

A. CIVIL CLAIMS FOR DAMAGES

1. ***About Civil Claims for Damages***

Though victims of sexual violence have historically depended on criminal prosecution to ensure legal justice, most acts of sexual violence can also be described as “torts,” or civil wrongs that result in personal injury and/or loss of property. Where a “tort” has occurred, an injured party may bring a “civil claim” in order to recover money damages.

Civil claims for damages may be based on either intentional wrongdoing or negligence. Where the suit is directed at the perpetrator of the crime, the claim is generally described as an “intentional tort.” Civil claims may also be brought against third parties whose “negligence” provided the opportunity for or facilitated the crime. Third party negligence must be based on a “duty of care” owed to the victim for her/his safety, security, protection, etc., and a “breach,” or violation, of that duty of care which ultimately leads to an opportunity for the perpetrator to commit the crime. In order to prevail, a plaintiff must also establish “damages” that can be remedied through the judicial process by the payment of money damages.

There are two general types of damages, “actual” and “punitive.” “Actual damages” are described as “real, substantial and just damages,” or an amount awarded in compensation for actual losses or injury. “Punitive damages” may be awarded over and above actual damages, where the wrong was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of the defendant. “Punitive damages” are intended to compensate for mental anguish, damaged feelings, shame, degradation, or other aggravations of the original wrong. “Punitive damages” may also be intended to punish the defendant for “evil behavior” or to make an example of that person.

The section below describes various civil claims or “causes of action,” outlining the elements of each and the relevant statute of limitations. Where there is a statute on point, the text of the statute has been included. However, some of these causes of action are based on “common law theories,” that is law established by precedent and court decisions. This Handbook is designed to provide basic information only and does not constitute legal advice. Individuals are encouraged to contact practicing attorneys to discuss whether civil action is appropriate in particular cases.

2. ***Civil Causes of Action***

a. ***Any person injured by violation of any statute may recover damages***

KRS 446.070 Penalty no bar to civil recovery.

A person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation.

b. Threats, Contact, and/or injury

Assault (Common law based action)

Assault is an intentional tort involving merely the threat of unwanted touching. The plaintiff must be placed in fear or apprehension of immediate harmful or offensive contact without consent or privilege. It is not necessary to prove actual damages - proof of fear or apprehension is enough. However, words alone are not enough; there must be an act or gesture of some kind. The plaintiff may recover for emotional distress. The statute of limitations is one year from the incident.

The parallel criminal offenses are menacing (KRS 508.050), wanton endangerment (KRS 508.060-.070), terroristic threatening (KRS 508.080) and indecent exposure (KRS 510.148-150).

Stalking

KRS 411.220 Action by crime stalking victim against stalker - Damages - Statute of limitations.

A civil action may be maintained under this section against any person who commits the conduct prohibited under KRS 508.140 or 508.150. A civil action may be maintained under this section whether or not the individual who is alleged to have violated KRS 508.140 or 508.150 has been charged or convicted of the alleged crime. Liability under this section shall include the actual damages caused by the violation and may include punitive damages, court costs, and reasonable attorney's fees. An action under this section shall be brought within two (2) years of the last act of conduct in violation of this section.

The parallel criminal offenses are stalking in the first degree (KRS 508.140) and stalking in the second degree (KRS 508.150).

False Imprisonment (Common law based action)

False imprisonment is any deprivation of the liberty of one person by another, or detention for however short a time without such person's consent and against the person's will, whether done by actual violence, threats, or otherwise. It is necessary that the restraint be wrongful, improper, or without a claim of reasonable justification, authority or privilege. The detention may be accomplished by either actual violence or mere threats of violence.

A plaintiff is entitled to compensation for loss of time, for physical discomfort or inconvenience, and for any resulting physical illness or injury to health. Since the injury is in large part a mental one, the plaintiff is also entitled to damages for mental suffering, humiliation, embarrassment, and the like. The statute of limitations is one year from the incident.

The parallel criminal offenses are unlawful imprisonment (KRS 509.020-.030) and kidnapping (KRS 509.040).

Battery (Common law based action)

Battery is an unpermitted/unwanted touching or harmful/offensive contact. The primary issue is generally lack of consent, which the plaintiff must prove. The plaintiff must also prove intent on the part of the perpetrator to make contact with her/him, but necessarily intent to harm. The plaintiff can recover for emotional distress caused by the battery. Punitive damages are available. The statute of limitations is one year from the incident.

The corresponding criminal offenses are assault (KRS 508.010 through KRS 508.040), criminal abuse (KRS 508.100 through KRS 508.120), and sexual offenses (KRS Chapter 510), including rape, sodomy, sexual abuse, and sexual misconduct.

Sexual Assault and Abuse

KRS 413.249 Action relating to childhood sexual abuse or childhood sexual assault.

NOTE: Amended, 2017, extends statute of limitations to ten years.

(1) As used in this section:

- (a) "Childhood sexual assault" means an act or series of acts against a person less than eighteen (18) years old and which meets the criteria defining a felony in KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 529.100 where the offense involves commercial sexual activity, 529.110 where the offense involves commercial sexual activity, 530.020, 530.064, 531.310, or 531.320. No prior criminal prosecution or conviction of the civil defendant for the act or series of acts shall be required to bring a civil action for redress of childhood sexual assault;
- (b) "Childhood sexual abuse" means an act or series of acts against a person less than eighteen (18) years old and which meets the criteria defining a misdemeanor in KRS 510.120, KRS 510.130, KRS 510.140, or KRS 510.150. No prior criminal prosecution or conviction of the civil defendant for the act or series of acts shall be required to bring a civil action for redress of childhood sexual abuse;
- (c) "Child" means a person less than eighteen (18) years old; and
- (d) "Injury or illness" means either a physical or psychological injury or illness.

(2) A civil action for recovery of damages for injury or illness suffered as a result of childhood sexual abuse or childhood sexual assault shall be brought before whichever of the following periods last expires:

- (a) Within ten (10) years of the commission of the act or the last of a series of acts by the same perpetrator;
- (b) Within ten (10) years of the date the victim knew, or should have known, of the act;
- (c) Within ten (10) years after the victim attains the age of eighteen (18) years; or
- (d) Within ten (10) years of the conviction of a civil defendant for an offense included in the definition of childhood sexual abuse or childhood sexual assault

(3) If a complaint is filed alleging that an act of childhood sexual assault or childhood sexual abuse occurred more than ten (10) years prior to the date that the action is commenced, the complaint shall be accompanied by a motion to seal the record and the complaint shall immediately be sealed by the clerk of the court. The complaint shall remain sealed until:

- (a) The court rules upon the motion to seal;
- (b) Any motion to dismiss under CR 12.02 is ruled upon, and if the complaint is dismissed, the complaint and any related papers or pleadings shall remain sealed unless opened by a higher court; or
- (c) The defendant files an answer and a motion to seal the record upon grounds that a valid factual defense exists, to be raised in a motion for summary judgment pursuant to CR 56. The record shall remain sealed by the clerk until the court rules upon the defendant's motion to close the record. If the court grants the motion to close, the record shall remain sealed until the defendant's motion for summary judgment is granted. The complaint, motions, and other related papers or pleadings shall remain sealed unless opened by a higher court.

KRS 413.2485 Action relating to injury to or illness of an adult as a result of a sexual offense.

- (1) As used in this section, "injury or illness" means either a physical or psychological injury or illness.
- (2) A civil action for recovery of damages for an injury or illness suffered as a result of an act or series of acts against a person eighteen (18) years old or older that meets the criteria of KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 510.120, 510.130, 510.140, 510.150, 529.100 where the offense involves commercial sexual activity, 529.110 where the offense involves commercial sexual activity, 530.020, 531.090, or 531.100, shall be brought before whichever of the following periods last expires
 - (a) Within five (5) years of the act or the last of a series of acts by the same perpetrator;
 - (b) Within five (5) years of the date the victim knew, or should have known, of the act;
 - (c) Within five (5) years upon knowledge or identity of the perpetrator; or
 - (d) Within five (5) years of the conviction of a civil defendant for KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 510.120, 510.130, 510.140, 510.150, 529.100 where the offense involves commercial sexual activity, 529.110 where the offense involves commercial sexual activity, 530.020, 531.090, or 531.100.
- (3) No prior criminal prosecution or conviction of the civil defendant for the act or series of acts shall be required to bring a civil action under this section for redress of an injury or illness.

Damages following conviction of sexual offense or pornography

KRS 431.082 Civil action by victim against defendant -- Damages -- Construction.

