

HB 1 Statutory Changes



Administrative Office of the Courts

www.courts.ky.gov

Affected by HB 1

Effective on July 14, 2018

- Paternity
- Dependency, Neglect or Abuse
- Termination of Parental Rights
- Adoption
- Citizen Foster Care Review Boards (CFCRB)
- Cabinet for Health and Family Services Policies (CHFS)



Paternity



KRS 406.081 HB 1(§32)

Paternity resolved against alleged father

“If the alleged father is ordered to submit to genetic tests and refuses or does not submit the results of the paternity test to the court within thirty (30) days of the court order, the court shall resolve the question of paternity against him.”



KRS 406.091 HB 1(§33)

Requester of KRS 406.021 action pays

OLD

- Costs of genetic testing paid by, “the parties in proportions determined by court.”

NEW

- Costs of genetic testing paid by, “the party who requested that the action be brought pursuant to KRS 406.021.”



Issues/Concerns

- Who “requested” the action?
- Is testing available?
- How long does it take for results?
- Calfee v. Com., 230 S.W.3d 601 (Ky.App. 2007)



DNA Proceedings



KRS 620.060(1) HB 1(§20)

Expands venue for ECO

OLD

- ECO where child is present

NEW

- Adds: “Where child ordinarily resides or will reside”



Related FCRPPs

- FCRPP 18(3)(c): (Forum non conveniens) transfer to county where alleged dependency, abuse or neglect occurred
- FCRPP 24: Requires specific finding of improper venue or forum non conveniens



KRS 620.070(2) HB 1(§21)

No service by CHFS Employee

OLD

- KRS: Service allowed by sheriff or other authorized agent
- FCRPP 17: "...except the state child protective service agency"

NEW

- No service by CHFS employee



KRS 620.070(2) HB 1(§21)

Service when location/identity unknown

OLD

“[...] petition and summons shall be served on the nearest known adult relative.”

NEW

“[...] as directed by the court, which means may include:

- service on the nearest known adult relative,
- service by mail to the last known address, or
- other service directed by the court and given in a manner reasonably calculated to give actual notice.
- Service may be by warning order if other means are not effective.”



Issues/Concerns

- Non-traditional service must be directed by the court
- What other methods would satisfy the statute?



KRS 620.100 HB 1 (§47)

Right to counsel for de facto custodian

“The court shall appoint separate counsel for a person claiming to be a de facto custodian, as defined in KRS 403.270, if the person is unable to afford counsel pursuant to KRS Chapter 31.”

Paid by Finance Dept. \$500/\$250



Issues/Concerns

- Same indigency standards
- “Claiming to be” ≠ “Found to be”
- Is a determination required?



KRS 620.360 HB 1(§45)

Foster parents' right to notice and be heard

Foster parents have the right to:

“To receive notice of, have a right to attend, and have a right to be heard in, either verbally or in writing, any cabinet or court proceeding held with respect to the child. This paragraph shall not be construed to require that a foster parent caring for the child be made a party to a proceeding solely on the basis of the notice and rights to attend and be heard.”



Issues/Concerns

- Proceeding “with respect to” child
 - Compared to FCRPP 16(2) rights in regard to review and permanency hearings
- Notice of date, right to attend, and right to be heard verbally or writing
- Not necessary to make a party



KRS 600.020 HB 1(§13)

Expanded timeframe for neglect definition

OLD

- Committed to cabinet and remaining in care “fifteen (15) of the most recent twenty-two (22) months”

NEW

- “...fifteen (15) cumulative months out of forty-eight (48) months”



KRS 620 HB 1(§17)

Adjudication testimony excluded

“Testimony offered by an alleged responsible parent or person exercising custodial control or supervision in an adjudication of a petition under this chapter for dependency, abuse, or neglect shall not be admissible in any criminal proceeding for charges arising from the same transaction or occurrence except for the purposes of impeachment.”



Issues/Concerns

- Similar to KRS 403.745(6) in domestic violence cases
- Only applies to accused
- Excluded in criminal prosecution except for impeachment



TPR Proceedings



KRS 625.090(1)(b) HB 1(§26)

Involuntary TPR must be filed by CHFS

New requirement for Involuntary
Termination of Parent Rights:

“CHFS has filed a petition with the
court...”



Issue

Inconsistent with KRS 625.050(3):

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



KRS 625.065 HB 1 (§34)

Notice to putative father

OLD

Must be a party and served if, “[p]rior to the entry of a final order in a termination proceeding, he shall have acknowledged the child as his own by affirmatively asserting paternity in the action or to the custodial agency or the party bringing the action within sixty (60) days after the birth of the child.”

