retention and return of firearms.

V. Paternity Actions

FCRPP 14 Paternity Reopenings

- (1) A fee of \$50.00 shall be paid by the movant in paternity cases reopened after 6 months from the entry of the paternity judgment for the purpose of modifying any support, custody or visitation ordered. This does not include motions in 42 U.S.C. Title

IV-D cases for child support enforcement. The clerk shall collect any fee upon the filing of the motion, unless the movant files a motion to proceed in forma pauperis.

(a) Reopening for purposes of this rule means any motion for modification of an order filed more than 6 months after entry of the order. A case is considered reopened until all matters in the motion are resolved.

(b) Once a case is reopened and the fee is paid, another fee will not be required unless 6 months or more have elapsed since entry of the order on the motion that reopened the case.

(c) This fee shall not be required for motions to enforce an order and which are so titled.

(2) Nothing in this Rule shall preclude the district court from declining jurisdiction on custody and visitation and referring the action to the circuit court pursuant to KRS 406.051(2); nor shall this Rule preclude an action for custody, visitation or support from being filed in the circuit court by a party after the entry of a judgment of paternity in district court. In either event the appropriate filing fee shall be paid by the moving party, unless the movant/petitioner files a motion to proceed in forma pauperis.

(3) In family court jurisdictions nothing in this Rule shall preclude the family court judge from ordering the custody, visitation and support matters in a paternity action be initiated in a circuit action. In such instance, a new circuit civil petition shall be filed by the movant/petitioner and the appropriate filing fee shall be paid unless in forma pauperis status is granted by the court.

FCRPP 15 Genetic Testing

When paternity is an issue in any action, the court may order the mother, child and the putative father to submit to genetic tests as follows:

(1) In a case in which paternity is denied or in which the parties request genetic testing, on motion made by any party, a pretrial order shall be entered by the court forthwith which requires both parties and the child to submit to genetic tests in accordance with KRS 406.081 or 406.091 unless an agreed order is entered.

(2) Within 30 days of receipt of the genetic report, the petitioner shall file the original report with the court in support of a motion to dismiss, a motion for trial or a motion for summary judgment. This does not preclude prehearing conferencing in the interim which may extend the 30 days by agreement or resolve the issues.

(3) In those cases in which the genetic test report excludes the defendant from the paternity of the child, the court, after the expiration of 30 days from the date of the filing of the exclusionary report, shall enter an order of dismissal in favor of the defendant unless a motion for additional testing pursuant to KRS 406.091 is filed prior to the expiration of the 30 days.

VI. Dependency, Neglect or Abuse

FCRPP 16 Orders in Dependency, Neglect or Abuse Actions

To the extent not otherwise specified, any order entered in a dependency or neglect or abuse action shall be on the appropriate Administrative Office of the Courts forms.

FCRPP 17 Notice in Dependency, Neglect or Abuse Actions

(1) Judicial Notice. In making any determinations with regard to a child in a dependency or neglect or abuse action, the court may consider the findings of fact and court orders from any other court proceeding in any other court file involving the child or the child's parents or the person exercising custodial control or supervision, if the court is aware of

such proceedings. To the extent that the court relies on such, the court shall include a copy of that material in the record.

(2) Notice and Opportunity to be Heard. Prior to any review or permanency hearing, the state child welfare agency shall inform the court of the name and address of the foster parents, pre-adoptive parents and any relatives who are providing care for the child.

The clerk shall provide notice of any review or permanency hearing to all parties and to the child's foster parents, pre-adoptive parents, and any relatives who are providing care for the child. The foster parents, pre-adoptive parents or any relative who is providing care for the child shall have an opportunity to be heard and may be subject to cross examination but shall not be designated as a party to such a proceeding solely on the basis of such notice and right to be heard.

FCRPP 18 Service

(1) A copy of the petition and summons, and an emergency custody order, if any, shall be served upon parents or persons exercising custodial control or supervision or who have been awarded legal custody by a court or claims a right to legal custody under the law of this state. It may be served by any person authorized to serve process except the state child protective service agency.

(2) A notice and statement of the rights and a blank affidavit of indigency, which contain the contents of the official AOC forms, AOC-DNA-2.2, Notice of Emergency Removal, and AOC-DNA-11, Financial Statement, Affidavit of Indigence, Request for Counsel and Order, shall be served with the emergency custody order. The official AOC forms are available for use in compliance with this rule.