- (1) In the event of the conviction of a defendant for the violation of any offense proscribed by KRS Chapter 510 or 531 or any human trafficking offense proscribed by KRS Chapter 529, the person who was the victim of the offense may bring an action in damages against the defendant in the criminal case.
- (2) If the plaintiff prevails, he or she shall be entitled to attorney's fees and all other costs incurred in the bringing of the action, including but not limited to the services of expert witnesses, testing and counseling, medical and psychological treatment, and other expenses reasonably incurred as a result of the criminal act.
- (3) Any award of nominal damages shall support an award of attorney's fees and costs to the prevailing party.
- (4) Punitive damages as well as compensatory damages shall be awardable in cases brought under this section.
- (5) The provisions of this section shall not be construed as repealing any provision of KRS 431.080 or any other applicable statute or of any statutory or common law right of action but shall be construed as ancillary and supplemental thereto.

c. Mental or Emotional Injury or Distress

Intentional infliction of emotional distress (tort of outrage) (Common law based action)

The wrongdoer's conduct must be intentional or reckless, and must be outrageous and intolerable in that it offends generally accepted standards of decency and morality; there must be a causal connection between the wrongdoer's conduct and the emotional distress, and the distress suffered must be severe. The statute of limitations is five years.

d. Injury to Victim's Property

Trespass to land (Common law based action)

Trespass to land is the intentional physical entry upon the land of another. It can be achieved merely by walking upon the land, by causing deleterious substances to be placed on land, causing objects (e.g., rocks and garbage) to be cast on the land, by firing projectiles on to the land, or by

failing to remove property.
The statute of limitations is five (5) years. (KRS 413.120)

Conversion / Trespass to Chattels (Common law based action)

Conversion is the wrongful exercise of dominion and control over the personal property of another. The measure of damages is the value of the property at the time of the conversion. However, if the interference is minor, the tort committed is trespass to chattels.
The statute of limitations is five (5) years. (KRS 413.120)

Reparation for property stolen or damages

KRS 431.200 Reparation for property stolen or damaged, from person convicted.

Any person convicted of a misdemeanor or felony for taking, injuring or destroying property shall restore the property or make reparation in damages if not ordered as a condition of probation. The court in which the conviction is had, if applied to by verified petition made within ninety (90) days of the date the sentence was pronounced, may order restitution or give judgment against the defendant for reparation in damages, and enforce collection by execution or other process. In a petition for restitution or reparation, the court shall cause the defendant, if in custody, to be brought into court, and demand of him if he has any defense to make to the petition. If he consents to the restitution or to reparation in damages in an agreed sum, the court shall give judgment accordingly. Otherwise a jury shall be impaneled to try the facts and ascertain the amount and the value of the property, or assess the damage, as the case may be. A failure to pursue this remedy shall not deprive the person aggrieved of his civil action for the injury sustained.

The parallel criminal offenses are burglary (KRS 511.020 - 511.040), criminal trespass (KRS 511.060 - 511.080) and criminal mischief (KRS 512.020 - 512.0440).

e. Claims by Individual Other than the Victim

Wrongful death

When death results from injury inflicted by the negligence or wrongful action of another, damages may be recovered from the person who caused it or whose agent or servant caused the death. The personal representative of the deceased must file the action. Only spouses, children, parents, or the general estate may recover. Recovery is limited to the lost power to earn. However, punitive damages are available where the death was caused by the willful actions or gross negligence of the defendant. The statute of limitations is two years from the date of death.

KRS 411.130 Action for wrongful death-Personal representative to prosecute-Distribution of amount recovered.

- (1) Whenever the death of a person results from an injury inflicted by the negligence or wrongful act of another, damages may be recovered for the death from the person who caused it, or whose agent or servant caused it. If the act was willful or the negligence gross, punitive damages may be recovered. The action shall be prosecuted by the personal representative of the deceased.
- (2) The amount recovered, less funeral expenses and the cost of administration and costs of recovery including attorney fees, not included in the recovery from the defendant, shall be for the benefit of and go to the kindred of the deceased in the following order:
 - (a) If the deceased leaves a widow or husband, and no children or their descendants, then the whole to the widow or husband.
 - (b) If the deceased leaves a widow and children or a husband and children, then one-half (1/2) to the widow or husband and the other one-half (1/2) to the children of the deceased.

- (c) If the deceased leaves a child or children, but no widow or husband, then the whole to the child or children.
- (d) If the deceased leaves no widow, husband or child, then the recovery shall pass to the mother and father of the deceased, one (1) moiety each, if both are living; if the mother is dead and the father is living, the whole thereof shall pass to the father; and if the father is dead and the mother living, the whole thereof shall go to the mother. In the event the deceased was an adopted person, "mother" and "father" shall mean the adoptive parents of the deceased.
- (e) If the deceased leaves no widow, husband or child, and if both father and mother are dead, then the whole of the recovery shall become a part of the personal estate of the deceased, and after the payment of his debts the remainder, if any, shall pass to his kindred more remote than those above named, according to the law of descent and distribution.

Death by a deadly weapon

This statute (KRS 411.150) permits a cause of action for a surviving spouse or child of a person killed with a deadly weapon. Damages are the same as in wrongful death, but the jury may also award "vindictive damages." The statute of limitations is the same as in a wrongful death action, two (2) years from the date of death.

The parallel criminal offense is criminal homicide (KRS Chapter 507).

KRS 411.150 Action by surviving spouse of child of person killed with deadly weapon.

The surviving spouse and child, under the age of eighteen (18) or either of them, of a person killed by the careless, wanton or malicious use of a deadly weapon, not in self-defense, may have an action against the person who committed the killing and all others aiding or promoting, or any one (1) or more of them. In such actions the jury may give vindictive damages.

KRS 500.080(4) Definition of 'deadly weapon'.

(4) "Deadly weapon" means any of the following:

- (a) A weapon of mass destruction;
- (b) Any weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged;
- (c) Any knife other than an ordinary pocket knife or hunting knife;
- (d) Billy, nightstick, or club;
- (e) Blackjack or slapjack;
- (f) Nunchaku karate sticks;
- (g) Shuriken or death star; or
- (h) Artificial knuckles made from metal, plastic, or other similar hard material.

Loss of Consortium

KRS 411.145 Damages for Loss of Consortium.

- (1) As used in this section "consortium" means the right to the services, assistance, aid, society, companionship and conjugal relationship between husband and wife, or wife and husband.
- (2) Either a wife or husband may recover damages against a third person for loss of consortium, resulting from a negligent or wrongful act of such third person.

Minor children may bring a civil action for loss of parental consortium. The cause of action, however, is only available for the wrongful death of a parent. Additionally, in the wrongful death of a child, the parents can sue for loss of consortium of the child, but only for the time of the child's minority.

f. Negligence & Third Party Liability

Not only can the perpetrator be named as a defendant, but the attorney may also wish to name as defendants those individuals who had a duty to protect or to care for the victim and did not do so - in other words, those parties who did not actually commit the crime but whose negligence may have facilitated the commission of the crime. Some examples are:

Landlords - who do not provide adequate security measures, such as locks on doors and windows or adequate lighting.

Colleges - that fail to provide adequate security for students, fail to notify students of campus assaults, and do not follow federal law regarding campus security.

Shopping malls - that do not employ, or inadequately provide security guards or other necessary measures, despite the likelihood of criminal attacks on customers.

Employers - that do not properly check the background of their employees or simply transfer employees to other locations following allegations of abuse. An employer can be held liable for negligent hiring, retention, and supervision. Additionally, Kentucky's Civil Rights Act (KRS 344.040) prohibits sexual harassment at work, as well as other discrimination, such as gender discrimination. Also prohibited is any retaliatory action taken against an employee who complains about sexual harassment or other discriminatory conduct by a co-worker.

Law Enforcement - Causes of action against law enforcement address the failure to adequately protect a victim, e.g., failure to arrest a perpetrator pursuant to an arrest warrant despite several opportunities to do so, failure to know about an existing protective order, and failure to comply with mandatory reporting, recording, and arrest requirements. Officers are allowed immunity from suit in some circumstances, but not in all cases.

Other examples are hotels, security companies, child care centers, neighbors, schools, churches, hospitals, and transportation services. In addition to the added benefit of the victim's having access to a greater pool of resources, third party liability serves to deter crime and promote safer and fairer practices in society.

3. Statutes of Limitation and Survival

KRS 413.120 Actions to be brought within five years.

The following actions shall be commenced within five (5) years after the cause of action accrued:

- (1) An action upon a contract not in writing, express or implied.
- (2) An action upon a liability created by statute, when no other time is fixed by the statute creating the liability.
- (3) An action for a penalty or forfeiture when no time is fixed by the statute prescribing it.
- (4) An action for trespass on real or personal property.
- (5) An action for the profits of or damages for withholding real or personal property.
- (6) An action for an injury to the rights of the plaintiff, not arising on contract and not otherwise enumerated.
- (7) An action upon a bill of exchange, check, draft or order, or any endorsement thereof, or upon a promissory note, placed upon the footing of a bill of exchange.
- (8) An action to enforce the liability of a steamboat or other vessel.
- (9) An action upon a merchant's account for goods sold and delivered, or any article charged in such store account.

- (10) An action upon an account concerning the trade of merchandise, between merchant and merchant or their agents.
- (11) An action for relief or damages on the ground of fraud or mistake.
- (12) An action to enforce the liability of bail.
- (13) An action for personal injuries suffered by any person against the builder of a home or other improvements. This cause of action shall be deemed to accrue at the time of original occupancy of the improvements which the builder caused to be erected.

KRS 413.125 Actions relating to personal property to be brought within two years.

An action for the taking, detaining or injuring of personal property, including an action for specific recovery shall be commenced within two (2) years from the time the cause of action accrued

KRS 413.130 When certain actions in KRS 413.120 accrue.