NEW

“He has registered with the cabinet pursuant to Section 28 of this Act as a putative father prior to the birth of the child, or if he did not have notice prior to the birth of the child, within thirty (30) days after the birth of the child.”



Putative Registry

Information, registration, and requests are found at:

<https://chfs.ky.gov/agencies/dcbs/dpp/Pages/putativefather.aspx>



Issues/Concerns

- Putative fathers can no longer “affirmatively assert” paternity in the action
- This does not affect other triggers:
 - Known and identified by mother’s affidavit
 - Birth certificate
 - Judicial proceeding
 - Financial support
 - Living with child and/or mother



KRS 625.040, 625.042, 625.050

HB 1 (§§ 38, 39, 41)

Deadlines for TPR Judgments

OLD

- Voluntary TPR: As soon as practical
- Involuntary TPR: None

NEW

- Voluntary TPR: Within 6 months of filing
- Involuntary TPR: Within 6 months of service of petition on parents



Issues/Concerns

- Voluntary:
 - Petition drafting is important
 - “Any petition filed pursuant to KRS 625.040”
- Involuntary:
 - Triggered by service.
 - Allows time for warning order



KRS 625.090(1)(a)(3) HB 1(§26)

Neonatal withdrawal as grounds for TPR

The child is found to have been diagnosed with neonatal abstinence syndrome at the time of birth, unless his or her birth mother:

- a. Was prescribed and properly using medication for a legitimate medical condition as directed by a health care practitioner that may have led to the neonatal abstinence syndrome; or
- b. Is currently, or within ninety (90) days after the birth, enrolled in and maintaining substantial compliance with both a substance abuse treatment or recovery program and a regimen of prenatal care or postnatal care as recommended by her health care practitioner throughout the remaining term of her pregnancy or the appropriate time after her pregnancy; or



Issues/Concerns

- Born with neonatal abstinence syndrome unless...
 - Caused by proper use of prescribed medication for legitimate medical condition OR
 - Enrolled and substantially compliant with treatment/recovery and post-natal care
- Proof required?
- Substantially compliant?
- Would additional services enable return? KRS 625.090(4)
- Would child be neglected if returned? KRS 625.090(5) (Parent must prove by preponderance)



KRS 625.090(2)(j) HB 1(§26)

New timeframe for TPR

OLD

- Committed to cabinet and remaining in care “fifteen (15) of the most recent twenty-two (22) months”

NEW

- “...fifteen (15) cumulative months out of forty-eight (48) months”



Issues/Concerns

- Any 15 months within a 48-month span
- Would additional services enable return? KRS 625.090(4)
- Would child be neglected if returned? KRS 625.090(5)
 - (Parent must prove by preponderance)



KRS 625.110 HB 1 (§27)

TPR Appeal Timelines

OLD

- Must appeal within 30 days (CR)
- No deadline for appellate opinion

NEW

“Only an appeal made within thirty (30) days may be considered by the court. The court shall make its final ruling within ninety (90) days after the appeal case is submitted to the appellate bench for decision.”



Adoption Proceedings



KRS 199.470 HB 1(§4)

CHFS Secretary Approval for Adoption

OLD

- Not needed for stepparents, grandparents, sibling, aunt/uncle, great grandparents, great aunt/uncle

NEW

- Adds: half-blood relatives, 1st cousins, step-siblings, great great grandparents, fictive kin, and any adoptions approved under the Interstate Compact on the Placement of Children



Issues/Concerns

- Allows more adoptions without approval
- Get relationship on the record



KRS 199.480(1)(b)(2) HB 1 (§30)

Putative father as a party to adoption

OLD

- Party if asserted paternity in the action, or to the custodial agency, or to the petitioner within 60 days of child's birth

NEW

- Registered on the Putative Father Registry prior to birth or within 30 days of child's birth



Issues/Concerns

- Putative fathers can no longer “affirmatively assert” paternity
- This does not affect other triggers:
 - Known and identified by mother’s affidavit
 - Birth certificate
 - Judicial proceeding
 - Financial support
 - Living with child and/or mother



KRS 199 HB 1 (§29)

Putative father affidavit required

A court shall not grant an adoption unless the cabinet has filed its affidavit stating whether the father has registered in relation to the mother.