SUPREME COURT STANDING COMMITTEE ON THE FCRPP (2012) COMMENTARY

If a permanent custody motion is filed within a Dependency, Neglect and Abuse (DNA) action pursuant to KRS 620.027, the movant shall ensure that personal service of the permanent custody motion has been perfected upon both parents and any other legal custodian, except as otherwise directed by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Personal service shall be perfected in accordance with the Kentucky Rules of Civil Procedure, CR 4, et. seq. If said service has not been properly perfected in the DNA action, the court should deny the motion and require the movant to file a proper petition for child custody pursuant to KRS Chapter 403.

FCRPP 19 Emergency Custody Orders in Dependency, Neglect or Abuse Actions

(1) Any request for an emergency custody order in a dependency, neglect or abuse case shall be in writing and shall be accompanied by an affidavit for emergency custody order which contains the contents of the official AOC form, AOC-DNA-2.1, Affidavit for Emergency Custody Order, and which alleges dependency, or abuse or neglect. The affidavit shall be presented to the judge with any other documentation presented at the time of the filing of the request. The official AOC form may be utilized for compliance with this rule.

(2) The person seeking the emergency custody order shall indicate on the affidavit whether there are other proceedings pending, or any orders of custody, related to the child in the Commonwealth or any other state.

(3) The emergency custody order shall contain the contents of the official AOC form, AOC-DNA-2, Emergency Custody Order, which is available for use in compliance with this rule. In no event shall a child be removed pursuant to KRS 620.060 only on a verbal order.

(a) Upon issuance of an emergency custody order by the judge, the person seeking the emergency custody order shall file the emergency custody order and the affidavit with the clerk no later than the close of the next work day and the clerk shall assign a case number.

(b) If not filed with the emergency custody order, a petition shall be filed with the clerk within 72 hours of taking the child into custody in the same case file as the emergency custody order and affidavit.

(c) The court may, after issuing an emergency custody order, transfer the case for forum non conveniens to the county where the dependency, abuse or neglect is alleged to have occurred and shall notify the court to which the case is being transferred, upon issuance of the transfer order.

FCRPP 20 Petition

(1) A petition pursuant to KRS Chapter 620 shall contain the contents of the official AOC form, AOC-DNA-1, Dependency Neglect or Abuse Petition, which is available for use in compliance with this rule. In proceedings involving siblings, separate petitions shall be filed for each child and individual case numbers shall be assigned by the clerk of the court, but all siblings' files shall be assigned to the same judge.

(2) When a petition is filed a copy shall be mailed or provided by the clerk to the parents or other person exercising custodial control or supervision, the state child protective service agency, the county attorney, any guardian *ad litem*, and any counsel of record, no later than the business day following the filing of the petition.

FCRPP 21 Notice of Temporary Removal Hearing

(1) The clerk shall provide notification of the temporary removal hearing to the parents or other person exercising custodial control or supervision, county attorney, the state child protective service agency, any guardian *ad litem* and any counsel of record.

(2) The order entered at the hearing shall contain the contents of the official AOC form, AOC-DNA-3, Order-Temporary Removal Hearing, which is available for use in compliance with this rule.

FCRPP 22 Orders from Hearings

(1) Adjudication Hearing. The order entered at the hearing shall contain the contents of the official AOC form, AOC-DNA-4, Order-Adjudication Hearing, which is available for use in compliance with this rule.

(2) Disposition Hearing. The order entered at the hearing shall contain the contents of the official AOC form, AOC-DNA-5, Order-Disposition Hearing, which is available for use in compliance with this rule.

(3) Permanency Hearing. The order entered at the hearing shall contain the contents of the official AOC form, AOC-DNA-6, Order-Disposition Hearing, which is available for use in compliance with this rule.

(4) Permanent Custody Order. Any order of permanent custody entered pursuant to KRS 620.027 shall contain the contents of the official AOC form, AOC-DNA-9, Order-Permanent Custody, which is available for use in compliance with this rule.

(5) Verbal Approval or Stamped Signatures. No order in a dependency, neglect and abuse action may be entered on verbal approval or stamped signature.

SUPREME COURT STANDING COMMITTEE ON THE FCRPP (2012) COMMENTARY

Faxed or scanned original signatures and encrypted or otherwise secure digital signatures authorized by the Supreme Court have been deemed to be acceptable methods of signature for purposes of these Rules.

FCRPP 23 Continuances

(1) If the court grants an extension of time or a continuance for any hearing other than the annual permanency hearing, it shall make written or oral findings on the record that the continuance is necessary in the best interest of the child, for discovery or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown.