- (1) In every action upon a merchants' account as described in subsection (9) of KRS 413.120, the limitation shall be computed from January 1 next succeeding the respective dates of the delivery of the several articles charged in the account. Judgment shall be rendered for no more than the amount of articles actually charged or delivered within five (5) years preceding that in which the action was brought. If any merchant willfully postdates any article charged in such account, or the receipt for the delivery of it, he shall forfeit ten (10) times the amount of the article postdated, to be credited against the account. This credit shall be allowed in an action on the account, without any written pleadings setting it up.
- (2) In an action to recover a balance due upon a mutual open and current account concerning the trade of merchandise between merchant and merchant or their agents, as described in subsection (10) of KRS 413.120, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account claimed, or proved to be chargeable on the adverse side.
- (3) In an action for relief or damages for fraud or mistake, referred to in subsection (11) of KRS 413.120, the cause of action shall not be deemed to have accrued until the discovery of the fraud or mistake. However, the action shall be commenced within ten (10) years after the time of making the contract or the perpetration of the fraud.

KRS 413.140 Actions to be brought within one year.

- (1) The following actions shall be commenced within one (1) year after the cause of action accrued:
 - (a) An action for an injury to the person of the plaintiff, or of her husband, his wife, child, ward, apprentice, or servant;
 - (b) An action for injuries to persons, cattle, or other livestock by railroads or other corporations, with the exception of hospitals licensed pursuant to KRS Chapter 216;
 - (c) An action for malicious prosecution, conspiracy, arrest, seduction, criminal conversation, or breach of promise of marriage;
 - (d) An action for libel or slander;
 - (e) An action against a physician, surgeon, dentist, or hospital licensed pursuant to KRS Chapter 216, for negligence or malpractice;
 - (f) A civil action, arising out of any act or omission in rendering, or failing to render, professional services for others, whether brought in tort or contract, against a real estate appraiser holding a certificate or license issued under KRS Chapter 324A;
 - (g) An action for the escape of a prisoner, arrested or imprisoned on civil process;
 - (h) An action for the recovery of usury paid for the loan or forbearance of money or other thing, against the loaner or forbearer or assignee of either;
 - (i) An action for the recovery of stolen property, by the owner thereof against any person having the same in his possession;

- (j) An action for the recovery of damages or the value of stolen property, against the thief or any accessory; and
 - (k) An action arising out of a detention facility disciplinary proceeding, whether based upon state or federal law;
 - (l) An action for damages arising out of a deficiency, defect, omission, error, or miscalculation in any survey or plat, whether brought in tort or contract, against a licensed professional land surveyor holding a license under KRS Chapter 322; and
 - (m) An action for violating KRS 311.782
- (2) In respect to the action referred to in paragraph (e) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time the injury is first discovered or in the exercise of reasonable care should have been discovered; provided that such action shall be commenced within five (5) years from the date on which the alleged negligent act or omission is said to have occurred.
- (3) In respect to the action referred to in paragraph (f) or (l) of subsection (1) of this section, the cause of action shall be deemed to accrue within one (1) year from the date of the occurrence or from the date when the cause of action was, or reasonably should have been, discovered by the party injured.
- (4) In respect to the action referred to in paragraph (h) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time of payment. This limitation shall apply to all payments made on all demands, whether evidenced by writing or existing only in parol.
- (5) In respect to the action referred to in paragraph (i) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time the property is found by its owner.
- (6) In respect to the action referred to in paragraph (j) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time of discovery of the liability.
- (7) In respect to the action referred to in paragraph (k) of subsection (1) of this section, the cause of action shall be deemed to accrue on the date an appeal of the disciplinary proceeding is decided by the institutional warden.
- (8) In respect to the action referred to in subsection (1)(m) of this section, the cause of action shall be deemed to accrue after the performance or inducement or attempt to perform or induce the abortion.

KRS 413.160 Actions upon written contract or not provided for by statute -- Ten-year limitation.

An action upon a written contract executed after July 15, 2014, unless otherwise provided by statute, and an action for relief not provided for by statute can only be commenced within ten (10) years after the cause of action accrued.

KRS 413.250 When action commences.

An action shall be deemed to commence on the date of the first summons or process issued in good faith from the court having jurisdiction of the cause of action.

KRS 413.260 Effect of injunction or other restraint on limitation.

- (1) If the doing of an act necessary to save any right or benefit is restrained or suspended by injunction or other lawful restraint, vacancy in office, absence of an officer or his refusal to act, the time covered by the injunction, restraint, vacancy, absence or refusal to act shall not be counted in the application of any statute of limitations.
- (2) When the collection of a judgment or the commencement of an action is stayed by injunction, the time of continuance of the injunction shall not be counted as part of the period limited for the collection of the judgment or the commencement of the action.

KRS 413.265 Validity of agreements extending limitations periods.

Written agreements entered into in good faith and at arms-length to extend limitations periods for the filing of civil actions, including agreements entered into prior to July 15, 1988, shall be valid and enforceable according to their terms.

KRS 413.270 Effect of judgment of no jurisdiction-Application to administrative agencies.

- (1) If an action is commenced in due time and in good faith in any court of this state and the defendants or any of them make defense, and it is adjudged that the court has no jurisdiction of the action, the plaintiff or his representative may, within ninety (90) days from the time of that judgment, commence a new action in the proper court. The time between the commencement of the first and last action shall not be counted in applying any statute of limitation.
- (2) As used in this section, "court" means all courts, commissions, and boards which are judicial or quasi-judicial tribunals authorized by the Constitution or statutes of the Commonwealth of Kentucky or of the United States of America.

KRS 413.280 Person under more than one disability.

When two (2) or more disabilities exist in the same person at the time the cause of action accrues, the limitation does not attach until they are all removed.

KRS 413.320 Cause of action barred here if barred where it accrued.

When a cause of action has arisen in another state or country, and by the laws of this state or country where the cause of action accrued the time for the commencement of an action thereon is limited to a shorter period of time than the period of limitation prescribed by the laws of this state for a like cause of action, then said action shall be barred in this state at the expiration of said shorter period.

KRS 413.330 Action on judgement barred here if barred where rendered - Exception.

If, by the laws of any other state or country, an action upon a judgment or decree rendered in that state or country cannot be maintained there by reason of the lapse of time, and the judgment or decree is incapable of being otherwise enforced there, an action upon it may not be maintained in this state, except in favor of a resident thereof who has had the cause of action from the time it accrued.

KRS 411.140 What action shall survive.

No right of action for personal injury or for injury to real or personal property shall cease or die with the person injuring or injured, except actions for slander, libel, criminal conversation, and so much of the action for malicious prosecution as is intended to recover for the personal injury. For any other injury an action may be brought or revived by the personal representative, or against the personal representative, heir or devisee, in the same manner as causes of action founded on contract.

KRS 413.249 Action relating to childhood sexual abuse or assault. -- *Text (above) in Ch. 6, Section A(2)(b)*

KRS 413.2485 Action relating to adult sexual assault. -- *Text (above) in Ch. 6, Section A(2)(b)*

4. Damages

KRS 411.182 Allocation of fault in tort actions - Award of damages - Effect of release.

- (1) In all tort actions, including products liability actions, involving fault of more than one (1) party to the action, including third-party defendants and persons who have been released under subsection (4) of this section, the court, unless otherwise agreed by all parties, shall instruct the jury to answer interrogatories or, if there is no jury, shall make findings indicating:
 - (a) The amount of damages each claimant would be entitled to recover if contributory fault is disregarded; and
 - (b) The percentage of the total fault of all the parties to each claim that is allocated to each claimant, defendant, third-party defendant, and person who has been released from liability under subsection (4) of this section.
- (2) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party at fault and the extent of the causal relation between the conduct and the damages claimed.
- (3) The court shall determine the award of damages to each claimant in accordance with the findings, subject to any reduction under subsection (4) of this section, and shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault.
- (4) A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable, shall discharge that person from all liability for contribution, but it shall not be considered to discharge any other persons liable upon the same claim unless it so provides. However, the claim of the releasing person against other persons shall be reduced by the amount of the released persons' equitable share of the obligation, determined in accordance with the provisions of this section.

KRS 411.184 Definitions - Punitive damages - Proof of punitive damages.

- (1) As used in this section and KRS 411.186, unless the context requires otherwise:
 - (a) "Oppression" means conduct which is specifically intended by the defendant to subject the plaintiff to cruel and unjust hardship.
 - (b) "Fraud" means an intentional misrepresentation, deceit, or concealment of material fact known to the defendant and made with the intention of causing injury to the plaintiff.
 - (c) "Malice" means either conduct which is specifically intended by the defendant to cause tangible or intangible injury to the plaintiff or conduct that is carried out by the defendant both with a flagrant indifference to the rights of the plaintiff and with a subjective awareness that such conduct will result in human death or bodily harm.
 - (d) "Plaintiff" means any party claiming punitive damages.
 - (e) "Defendant" means any party against whom punitive damages are sought.
 - (f) "Punitive damages" includes exemplary damages and means damages, other than compensatory and nominal damages, awarded against a person to punish and to discourage him and others from similar conduct in the future.
- (2) A plaintiff shall recover punitive damages only upon proving, by clear and convincing evidence, that the defendant from whom such damages are sought acted toward the plaintiff with oppression, fraud or malice.
- (3) In no case shall punitive damages be assessed against a principal or employer for the act of an agent or employee unless such principal or employer authorized or ratified or should have anticipated the conduct in question.
- (4) In no case shall punitive damages be awarded for breach of contract.
- (5) This statute is applicable to all cases in which punitive damages are sought and supersedes any and all existing statutory or judicial law insofar as such law is inconsistent with the provisions of this statute.

KRS 411.186 Assessment of punitive damages.