Issues/Concerns

- The affidavit is produced by CHFS upon request of the petitioner
- The affidavit contains the results of the registry search
- Must be in file



CHFS Regulation

922 KAR 1:560E(§4)(5):

Pursuant to KRS 199.505, a search of the putative father registry shall not be required for a public agency adoption in accordance with 922 KAR 1:100.

- Does not prohibit a search
- It might still be prudent to search



KRS 199.500 HB 1 (§42)

Irrevocability of consent to adoption

OLD

- Consent is irrevocable 20 days after the later of when signed or after CHFS secretary approval

NEW

- Consent is irrevocable 20 days after signed



Issues/Concerns

Inconsistent with KRS 199.011(17)(2):

“If placement approval by the secretary is required, the voluntary and informed consent shall become final and irrevocable twenty (20) days after the later of the placement approval or the execution of the voluntary and informed consent. This consent may be withdrawn only by written notification sent to the proposed adoptive parent or the attorney for the proposed adoptive parent on or before the twentieth day by certified or registered mail and also by first-class mail.”

- See: Williams v. Commonwealth, 829 S.W.2d 942, 944 (Ky. App. 1992)



KRS 199.502 HB 1 (§35)

Right to attorney for non-consenting parent

“Biological living parents have the right to legal representation in an adoption wherein he or she does not consent. The Circuit Court shall determine if a biological living parent is indigent and, therefore, entitled to counsel pursuant KRS Chapter 31. If the Circuit Court so finds, the Circuit Court shall inform the indigent parent; and, upon request, if it appears reasonably necessary in the interest of justice, the Circuit Court shall appoint an attorney to represent the biological living parent pursuant to KRS Chapter 31 to be provided or paid for by:

- (a) The petitioner a fee to be set by the court and not to exceed five hundred dollars (\$500); or
- (b) The Finance and Administration Cabinet if the petitioner is a blood relative or fictive kin as established in subsection (4)(a) of Section 4 of this Act a fee to be set by the court and not to exceed five hundred dollars (\$500).”



Issues/Concerns

- Court shall determine indigency
- If indigent, court shall inform parent of the right
- Upon request, if reasonably necessary in the interest of justice, court shall appoint
- If petitioner is relative or fictive kin, the Finance Dept. pays
- If unrelated, then petitioner pays.
- Fees cannot exceed \$500



KRS 199.502(1)(j) HB 1(§35)

Adoption without consent for putative father

Father's consent not required if:

“...[T]he parent is a putative father, as defined in Section 28 of this Act, who fails to register as the minor's putative father with the putative father registry established under Section 28 of this Act or the court finds, after proper service of notice and hearing, that:

1. The putative father is not the father of the minor;
2. The putative father has willfully abandoned or willfully failed to care for and support the minor; or
3. The putative father has willfully abandoned the mother of the minor during her pregnancy and up to the time of her surrender of the minor, or the minor's placement in the home of the petitioner, whichever occurs first.”



Issues/Concerns

Failure to register is irrelevant if putative father:

- Is not the father
- Willfully abandoned/failed to care for and support the minor, or
- Willfully abandoned mother during pregnancy through surrender or placement of child



Extra-Judicial Changes



KRS 620.270 HB 1(§23)

Regional Forums hosted by CFCRB

CFCRBs must conduct regional forums twice annually for public to discuss areas of concern in foster care system and to identify barriers to timely permanency

Goal is to get community feedback about the system and process for child welfare and foster care



Changes to Policy and Regs

HB 1

- CHFS must include recommendation about TPR vs. Reunification with 6-month reviews
- CHFS must review every 3 months
- CHFS must petition for TPR after child in care 22 months of 48 months
- When placing, must consider child's early care provider or school



Changes to Policy and Regs

HB 1

- Facilities must maintain continuity with child's family, school, faith, and community
- CHFS must contact school when taking custody
- CHFS must adopt uniform home study procedures and requirements
- Foster parent can cut hair unless CHFS objects due to child's race, religion, culture, or origin



Changes to Policy and Regs

HB 1

- CHFS must give foster parent, child-placing agency, or child-care agency 10 days notice prior to moving a child if the child is placed by ECO, TCO, or Permanent Custody Order.
- Workgroup established to make recommendations to create and implement performance-based contracting and privatization



What to expect...

- Revisions to the Family Court Rules
- Recommendations from the Oversight Committee
- CHFS regulatory changes
- Additional Statutory Reform



**Please direct any questions and
Issues/Concerns to:**

**Nathan Goins
Family Court Liaison
nathanielgoins@kycourts.net
502-573-2350 ext. 50529**



Administrative Office of the Courts
www.courts.ky.gov