(2) The annual permanency review hearing shall be conducted at least annually and shall not be continued beyond 12 months from the placement of the child in foster care for any reason, including good cause.

SUPREME COURT STANDING COMMITTEE ON THE FCRPP (2012) COMMENTARY

Pursuant to 45 C.F.R. 1356.21(b)(2)(i), the state child welfare agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within 12 months of the date the child is considered to have entered foster care and at least every 12 months thereafter while the child is in foster care.

Under 45 C.F.R. 1356.21(b)(2)(ii), if such a judicial determination is not made, the child becomes ineligible under title IV-E at the end of the month in which the judicial

determination was required to have been made, and remains ineligible until such a determination is made.

FCRPP 24 Dismissal

Once filed, a petition shall be dismissed only upon court order.

FCRPP 25 Transfer

Cases shall not be transferred from one county to another prior to adjudication except on a specific finding of improper venue or forum nonconveniens.

FCRPP 26 Appearances

Any attorney appearing on behalf of a party in a dependency, neglect or abuse action shall file a written entry of appearance unless an order appointing the attorney as guardian *ad litem* or court-appointed counsel has been entered. An attorney shall not withdraw from representation except upon motion to withdraw granted by the court.

FCRPP 27 Records and Transcripts

(1) An electronic or stenographic record of interviews with children, including a recording of any in-camera proceedings, shall be filed under seal with the clerk and may be made available to the parties or their counsel on motion and written order of the court.

(2) In courts that have more than one county in their jurisdiction any recordings made in a county other than where the action is filed shall be delivered to the clerk of the county where the action is filed by the court ordering the hearing.

FCRPP 28 Reports

Any dispositional report shall be filed three days prior to a dispositional hearing and shall contain the contents of the official AOC form, AOC-DNA-12, Dependency, Neglect

or Abuse Dispositional Report, which is available for use in compliance with this rule.

FCRPP 29 Case Plan and Case Progress Reports

The court shall require the following to be filed in the court record and provided to all parties:

- (1) The out of home case plan;
- (2) Any visitation agreement for the case plan or the case permanency plan; and,
- (3) Any prevention plan or safety plan developed by the child protective service agency.
- (4) The state child welfare agency shall provide the names and addresses of the child's foster parents, pre-adoptive parents or relatives providing care to the child, court appointed special advocate, and foster care review board member assigned to the case with the case permanency plan or case progress report filed with the court on a form prescribed by the Administrative Office of the Courts.

FCRPP 30 Reviews

(1) Permanency Progress Review. In addition to the annual permanency hearing mandated by KRS 610.125, the court shall conduct a permanency progress review no later than 6 months after a child is placed in foster care, in the home of a non-custodial parent, or other person or agency, when that child was sixteen years of age or younger at the time of the filing of a dependency, neglect or abuse petition.

(2) Independent Living Review. In addition to the permanent placement review and the annual permanency hearing, and when the child remains in foster care or committed to the state child welfare agency, the court shall conduct an independent living review at least 6 months prior to the child turning 18 years of age to ensure that training on

independent living and other appropriate services have been included in the case plan and are being provided to the child.

SUPREME COURT STANDING COMMITTEE ON THE FCRPP (2012) COMMENTARY

With respect to FCRPP 30(1), if a permanent custody motion is filed within a Dependency, Neglect or Abuse (DNA) action pursuant to KRS 620.027, the movant shall ensure that personal service (of the DNA action) has been perfected upon both parents and any other legal custodian, except as otherwise directed by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Personal service shall be perfected in accordance with the Kentucky Rules of Civil Procedure, CR 4, et. seq. If said service has not been properly perfected in the DNA action, the court should deny the motion and require the movant to file a proper petition for child custody pursuant to KRS Chapter 403.

FCRPP 31 New Action

Any new allegation or request for removal after a child has achieved permanency shall be filed as a new action.

VII. Adoption and Termination of Parental Rights

FCRPP 32 Venue and Petition

(1) Venue. When filed in the same county in which a KRS Chapter 620 proceeding has been held, a proceeding under KRS Chapter 625 shall be assigned to the same family court division that heard the KRS Chapter 620 action. Otherwise, venue shall proceed according to KRS 625.050(4).

(2) Petition.

(a) A separate petition shall be filed for each child and individual case numbers shall be assigned by the clerk of the court in proceedings filed pursuant to KRS Chapters 199 and 625, and in the case of siblings, shall be heard by the same judge.