- (1) In any civil action where claims for punitive damages are included, the jury issues presented, whether punitive damages may be assessed.
- (2) If the trier of fact determines that punitive damages should be awarded, the trier of fact shall then assess the sum of punitive damages. In determining the amount of punitive damages to be assessed, the trier of fact should consider the following factors:
 - (a) The likelihood at the relevant time that serious harm would arise from the defendant's misconduct;
 - (b) The degree of the defendant's awareness of that likelihood;
 - (c) The profitability of the misconduct to the defendant;
 - (d) The duration of the misconduct and any concealment of it by the defendant; and
 - (e) Any actions by the defendant to remedy the misconduct once it became known to the defendant.
- (3) KRS 411.184 and this section are applicable to all cases in which punitive damages are sought.

KRS 411.187 Supersedeas bond for punitive damages on appeal - Limit - Rescission of limit if assets diverted or dissipated.

- (1) In any civil action brought under any legal theory, the amount of a supersedeas bond necessary to stay execution of a judgment granting legal, equitable, or any other relief during the entire course of all appeals or discretionary reviews of the judgment by all appellate courts shall be set in accordance with applicable law, except that the total amount of the supersedeas bonds that are required collectively of all appellants during the appeal of a civil action may not exceed one hundred million dollars (\$100,000,000) in the aggregate, regardless of the amount of the judgment that is appealed.
- (2) If the appellee proves by a preponderance of the evidence that a party bringing an appeal, for whom the supersedeas bond requirement has been limited, is purposefully dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding ultimate payment of the judgment, the limitation granted under subsection (1) of this section shall be rescinded and a court may require the appellant to post a bond in an amount up to the full amount of the judgment pursuant to the Kentucky Rules of Civil Procedure

B. CIVIL RIGHTS (PROTECTION FROM SEXUAL HARASSMENT)

Note: This subsection includes portions of Kentucky's Civil Rights Act, which addresses sexual harassment as an issue of discrimination. There are additional protections under federal law.

KRS 344.010 Definitions for chapter.

In this chapter:

- (1) "Person" includes one (1) or more individuals, labor organizations, joint apprenticeship committees, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, fiduciaries, receivers, or other legal or commercial entity; the state, any of its political or civil subdivisions or agencies.
- (2) "Commission" means the Kentucky Commission on Human Rights.
- (3) "Commissioner" means a member of the commission.
- (4) "Disability" means, with respect to an individual:
 - (a) A physical or mental impairment that substantially limits one (1) or more of the major life activities of the individual;
 - (b) A record of such an impairment; or

(c) Being regarded as having such an impairment.

Persons with current or past controlled substances abuse or alcohol abuse problems and persons excluded from coverage by the Americans with Disabilities Act of 1990 (P.L. 101-336) shall be excluded from this section.

(5) "Discrimination" means any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, or any other act or practice of differentiation or preference in the treatment of a person or persons, or the aiding, abetting, inciting, coercing, or compelling thereof made unlawful under this chapter.

...

(14) "Family" includes a single individual.

(15) (a) "Familial status" means one (1) or more individuals who have not reached the age of eighteen (18) years and are domiciled with:

1. A parent or another person having legal custody of the individual or individuals; or
2. The designee of a parent or other person having custody, with the written permission of the parent or other person.

(b) The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen (18) years.

(16) "Discriminatory housing practice" means an act that is unlawful under KRS 344.360, 344.367, 344.370, 344.380, or 344.680.

KRS 344.020 Purposes and construction of chapter - Effect.

(1) The general purposes of this chapter are:

(a) To provide for execution within the state of the policies embodied in the Federal Civil Rights Act of 1964 as amended (78 Stat. 241), Title VIII of the Federal Civil Rights Act of 1968 (82 Stat. 81), the Fair Housing Act as amended (42 U.S.C. 360), the Federal Age Discrimination in Employment Act of 1967 (81 Stat. 602), the Americans with Disabilities Act of 1990 (P.L. 101-336), and the Civil Rights Act of 1991 as amended (P.L. 102-166, amended by P.L. 102-392);

(b) To safeguard all individuals within the state from discrimination because of familial status, race, color, religion, national origin, sex, age forty (40) and over, or because of the person's status as a qualified individual with a disability as defined in KRS 344.010 and KRS 344.030; thereby to protect their interest in personal dignity and freedom from humiliation, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest which would menace its democratic institutions, to preserve the public safety, health, and general welfare, and to further the interest, rights, and privileges of individuals within the state;

(c) To establish as the policy of the Commonwealth the safeguarding of the rights of an individual selling or leasing his primary residence through private sale without the aid of any real estate operator, broker, or salesman and without advertising or public display.

(2) This chapter shall be construed to further the general purposes stated in this section and the special purposes of the particular provision involved.

(3) Nothing in this chapter shall be construed as indicating an intent to exclude local laws on the same subject matter not inconsistent with this chapter.

(4) Nothing contained in this chapter shall be deemed to repeal any other law of this state relating to discrimination because of familial status, race, color, religion, national origin, sex, age forty (40) and over, or because of the person's status as a qualified individual with a disability as defined in KRS 344.030.

KRS 344.030 Definitions for KRS 344.030 to 344.110.

For the purposes of KRS 344.030 to 344.110:

- (1) "Qualified individual with a disability" means an individual with a disability as defined in KRS 344.010 who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires unless an employer demonstrates that he is unable to reasonably accommodate an employee's or prospective employee's disability without undue hardship on the conduct of the employers' business. Consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.
- (2) "Employer" means a person who has eight (8) or more employees within the state in each of twenty (20) or more calendar weeks in the current or preceding calendar year and an agent of such a person, except for purposes of determining discrimination based on disability, employer means a person engaged in an industry affecting commerce who has fifteen (15) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and any agent of that person, except that, for two (2) years following July 14, 1992, an employer means a person engaged in an industry affecting commerce who has twenty-five (25) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding year, and any agent of that person. For the purposes of determining discrimination based on disability, employer shall not include:
 - (a) The United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or
 - (b) A bona fide private membership club (other than a labor organization) that is exempt from taxation under Section 501(c) of the Internal Revenue Service Code of 1986.
- (3) "Employment agency" means a person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such person.
- (4) "Labor organization" means a labor organization and an agent of such an organization, and includes an organization of any kind, an agency or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and a conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.
- (5) (a) "Employee" means an individual employed by an employer, but does not include an individual employed by his parents, spouse, or child, or an individual employed to render services as a domestic in the home of the employer.
 - (b) Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisee, neither a franchisee nor a franchisee's employee shall be deemed to be an employee of the franchisor for any purpose under this chapter.
 - (c) Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisor, neither a franchisor nor a franchisor's employee shall be deemed to be an employee of the franchisee for any purpose under this chapter.
 - (d) For purposes of this subsection, "franchisee" and "franchisor" have the same meanings as in 16 C.F.R. sec. 436.1.
- (6) "Reasonable accommodation" means making existing facilities used by employees readily accessible to and usable by individuals with disabilities, job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for

individuals with disabilities.

- (7) "Religion" means all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.
- (8) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in this section shall be interpreted to permit otherwise.
- (9) "Undue hardship," for purposes of disability discrimination, means an action requiring significant difficulty or expense, when considered in light of the following factors:
 - (a) The nature and cost of the accommodation needed;
 - (b) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at the facility; the effect on expenses and resources; or the impact otherwise of such accommodation upon the operation of the facility;
 - (c) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; and the number, type, and location of its facilities; and
 - (d) The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

KRS 344.040 Unlawful discrimination by employers -- Difference in health plan contribution rates for smokers and nonsmokers and benefits for smoking cessation program participants excepted.

- (1) It is an unlawful practice for an employer:
 - (a) To fail or refuse to hire, or to discharge any individual, or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of the individual's race, color, religion, national origin, sex, age forty (40) and over, because the person is a qualified individual with a disability, or because the individual is a smoker or nonsmoker, as long as the person complies with any workplace policy concerning smoking;
 - (b) To limit, segregate, or classify employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect status as an employee, because of the individual's race, color, religion, national origin, sex, or age forty (40) and over, because the person is a qualified individual with a disability, or because the individual is a smoker or nonsmoker, as long as the person complies with any workplace policy concerning smoking; or
 - (c) To require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products outside the course of employment, as long as the person complies with any workplace policy concerning smoking.
- (2)
 - (a) A difference in employee contribution rates for smokers and nonsmokers in relation to an employer-sponsored health plan shall not be deemed to be an unlawful practice in violation of this section.
 - (b) The offering of incentives or benefits offered by an employer to employees who participate in a smoking cessation program shall not be deemed to be an unlawful practice in violation of this section.

KRS 344.120 Refusal to rent or sell public accommodations unlawful.

Except as otherwise provided in KRS 344.140 and 344.145, it is an unlawful practice for a person to deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation, resort, or amusement, as defined in KRS 344.130, on the ground of disability, race, color, religion, or national origin.

KRS 344.200 Complaints of discrimination -- Procedure -- Conciliation agreements -- Enforcement.