(b) Every petition in an adoption or termination of parental rights action shall include the case number of any underlying juvenile case, specifically dependency, neglect or abuse or termination of parental rights cases, and shall include the name of any guardian *ad litem* previously appointed.

FCRPP 33 Adoption

(1) No request for final hearing shall be made prior to the filing of the state child protective service agency report pursuant to KRS 199.510, and the guardian *ad litem* report, if any, pursuant to KRS 199.515.

(2) In the event of an uncontested adoption, a hearing shall be held within 60 days of the filing of a request for a final hearing.

(3) A continuance of any final hearing date shall not be granted except upon good cause shown. Annual permanency review hearings shall continue to be held in any dependency, neglect and abuse action as required by FCRPP 23 until finalization of the adoption.

FCRPP 34 Involuntary Termination

(1) Immediately upon the filing of any petition for involuntary termination of parental rights, the petitioner shall obtain a pretrial date. In the event the parents are not served prior to the pretrial date, the pretrial date shall be used as a case status review to expedite the proceeding.

(2) A continuance of any final hearing date shall not be granted except upon good cause shown. The annual permanency review hearings shall continue to be held in any dependency, neglect and abuse action as required by FCRPP 23 until permanency is achieved.

FCRPP 35 Orders Terminating Parental Rights

The clerk of the court shall send two certified copies of the order terminating parental rights to the state child protective agency. The prospective adoptive parent or his or her attorney, if any, may obtain a certified copy of the order terminating parental rights from the state child protective agency to attach to the adoption petition.

FCRPP 36 Post-Termination of Parental Rights Review

If an order terminating parental rights is entered, a copy of the order shall also be certified to the record in the underlying dependency, neglect and abuse case which shall be identified in the order. The clerk of the court in the underlying dependency, neglect and abuse case shall docket the matter for a review hearing within 90 days from the date of the entry of the order of termination of parental rights and shall docket the matter as directed by the court at least annually thereafter until permanency is achieved.

[VIII. Status Offenders

FCRPP 37 Review

~~At any time during a status offense action, the court on its own motion, or on motion of any interested person, may determine that a status matter is more appropriate as a KRS Chapter 620 proceeding and direct the state child welfare agency to investigate and/or provide services to the child and/or family; amend the petition pursuant to KRS~~

~~610.010(13) and order it served; or, require a new petition to be filed. See also KRS 605.130(3).~~

~~FCRPP 38 Interstate Compact on Placement of Children~~

~~Pursuant to KRS Chapter 615, the child shall be presented forthwith to the court without formal petition. The court shall utilize the forms provided pursuant to the Interstate Compact.~~

~~FCRPP 39 Diversion~~

~~Prior to the court issuing an order for a formal hearing or the county attorney requesting a formal hearing, the case shall be processed by the court designated worker pursuant to KRS 610.030.~~

~~FCRPP 40 Petition~~

~~(1) Every petition shall be accompanied by the AOC JW-40, Preliminary Inquiry Formal/Informal Processing Criteria and Recommendations; and where diversion has been attempted pursuant to KRS 630.050, shall also include an AOC-40.1, Unsuccessful Diversion Agreement, which includes preliminary intake inquiry findings.~~

~~(2) A habitual truancy petition shall be accompanied by an affidavit and truancy evaluation form in compliance with KRS 159.140 and which contains the contents of the official AOC form, AOC JV-41, Affidavit and Truancy Evaluation Form, and which is available for use in compliance with this rule.~~

~~(3) A beyond control of school petition shall be accompanied by an affidavit and beyond control of school evaluation form which contains the contents of the official AOC form,~~

~~AOC JV 38.1, Affidavit and Beyond Control of School Evaluation Form, and which is available for use in compliance with this rule.~~

~~(4) A beyond control of parent petition shall be accompanied by an affidavit and beyond control of parent evaluation form which contains the contents of the official AOC form, AOC JV 38, Affidavit and Beyond Control of Parent Evaluation Form, and which is available for use in compliance with this rule.~~

~~(5) A habitual runaway petition shall be accompanied by a pre-adjudicative detention criteria with attachments which contains the contents of the official AOC form, AOC JW 39, Pre-Adjudicative Detention Criteria, and which is available for use in compliance with this rule.~~

FCRPP 41. Summons

~~Upon the filing of the petition, the clerk shall issue a summons to the parent(s) or other person exercising custodial control or supervision of the child, setting a date for initial appearance as directed by the presiding judge.~~