- (1) An individual claiming to be aggrieved by an unlawful practice other than a discriminatory housing practice, a member of the commission, or the Attorney General may file with the commission a written sworn complaint stating that an unlawful practice has been committed, setting forth the facts upon which the complaint is based, and setting forth facts sufficient to enable the commission to identify the persons charged (referred to as the respondent in this section, KRS 344.210, 344.230, and 344.240). The commission shall make reasonable accommodations to assist persons with disabilities in filing a written sworn complaint. The commission staff or a person designated pursuant to its administrative regulations shall promptly investigate the allegations of unlawful practice set forth in the complaint and shall within five (5) days furnish the respondent with a copy of the complaint. The complaint must be filed within one hundred eighty (180) days after the alleged unlawful practice occurs.
- (2) The commission or an individual designated pursuant to its administrative regulations shall determine within thirty (30) days after the complaint has been filed whether there is probable cause to believe the respondent has engaged in an unlawful practice. If it is determined that there is no probable cause to believe that the respondent has engaged in an unlawful practice, the commission shall issue an order dismissing the complaint and shall furnish a copy of the order to the complainant, the respondent, the Attorney General, and any other public officers and persons that the commission deems proper.
- (3) The complainant, within ten (10) days after receiving a copy of the order dismissing the complaint, may file with the commission an application for reconsideration of the order. Upon receiving a reconsideration application, the commission or an individual designated pursuant to administrative regulation shall make a new determination within ten (10) days whether there is probable cause to believe that the respondent has engaged in an unlawful practice. If it is determined that there is no probable cause to believe that the respondent has engaged in an unlawful practice, the commission shall issue an order dismissing the complaint and furnishing a copy of the order to the complainant, the respondent, the Attorney General, and any other public officers and persons that the commission deems proper.
- (4) If the staff determines, after investigation, or if the commission determines after the review provided for in subsection (3) of this section that there is probable cause to believe that the respondent has engaged in an unlawful practice, the commission staff shall endeavor to eliminate the alleged unlawful practice by conference, conciliation, and persuasion. The terms of a conciliation agreement reached with a respondent may require him to refrain from the commission of unlawful discriminatory practices in the future and make any further provisions as may be agreed upon between the commission or its staff and the respondent. If a conciliation agreement is entered into, the commission shall issue and serve on the complainant an order stating its terms. A copy of the order shall be delivered to the respondent, the Attorney General, and any other public officers and persons that the commission deems proper. Except for the terms of the conciliation agreement, neither the commission nor any officer or employee thereof shall make public, without the written consent of the complainant and the respondent, information concerning efforts in a particular case to eliminate an unlawful practice by conference, conciliation, or persuasion whether or not there is a determination of probable cause or a conciliation agreement.

- (5) At the expiration of one (1) year from the date of a conciliation agreement, and at other times in its reasonable discretion, the commission staff may investigate whether the terms of the agreement have been and are being complied with by the respondent. Upon a finding that the terms of the agreement are not being complied with by the respondent, the commission shall take whatever action it deems appropriate to assure compliance.
- (6) At any time after a complaint is filed, the commission may file an action in the Circuit Court in a county in which the subject of the complaint occurs, or in a county in which a respondent resides or has his principal place of business, seeking appropriate temporary relief against the respondent, pending final determination of proceedings including an order or decree restraining him from doing or procuring any act tending to render ineffectual any order the commission may enter with respect to the complaint. The court shall have power to grant temporary relief or a restraining order as it deems just and proper.
- (7) Nothing in this section shall apply to any discriminatory housing practice.

KRS 344.230 Orders of commission -- Nature of affirmative action.

- (1) If the commission determines that the respondent has not engaged in an unlawful practice, the commission shall issue a final order in accordance with the provisions of KRS Chapter 13B dismissing the complaint. A copy of the order shall be delivered to the complainant, the respondent, the Attorney General, and any other public officers and persons that the commission deems proper.
- (2) If the commission determines that the respondent has engaged in an unlawful practice, the commission shall issue a final order requiring the respondent to cease and desist from the unlawful practice and to take affirmative action as in the judgment of the commission will carry out the purposes of this chapter. A copy of the final order shall be delivered to the respondent, the complainant, the Attorney General, and to any other public officers and persons that the commission deems proper.
- (3) Affirmative action ordered under this section may include, but is not limited to:
 - (a) Hiring, reinstatement, or upgrading of employees with or without back pay. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.
 - (b) Admission or restoration of individuals to union membership, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program, or other occupational training or retraining program, and the utilization of objective criteria in the admission of individuals to such programs.
 - (c) Admission of individuals to a place of public accommodation, resort, or amusement.
 - (d) The extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges, and services of the respondent.
 - (e) Reporting as to the manner of compliance.
 - (f) Posting notices in conspicuous places in the respondent's place of business in form prescribed by the commission.
 - (g) Sale, exchange, lease, rental, assignment, or sublease of real property to an individual.
 - (h) Payment to the complainant of damages for injury caused by an unlawful practice including compensation for humiliation and embarrassment, and expense incurred by the complainant in obtaining alternative housing accommodations and for other costs actually incurred by the complainant as a direct result of an unlawful practice.
- (4) The commission may publish or cause to be published the names of persons who have been determined to have engaged in an unlawful practice.

KRS 344.240 Scope of and procedure for judicial review -- Hearing -- Appeal.

- (1) Any complainant, respondent, or intervenor aggrieved by a final order of the commission, including a final order dismissing any complaint or stating the terms of a conciliation agreement, may obtain judicial review, and the commission may obtain an order of the court for enforcement of its final order, in a proceeding brought in the Circuit Court in a county in which the alleged unlawful practice which is the subject of the final order or complaint occurs or in which a respondent resides or has his principal place of business.
- (2) Except for a discriminatory housing practice, if the commission has failed to schedule a hearing in accordance with KRS 344.210(1) or has failed to issue a final order within one hundred eighty (180) days after the complaint is filed, the complainant, respondent, Attorney General, or an intervenor may petition the Circuit Court in a county in which the alleged unlawful practice set forth in the complaint occurs or in which the petitioner resides or has his principal place of business for an order directing the commission to schedule a hearing or to issue its final order. The court shall follow the procedure set forth in KRS Chapter 13B and this section so far as applicable.
- (3) If before the expiration of sixty (60) days after the date of the commission order is entered for a discriminatory housing practice and no petition for review has been filed under subsection (1) of this section, any person entitled to under the discriminatory housing practice order may petition for a decree enforcing the order in the Circuit Court for the county in which the discriminatory housing practice is alleged to have occurred.
- (4) Except for subsection (2) of this section, all provisions in this section shall apply to orders issued in a discriminatory housing practice proceeding.

KRS 344.280 Conspiracy to violate chapter unlawful.

It shall be an unlawful practice for a person, or for two (2) or more persons to conspire:

- (1) To retaliate or discriminate in any manner against a person because he has opposed a practice declared unlawful by this chapter, or because he has made a charge, filed a complaint, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under this chapter; or
- (2) To aid, abet, incite, compel, or coerce a person to engage in any of the acts or practices declared unlawful by this chapter; or
- (3) To obstruct or prevent a person from complying with the provisions of this chapter or any order issued thereunder;
- (4) To resist, prevent, impede, or interfere with the commission, or any of its members or representatives, in the lawful performance of duty under this chapter; or
- (5) To coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by KRS 344.360, 344.367, 344.370, 344.380, or 344.680.

KRS 344.360 Unlawful housing practices - Design and construction requirements.

It is an unlawful housing practice for a real estate operator, or for a real estate broker, real estate salesman, or any person employed by or acting on behalf of any of these:

- (1) To refuse to sell, exchange, rent, or lease, or otherwise deny to or withhold, real property from any person because of race, color, religion, sex, familial status, disability, or national origin;
- (2) To discriminate against any person because of race, color, religion, sex, familial status, disability, or national origin in the terms, conditions, or privileges of the sale, exchange, rental, or lease of real property or in the furnishing of facilities or services in connection therewith;
- (3) To refuse to receive or transmit a bona fide offer to purchase, rent, or lease real property from any person because of race, color, religion, sex, familial status, disability, or national origin;

- (4) To refuse to negotiate for the sale, rental, or lease of real property to any person because of race, color, religion, sex, familial status, disability, or national origin;
- (5) To represent to any person that real property is not available for inspection, sale, rental, or lease when it is so available, or to refuse to permit any person to inspect real property because of his race, color, religion, sex, familial status, disability, or national origin;
- (6) To make, print, circulate, post, or mail or cause to be printed, circulated, posted, or mailed an advertisement or sign, or to use a form of application for the purchase, rental, or lease of real property, or to make a record of inquiry in connection with the prospective purchase, rental, or lease of real property, which indicates, directly or indirectly, a limitation, specification, or discrimination as to race, color, religion, sex, familial status, disability, or national origin or an intent to make such a limitation, specification, or discrimination;
- (7) To offer, solicit, accept, use, or retain a listing of real property for sale, rental, or lease with the understanding that any person may be discriminated against in the sale, rental, or lease of that real property or in the furnishing of facilities or services in connection therewith because of his race, color, religion, sex, familial status, disability, or national origin;
- (8) To otherwise deny to or withhold real property from any person because of his race, color, religion, sex, familial status, disability, or national origin;
- (9) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a housing accommodation to any buyer or renter because of a disability of:
 - (a) That buyer or renter;
 - (b) A person residing in or intending to reside in that housing accommodation after it is so sold, rented, or made available; or
 - (c) Any person associated with that buyer or renter; or
- (10) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such housing accommodation, because of a disability of:
 - (a) That person; or
 - (b) A person residing in or intending to reside in that housing accommodation after it is sold, rented, or made available; or
 - (c) Any person associated with that person.
- (11) For purposes of this section, discrimination includes:
 - (a) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by a person, if the modifications may be necessary to afford the person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.
 - (b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford the person equal opportunity to use and enjoy a housing accommodation; or
 - (c) In connection with the design and construction of covered multifamily housing accommodations for first occupancy after January 1, 1993, a failure to design and construct those housing accommodations in a manner ensuring that they have at least one (1) entrance on an accessible route unless impractical to do so because of the terrain or unusual characteristics of the site. Housing accommodations with a building entrance on an accessible route shall comply with the following requirements:
 - 1. The public use and common use portions of the housing accommodations shall be readily accessible to and usable by disabled persons;
 - 2. All the doors designed to allow passage into and within all premises within the housing accommodations shall be sufficiently wide to allow passage by disabled persons in wheelchairs; and

3. All premises within the housing accommodations shall contain the following features of adaptive design:
 - a. An accessible route into and through the housing accommodation;
 - b. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - c. Reinforcements in bathroom walls to allow later installation of grab bars; and
 - d. Usable kitchens and bathrooms so that an individual in a wheelchair can maneuver about the space.
- (12) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically disabled persons, (commonly cited as "ANSI A117.1 - 1986") suffices to satisfy the requirements of subsection (11)(c)3. of this section.
- (13) As used in subsection (11) of this section, the term "covered multifamily housing accommodation" means:
 - (a) Buildings consisting of four (4) or more units if the buildings have one (1) or more elevators; and
 - (b) Ground floor units in other buildings consisting of two (2) or more units.
- (14) Nothing in this section requires that a housing accommodation be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

KRS 344.400 Unlawful practices in connection with credit transactions - Exceptions.

- (1) It shall be an unlawful practice for any person, whether acting for himself or another, in connection with any credit transaction because of race, color, religion, national origin or sex to:
 - (a) deny credit to any person;
 - (b) increase the charges or fees for or collateral required to secure any credit extended to any person;
 - (c) restrict the amount or use of credit extended or impose different terms or conditions with respect to the credit extended to any person or any item or service related thereto;
 - (d) attempt to do any of the unlawful practices defined in this section.
- (2) The provisions of this section shall not prohibit any party to a credit transaction from considering the credit history of any individual applicant.
- (3) The provisions of this section shall not prohibit any party to a credit transaction from considering the application of Kentucky law on dower, curtesy, descent and distribution to the particular case or from taking reasonable action thereon.

KRS 344.550 Definitions for KRS 344.550 to 344.575.

For purposes of KRS 344.550 to 344.575:

- (1) "Educational institution" means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one (1) school, college, or department which are administratively separate units, the term means each school, college, or department.
- (2) "Funding recipient" means any department, agency, special purpose district, instrumentality of state or local government, college, university, postsecondary institution, public system of higher education, local educational agency, system of vocational education, corporation, partnership, private organization or sole proprietorship receiving state financial assistance for any education program or activity.

KRS 344.555 Prohibition against sex discrimination under any education program receiving state financial assistance -- Exceptions.

- (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving state financial assistance, except that:
- (a) In regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;
 - (b) This section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of the organization;
 - (c) This section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marines;
 - (d) In regard to admissions, this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one (1) sex;
 - (e) This section shall not apply to membership practices of a social fraternity or social sorority which is exempt under Section 501(a) of the Federal Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at an institution of higher education, or of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are exempt under Section 501(a) of the Federal Internal Revenue Code, the membership of which has traditionally been limited to persons of one (1) sex and principally to persons of less than nineteen (19) years of age;
 - (f) This section shall not apply to any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or any program or activity of any secondary school or educational institution specifically for the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or the selection of students to attend any such conference;
 - (g) This section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one (1) sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and
 - (h) This section shall not apply to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received the award in any pageant in which the attainment of the award is based upon a combination of factors related to the personal appearance, poise, and talent of the individual and in which participation is limited to individuals of one (1) sex only, so long as the pageant is in compliance with other nondiscrimination provisions of state and federal law.
- (2) Nothing contained in subsection (1) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one (1) sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any state supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, state, section, or other area. However, nothing in this subsection shall be construed to prevent the consideration in any hearing or proceeding under KRS 344.550 to 344.575 of statistical evidence tending to show that an imbalance exists with respect to the participation in, or receipt of the benefits of, any program or activity by the members of one (1) sex.

KRS 344.560 Agencies and departments required to effectuate KRS 344.555.

Each state department and agency which is empowered to extend state financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, shall effectuate the provisions of KRS 344.555 with respect to such program or activity by promulgating administrative regulations of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. This section shall not apply to a state department or agency which extends state financial assistance to an education institution if the amount of state financial assistance extended by the state department or agency represents less than two percent (2%) of the total state financial assistance received by the education institution. Compliance with any requirement adopted pursuant to this section shall be effected:

(1) By the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which the noncompliance has been found; or

(2) By any other means authorized by law.

However, no action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the chief officer of the state department or agency shall file with the committees of the House of Representatives and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty (30) days have elapsed after the filing of such report.

KRS 344.600 Complaint on discriminatory housing practice -- Investigation.

(1) (a) 1. An aggrieved person may, not later than one (1) year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the commission alleging a discriminatory housing practice. All other complaints of an alleged discrimination practice must be filed pursuant to the procedure described in KRS 344.200. The commission, on its own initiative, or the Attorney General may also file a complaint alleging a discriminatory housing practice.

2. The complaint shall be in writing and shall contain the information and be in a form required by the commission.

3. The commission may also investigate housing practices to determine whether a complaint should be brought under this section.

(b) Upon the filing of the discriminatory housing practice complaint:

1. The commission shall within five (5) days serve written notice upon the aggrieved person acknowledging the filing and advising the aggrieved person of the time limits and choice of forums provided in KRS 344.635.

2. The commission shall, not later than ten (10) days after the filing or the identification of an additional respondent under subsection (2) of this section, serve on the respondent a written notice identifying the alleged discriminatory housing practice and advising the respondent of the procedural rights and obligations of respondents under this chapter, together with a copy of the original complaint;

3. Each respondent shall file, not later than ten (10) days after receipt of notice from the commission, an answer to the complaint; and

4. The commission shall commence an investigation of the alleged discriminatory housing

practice within thirty (30) days of filing the complaint and complete the investigation within one hundred (100) days after the filing of the complaint, unless it is impracticable to do so.

- (c) If the commission is unable to complete the investigation within one hundred (100) days after the filing of the complaint, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.
 - (d) Complaints and answers shall be under oath or affirmation, and may be reasonably and fairly amended at any time.
- (2) (a) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under subsection (1) of this section, to that person, from the commission.
- (b) The notice, in addition to meeting the requirements of subsection (1) of this section, shall explain the basis for the commission's belief that the person to whom the notice is addressed is properly joined as a respondent.

KRS 344.620 Civil action for preliminary or temporary relief - Effect.

- (1) If the commission concludes at any time following the filing of a discriminatory housing complaint that prompt judicial action is necessary to carry out the purposes of this chapter, the commission may initiate a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section.
- (2) The commission shall promptly commence and maintain an action.
- (3) Any restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Kentucky Rules of Civil Procedure.
- (4) The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under KRS 344.600, 344.605, 344.635, 344.640, or 344.645.

KRS 344.625 Probable cause determination - Issuance of charge.

- (1) The commission shall determine, based on the facts, whether probable cause exists to believe that a discriminatory housing practice made unlawful under this chapter has occurred or is about to occur.
- (2) The commission shall make the determination under subsection (1) of this section not later than the one hundredth day after the date a complaint is filed unless:
 - (a) It is impracticable to make the determination; or
 - (b) The commission has approved a conciliation agreement relating to the discriminatory housing complaint.
- (3) If it is impracticable to make the determination within the time period provided by subsection (2) of this section, the commission shall notify the complainant and respondent in writing of the reasons for the delay.
- (4) If the commission determines that probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall, except as provided in subsection (6) of this section, immediately issue a charge on behalf of the aggrieved person for further proceeding under KRS 344.635.
- (5) The charge:
 - (a) Shall consist of a concise statement of the facts upon which the commission has found probable cause to believe that a discriminatory housing practice has occurred or is about to occur;
 - (b) Shall be based on the final investigative report; and
 - (c) Need not be limited to the facts or grounds alleged in the complaint filed under KRS 344.600.

- (6) If the commission determines that the matter involves the legality of any state or local zoning or other land use law or ordinance, the commission shall follow the procedures described in KRS 344.665.
- (7) If the commission determines that no probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall promptly dismiss the complaint. The commission shall make public disclosure of each dismissal at the request of the respondent.
- (8) The commission may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under a federal or state law seeking relief with respect to that discriminatory housing practice.

KRS 344.635 Election of method for securing relief.

When a discriminatory housing charge is filed under KRS 344.625, a complainant, a respondent, or the aggrieved person on whose behalf the complaint is filed, may elect to have the claims asserted in that charge decided in a civil action under KRS 344.670, in lieu of an administrative hearing before the commission under KRS 344.640.

- (1) The election shall be made not later than twenty (20) days after the receipt by the electing person of service under KRS 344.630, from the commission or, in the case of the commission, not later than twenty (20) days after service to the respondent and complainant.
- (2) The person making the election shall give written notice of doing so to the commission and to all other complainants and respondents to whom the charge relates

KRS 344.645 Final order of commission - Civil penalty.