FCRPP 42. Proceedings

~~(1) Pursuant to KRS 610.060, the judge shall explain to the child on the record his or her rights and the charge utilizing a notice which contains the contents of the official AOC form, AOC JV 49, Notice of Juvenile Rights and Consequences for Status Offenders, and which is available for use in compliance with this rule.~~

~~(2) A public advocate shall be appointed for the child unless otherwise waived on the record by obtaining private counsel. The court may place the child on terms which address the child's alleged behavior(s), and may order participation in a service, program or local resource to assist the child.~~

~~(3) A pretrial conference may be held in the court's discretion.~~

~~(4) For disposition, the court shall enter a juvenile status offense order which contains the contents of the official AOC form, AOC JV 36, Juvenile Order Status Offense, to order terms, services, programs and/or resources to address the needs of the child and family pursuant to KRS 630.120(5). These orders may not require an involuntary drug screen of the parent(s) or other person exercising custodial control or supervision in the status offense case. The court may also adopt recommendations in the dispositional report. For a child who is committed to the state child protective service agency, the court shall also enter a disposition order which contains the contents of the official AOC form, AOC JV 31, Juvenile Status Offense Disposition Order. The official AOC forms are available for use in compliance with this rule.~~

FCRPP 43 Informal Adjustments

~~(1) For any status offender petition resolved by an informal adjustment as defined by KRS 600.020(31), unless explicitly stated otherwise, the terms of the informal adjustment shall remain in effect for a period not to exceed one year or until the child's eighteenth birthday, whichever comes first.~~

~~(2) On notice of a violation of the terms of an informal adjustment to the county attorney, and motion filed with the court and noticed to the interested parties, the court shall re-docket the case, set aside the informal adjustment, and reinstate the original petition upon a showing that the violation could not be remedied without court intervention.~~

~~(3) In the event that the alleged violation of the terms of the informal adjustment would constitute grounds for an original petition the county attorney may move to file an amended petition or file a new petition after consulting with the case worker and the~~

family involved.

~~FCRPP 44 Detention of Status Offenders~~

~~(1) Pursuant to KRS 630.100, no status offender shall be placed in secure detention unless:~~

~~(a) The offender is alleged to be an habitual runaway; or,~~
~~(b) The offender is alleged to be in contempt of a valid court order which contains the contents of the official AOC form, AOC-JV-36, Juvenile Order Status Offense; or a finding of contempt of court has been entered in a formal court proceeding and a valid court order has been entered which contains the contents of the official AOC form, AOC-JV-36, Juvenile Order Status Offense. The official AOC-JV-36 may be utilized for compliance with this rule.~~

~~(2) Any status offender appearing before the court shall be provided a public advocate or shall be provided the opportunity to retain private counsel.~~

~~(3) Release of a child in detention to non-secure alternatives may be to:~~

~~(a) The child's parents or legal guardians; or~~
~~(b) The state child protective service agency if the child is committed to that agency; or~~
~~(c) The state juvenile justice agency for alternative detention services, if the child qualifies for such a placement; or~~
~~(d) A non-secure crisis or other mental health unit/facility.~~

~~(4) If the parents or legal guardians are unavailable or unwilling to accept the child and there is no other alternative under Section (3) above:~~

~~(a) Another responsible adult relative or other interested adult with an established relationship with the child, including the person who may have been exercising custodial~~

~~control or supervision but does not have actual legal custody, shall be contacted as directed by the presiding judge and the child released to his/her care; or~~

~~(b) The child shall be placed in an alternative placement, with possible referral to the state child protective service agency.~~

~~(5) No child shall be detained for more than twenty four (24) hours in secure detention without a hearing before the court within that twenty four (24) hour period of the detainment, exclusive of weekends and holidays. Each court shall establish a local protocol to assure that the hearing is scheduled within twenty four (24) hours, exclusive of weekends and holidays.~~

~~(6) A judge shall conduct a due process hearing prior to detaining a child in a secure detention facility for contempt and shall consider any alternatives to a secure detention placement, and other alternatives identified in agency reports submitted within 48 hours pursuant to KRS 610.265(3)(d)(3). If the court has determined by findings on the record that no less restrictive alternatives are available or appropriate, then the child may be securely detained. Any such court order shall indicate the length of detainment.]~~

IX. Appendix A

Appendix A Model Time-Sharing Visitation Guidelines

Model Time-Sharing/Visitation Guidelines

The following schedules are suggested as **guidelines** for the parents and the court in establishing time-sharing/visitation schedules. Each case will present unique facts or circumstances which shall be considered by the court in establishing a time-sharing/visitation schedule and **the final schedule established by the court or agreed to by the parents may or may not be what these guidelines suggest.**