- (1) If the commission finds that a respondent has engaged or is about to engage in a discriminatory housing practice, the commission shall promptly issue a final order for appropriate relief, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. The final order may, to vindicate the public interest, assess a civil penalty against the respondent:
 - (a) In an amount not exceeding ten thousand dollars (\$10,000) if the respondent has not been adjudged to have committed any prior discriminatory housing practice;
 - (b) In an amount not exceeding twenty-five thousand dollars (\$25,000) if the respondent has been adjudged to have committed one (1) other discriminatory housing practice during the five (5) year period ending on the date of the filing of this charge; and
 - (c) In an amount not exceeding fifty thousand dollars (\$50,000) if the respondent has been adjudged to have committed two (2) or more discriminatory housing practices during the seven (7) year period ending on the date of the filing of this charge; except that if the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in paragraphs (b) or (c) of this subsection may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.
- (2) No final order shall affect any contract, sale, encumbrance, or lease consummated before the issuance of the final order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the discriminatory housing charge.
- (3) If the commission finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, the commission shall enter a final order dismissing the charge. The commission shall make public disclosure of the dismissal.
- (4) The commission shall issue a final order in accordance with the provisions of KRS Chapter 13B.

KRS 344.650 Civil action for relief from discriminatory housing practice or breach of conciliation agreement - Time limitation.

- (1) An aggrieved person may file a civil action in an appropriate Circuit Court not later than two (2) years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into as the result of an alleged discriminatory housing practice, whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing practice or breach.
- (2) The computation of the two (2) year period shall not include any time during which an administrative proceeding under this chapter is pending with respect to a complaint or charge of an alleged discriminatory housing practice. This subsection does not apply to actions arising from a breach of a conciliation agreement entered into as a result of an alleged discriminatory housing practice.
- (3) An aggrieved person may file a civil action under this section whether or not a complaint has been filed under KRS 344.600, and without regard to the status of any such complaint, but:
 - (a) If the commission has obtained a conciliation agreement with the consent of an aggrieved person, the aggrieved person may not file an action under this section with respect to the alleged discriminatory housing practice which forms the basis for the complaint except for the purposes of enforcing the terms of the conciliation agreement; and
 - (b) An aggrieved person may not file a civil action under this section with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the commission if the commission has commenced a hearing.

KRS 344.655 Powers of Circuit Court.

Upon application by a person alleging a discriminatory housing practice or a person against whom a discriminatory housing practice is alleged, the Circuit Court may:

- (1) Appoint an attorney for the person; or
- (2) Authorize the commencement or continuation of a civil action under KRS 344.650, without the payment of fees, costs, or security, if in the opinion of the court the person is financially unable to bear the cost of such action.

KRS 344.660 Damages and injunctive relief available.

- (1) In a civil action under KRS 344.650, if the Circuit Court finds that a discriminatory housing practice has occurred or is about to occur, the Circuit Court may award to the plaintiff actual and punitive damages, and subject to subsection (3) of this section, may grant as relief, as the court deems appropriate any permanent or temporary injunction, restraining order, or other order including an order enjoining the defendant from engaging in the practice or ordering affirmative action as appropriate.
- (2) In a civil action under KRS 344.240, 344.650, or 344.665, the court, in its discretion, may award the prevailing complainant, a reasonable attorneys' fee and costs. The court, in its discretion, may award the prevailing respondent a reasonable attorneys' fee and costs if the respondent establishes that the complaint upon which the action was based was brought in bad faith. Whether a party has committed bad faith shall be determined in accordance with Rule 11 of the Kentucky Rules of Civil Procedure. The state shall not be liable in any event for fees and costs.
- (3) However, no relief provided under this section shall effect any contract, sale, encumbrance, or lease consummated before the granting of that relief, and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of the complaint of a discriminatory housing practice complaint with the commission or the filing of a civil action.

KRS 344.665 Institution of civil actions by commission or Attorney General -- Powers of court.

- (1) The commission or the Attorney General may file a civil action in Circuit Court for appropriate relief if the commission or Attorney General has probable cause to believe that:
- (a) Any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any housing right granted by this chapter; or
 - (b) Any group of persons has been denied any housing right granted by this chapter and the denial raises an issue of general public importance; or
 - (c) Any state or local zoning or land use law is a discriminatory housing practice. The action shall be brought within eighteen (18) months of the occurrence or termination of the alleged discriminatory practice; or
 - (d) A conciliation agreement has been breached.
The action shall be brought within ninety (90) days of the commission or Attorney General receiving notice of the breach.
- (2) In an action under this section, the court:
- (a) May award preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation to assure the full enjoyment of the rights granted by this chapter;
 - (b) May award other appropriate relief, including compensatory and punitive damages;
 - (c) May award a reasonable attorney's fee and costs to the prevailing party to the same extent allowed in KRS 344.660. The state shall not be liable in any event for fees and costs; and
 - (d) May, to vindicate the public interest, assess a civil penalty against the respondent in an amount that does not exceed:
 - 1. Fifty thousand dollars (\$50,000) for a first violation; and
 - 2. One hundred thousand dollars (\$100,000) for a second or subsequent violation.
 - (e) A person may intervene in an action under this section if the person is:
 - 1. An aggrieved person to the discriminatory housing practice; or
 - 2. A party to a conciliation agreement concerning the discriminatory housing practice.

KRS 344.670 Civil action by commission on behalf of aggrieved person electing judicial proceeding.

- (1) If an election is made under KRS 344.635 for a judicial rather than an administrative proceeding, the commission shall not later than thirty (30) days after the election is made, commence and maintain a civil action on behalf of the aggrieved person in the appropriate Circuit Court seeking relief under this section.
- (2) Any aggrieved person with respect to the issues to be determined in a civil action under this section may intervene as of right in that civil action.
- (3) If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief under KRS 344.660 which a court could grant with respect to a discriminatory housing practice in a civil action under KRS 344.650. Any relief granted under KRS 344.660 that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under KRS 344.650 shall also accrue to that aggrieved person in a civil action under this section. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award relief if that aggrieved person has not complied with discovery orders entered by the court.

KRS 344.675 Appointment of attorney and award of fees.

- (1) In any administrative proceeding brought under KRS 344.640 or 344.645 or any court proceeding arising therefrom, including actions described in KRS 344.240 or any civil action, the commission or the court, as the case may be, upon application of either party, and in its discretion, may:
 - (a) Appoint an attorney for the person; or
 - (b) Award a reasonable attorneys' fee and costs to the prevailing party to the same extent allowed in KRS 344.660, or both. The state shall not be liable in any event for fees and costs.
- (2) The state through the commission's attorney or the Attorney General shall maintain any civil action on behalf of the complainant or aggrieved party.
- (3) Where the parties to an alleged discriminatory housing practice have elected an administrative determination rather than a civil adjudication, the commission staff attorney shall represent the complainant or aggrieved party before the commission.

C. DOMESTIC VIOLENCE PROTECTIVE ORDERS

KRS 403.715 Interpretation of KRS 403.715 to 403.785.

KRS 403.715 to 403.785 shall be interpreted to:

- (1) Allow victims to obtain effective, short-term protection against further wrongful conduct in order that their lives may be as secure and as uninterrupted as possible;
- (2) Expand the ability of law enforcement officers to effectively respond to further wrongful conduct so as to prevent future incidents and to provide assistance to the victims;
- (3) Provide peace officers with the authority to immediately apprehend and charge for violation of an order of protection any person whom the officer has probable cause to believe has violated an order of protection and to provide courts with the authority to conduct contempt of court proceedings for these violations;
- (4) Provide for the collection of data concerning incidents of domestic violence and abuse in order to develop a comprehensive analysis of the numbers and causes of such incidents; and
- (5) Supplement and not repeal or supplant any duties, responsibilities, services, or penalties under KRS Chapters 209, 209A, and 620.

KRS 403.720 Definitions for KRS 403.715 to 403.785.

As used in KRS 403.715 to 403.785:

- (1) "Domestic violence and abuse" means physical injury, serious physical injury, stalking, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple;
- (2) "Family member" means a spouse, including a former spouse, a grandparent, a grandchild, a parent, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim;
- (3) "Foreign protective order" means any judgment, decree, or order of protection which is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 that was issued on the basis of domestic violence and abuse;
- (4) "Global positioning monitoring system" means a system that electronically determines a person's location through a device worn by the person which does not invade his or her bodily integrity and which transmits the person's latitude and longitude data to a monitoring entity;
- (5) "Member of an unmarried couple" means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together;
- (6) "Order of protection" means an emergency protective order or a domestic violence order and includes a foreign protective order; and

(7) "Substantial violation" means criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protection.

KRS 403.725 Petition for order of protection -- Venue -- Verified contents -- Concurrent jurisdiction -- Protocols for access and supplemental jurisdiction -- Referral.