1. The time-sharing/visitation schedule set by the court for holidays, school breaks and summer break should control over regularly scheduled time-sharing/visitation time, even if this allows successive time-sharing/visitation periods.
2. The parent exercising time-sharing/visitation should be responsible for timely picking up the child(ren) at the beginning of the time-sharing/visitation period and returning the child(ren) in a timely manner at the end of the time-sharing/visitation period.
3. Times in a time-sharing/visitation schedule should be set in the time zone where the child primarily resides.
4. For time-sharing/visitation times pertaining to school holidays, whether in a formal school or home-schooled, the school holidays where the child(ren) primarily resides should apply.
5. Each parent should provide to the other parent contact numbers and addresses (unless a domestic violence order is in effect) where the child(ren) can be located during their scheduled time-sharing/visitation time.
6. The parent exercising time-sharing/visitation should be given a minimum of every other weekend as time-sharing/visitation time with the child(ren) and one midweek overnight time-sharing/visitation. The parent having such time-sharing/visitation should be responsible for delivering the child(ren) to school, child care, or the other parent's home as specifically ordered by the court or agreed to by the parents.
7. Holidays.
 - a. If a holiday is celebrated on a Monday following a parent's regularly scheduled time-sharing/visitation, then that parent should be permitted to extend parenting time until 6:00 p.m. on the holiday, unless the parents agree otherwise.

b. Other holidays.

(i) Parent exercising time-sharing/visitation.

1) During the first full year after divorce/custody proceedings have been filed, the non-residential parent should have time-sharing/visitation scheduled as follows:

a) New Year's Day and July 4th from 8:00 a.m. until 6:00 p.m.

b) Thanksgiving, beginning at 6:00 p.m. the day school ends until 3:00 p. m. Thanksgiving Day.

c) Christmas/Winter Break, beginning at 6:00 p.m. the day school ends until noon on December 25.

d) Holidays not listed that are of special interest to the family should be assigned to the non-residential parent in time amounts similar to those in a), b) and c) above.

2) Holiday time not scheduled above to the parent exercising time-sharing/visitation should be with the other parent.

3) Mother's Day and Father's Day, regardless of any conflict with the above proposed schedule, should be spent with the appropriate parent from 8:00 a.m. until 6:00 p.m.

4) Fall Break or Spring Break, as allowed by the child(ren)'s school calendar, should be scheduled for the parent with whom the child(ren) primarily resides in the first full year after the divorce/custody proceedings are filed from 6:00 p.m. the day school ends until 6:00 p.m. the following

Friday. If school breaks are longer than one week due to the school schedule, the parent with whom the child(ren) primarily resides should be scheduled for the first half of the break and the other parent should be scheduled for the last half.

5) Summer Break should be scheduled to allow the parent exercising time-sharing/visitation a minimum of two periods of two consecutive weeks during the Summer Break. Each parent should provide the time periods he or she desires to the other parent before the end of the school year, or at least 60 days in advance of the requested time. If a child(ren) must attend summer school in order to pass to the next grade, summer time-sharing/visitation should not prevent school time.

6) Birthdays: Unless the birthday falls on a regularly scheduled time-sharing/visitation day, the parent exercising time-sharing/visitation should be scheduled for birthday time from 5:00 p.m. until 8:00 p.m. If it is a regular day of the parent exercising time-sharing/visitation where the child(ren) does not primarily reside, the other parent should have birthday time from 5:00 p.m. until 8:00 p.m.

(ii) Alternating years: For each year thereafter, the time-sharing/visitation set out above should alternate between the parent with whom the child(ren) primarily resides and the parent exercising time-sharing/visitation.

8. Waiting/Tardiness/Cancellations.

a. In the event either parent will be more than 30 minutes late, due to reasonable unforeseen circumstances, to pick up the child(ren), he or she should provide direct notice to the other parent or a designated third party and make suitable arrangements for exchange of the child(ren).

b. If time-sharing/visitation is missed through no fault of the parent, and reasonable notice has been given, that time should be made up, if reasonable to do so.

c. If the child(ren) is ill, the parent who has the child should give 24-hour notice, if possible, to allow for appropriate plans to be made.

9. Transportation: The parents should transport the child(ren) in a safe manner, which includes utilizing the appropriate child restraint systems and not driving under the influence of intoxicants.

All sitting. All concur.

ENTERED: June 29, 2015.


CHIEF JUSTICE