- (1) A petition for an order of protection may be filed by:
 - (a) A victim of domestic violence and abuse; or
 - (b) An adult on behalf of a victim who is a minor otherwise qualifying for relief under this subsection.
- (2) The petition may be filed in the victim's county of residence or a county where the victim has fled to escape domestic violence and abuse.
- (3) The petition shall be verified and contain:
 - (a) The name, age, address, occupation, residence, and school or postsecondary institution of the petitioner;
 - (b) The name, age, address, occupation, residence, and school or postsecondary institution of the person or persons who have engaged in the alleged act or acts complained of in the petition;
 - (c) The facts and circumstances which constitute the basis for the petition;
 - (d) The date and place of the marriage of the parties, if applicable; and
 - (e) The names, ages, and addresses of the petitioner's minor children, if applicable.
- (4) The petition shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief by the circuit clerk or by another individual authorized by the court to provide and verify petitions in emergency situations, such as law enforcement officers, Commonwealth's or county attorneys, and regional rape crisis centers or domestic violence shelters.
- (5) All petitions requested, completed, and signed by persons seeking protection under this chapter shall be accepted and filed with the court.
- (6)
 - (a) Jurisdiction over petitions filed under this chapter shall be concurrent between the District Court and Circuit Court and a petition may be filed by a petitioner in either court, except that a petition shall be filed in a family court if one has been established in the county where the petition is filed.
 - (b) The Court of Justice shall provide a protocol for twenty-four (24) hour access to orders of protection in each county with any protocol, whether statewide or local, being subject to Supreme Court review and approval of the initial protocol and any subsequent amendments. This protocol may allow for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection.
 - (c) The Court of Justice may authorize by rule that petitions in a specific county be filed in accordance with a supplemental jurisdictional protocol adopted for that county. This protocol may provide for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection.
 - (d)
 1. In addition to the protocols for twenty-four (24) hour access established under paragraphs (b) and (c) of this subsection, before January 1, 2019, the Court of Justice shall provide protocols for filing, including electronic filing, of petitions for orders of protection at those regional rape crisis centers designated under KRS 211.600, or regional domestic violence shelters designated under KRS 209A.045, that elect to participate in any county's twenty-four (24) hour access protocol.
 2. These protocols shall be subject to Supreme Court review for approval of the initial protocol and any subsequent amendments.

- (7) Any judge to whom a petition is referred under subsection (6) of this section shall have full authority to review and hear a petition and subsequently grant and enforce an order of protection.
- (8) If the judge of a court in which there is a pending request for modification or enforcement of an existing order of protection is unavailable or unable to act within a reasonable time, the proceedings may be conducted by any judge of the county in accordance with court rules.

KRS 403.735 Hearing on petition for order of protection -- Criteria to assess appropriate relief and sanctions -- Continuance of hearing and emergency protective order.

- (1) Prior to or at a hearing on a petition for an order of protection:
 - (a) The court may obtain the respondent's Kentucky criminal and protective order history and utilize that information to assess what relief and which sanctions may protect against danger to the petitioner or other person for whom protection is being sought, with the information so obtained being provided to the parties in accordance with the Rules of Civil Procedure; and
 - (b) If the petitioner or respondent is a minor, the court shall inquire whether the parties attend school in the same school system to assist the court in imposing conditions in the order that have the least disruption in the administration of education to the parties while providing appropriate protection to the petitioner.
- (2)
 - (a) If the adverse party is not present at the hearing ordered pursuant to KRS 403.730 and has not been served, a previously issued emergency protective order shall remain in place, and the court shall direct the issuance of a new summons for a hearing set not more than fourteen (14) days in the future. If service has not been made on the adverse party before that hearing or a subsequent hearing, the emergency protective order shall remain in place, and the court shall continue the hearing and issue a new summons with a new date and time for the hearing to occur, which shall be within fourteen (14) days of the originally scheduled date for the continued hearing. The court shall repeat the process of continuing the hearing and reissuing a new summons until the adverse party is served in advance of the scheduled hearing. If service has not been made on the respondent at least seventy-two (72) hours prior to the scheduled hearing, the court may continue the hearing no more than fourteen (14) days in the future. In issuing the summons, the court shall simultaneously transmit a copy of the summons or notice of its issuance and provisions to the petitioner.
 - (b) The provisions of this section permitting the continuance of an emergency protective order shall be limited to six (6) months from the issuance of the emergency protective order. If the respondent has not been served within that period, the order shall be rescinded without prejudice. Prior to the expiration of the emergency protective order, the court shall provide notice to the petitioner stating that, if the petitioner does not file a new petition, the order shall be rescinded without prejudice.

KRS 403.740 Domestic violence order -- Restrictions -- Temporary child support -- Expiration and reissuance.

- (1) Following a hearing ordered under KRS 403.730, if a court finds by a preponderance of the evidence that domestic violence and abuse has occurred and may again occur, the court may issue a domestic violence order:
 - (a) Restraining the adverse party from:
 - 1. Committing further acts of domestic violence and abuse;
 - 2. Any unauthorized contact or communication with the petitioner or other person specified by the court;
 - 3. Approaching the petitioner or other person specified by the court within a distance specified in the order, not to exceed five hundred (500) feet;

4. Going to or within a specified distance of a specifically described residence, school, or place of employment or area where such a place is located; and
5. Disposing of or damaging any of the property of the parties;
- (b) Directing or prohibiting any other actions that the court believes will be of assistance in eliminating future acts of domestic violence and abuse, except that the court shall not order the petitioner to take any affirmative action;
- (c) Directing that either or both of the parties receive counseling services available in the community in domestic violence and abuse cases; and
- (d) Additionally, if applicable:
 1. Directing the adverse party to vacate a residence shared by the parties to the action;
 2. Utilizing the criteria set forth in KRS 403.270, 403.320, and 403.822, grant temporary custody, subject to KRS 403.315; and
 3. Utilizing the criteria set forth in KRS 403.211, 403.212, and 403.213, award temporary child support.
- (2) In imposing a location restriction described in subsection (1)(a)4. of this section, the court shall:
 - (a) Afford the petitioner and respondent, if present, an opportunity to testify on the issue of the locations and areas from which the respondent should or should not be excluded;
 - (b) Only impose a location restriction where there is a specific, demonstrable danger to the petitioner or other person protected by the order;
 - (c) Specifically describe in the order the locations or areas prohibited to the respondent; and
 - (d) Consider structuring a restriction so as to allow the respondent transit through an area if the respondent does not interrupt his or her travel to harass, harm, or attempt to harass or harm the petitioner.
- (3) When temporary child support is granted under this section, the court shall enter an order detailing how the child support is to be paid and collected. Child support ordered under this section may be enforced utilizing the same procedures as any other child support order.
- (4) A domestic violence order shall be effective for a period of time fixed by the court, not to exceed three (3) years, and may be reissued upon expiration for subsequent periods of up to three (3) years each. The fact that an order has not been violated since its issuance may be considered by a court in hearing a request for a reissuance of the order.

KRS 403.745 Duration of emergency protective order and domestic violence order -- Prohibited costs and conditions -- Mutual orders of protection -- Amendment - - Expungement.

- (1) An emergency protective order and a domestic violence order shall become effective and binding on the respondent when the respondent is given notice of the existence and terms of the order by a peace officer or the court or upon personal service of the order, whichever is earlier. A peace officer or court giving notice of an unserved order shall make all reasonable efforts to arrange for the order's personal service upon the respondent. Once effective, a peace officer or the court may enforce the order's terms and act immediately upon their violation.
- (2) Costs, fees, or bond shall not be assessed against or required of a petitioner for any filing, hearing, service, or order authorized by or required to implement KRS 403.715 to 403.785.
- (3) A court shall not require mediation, conciliation, or counseling prior to or as a condition of issuing an order of protection.
- (4) Mutual orders of protection may be issued only if:
 - (a) Separate petitions have been filed by both parties; and
 - (b) The orders are written with sufficient specificity to allow any peace officer to identify which party has violated the order.
- (5) Upon proper filing of a motion, either party may seek to amend an order of protection.
- (6) Testimony offered by an adverse party in a hearing ordered pursuant to KRS 403.730 shall not be admissible in any criminal proceeding involving the same parties, except for purposes of impeachment.

- (7)
- (a) The Court of Justice, county and Commonwealth's attorneys, law enforcement agencies, and victim services organizations may jointly operate a domestic violence intake center to assist persons who apply for relief under KRS 403.715 to 403.785.
 - (b) In cases where criminal conduct is alleged, a court may suggest that a petitioner voluntarily contact the county attorney. A court may not withhold or delay relief if the petitioner elects to not contact the county attorney.
- (8) A person's right to apply for relief under this chapter shall not be affected by that person leaving his or her residence to avoid domestic violence and abuse.
- (9) A court shall order the omission or deletion of the petitioner's address and the address of any minor children from any orders or documents to be made available to the public or to any person who engaged in the acts complained of in the petition.
- (10) (a) If a petition under KRS 403.715 to 403.785 did not result in the issuance of a domestic violence order, the court in which the petition was heard may for good cause shown order the expungement of the records of the case if:
- 1. Six (6) months have elapsed since the case was dismissed; and
 - 2. During the six (6) months preceding the expungement request, the respondent has not been bound by an order of protection issued for the protection of any person, including an order of protection as defined in KRS 456.010.
- (b) As used in this subsection, "expungement" has the same meaning as in KRS 431.079.

KRS 403.750 Order of protection for family member or member of unmarried couple upon filing of petition or action under KRS Chapter 403.

- (1) Any family member or any member of an unmarried couple may file for and receive protection under this chapter from domestic violence and abuse, notwithstanding the existence of or intent to file an action under this chapter by either party.
- (2) (a) Any family member or member of an unmarried couple who files a petition for an order of protection based upon domestic violence or abuse shall make known to the court any custody or divorce actions involving both the petitioner and the respondent that are pending in any court.
- (b) If the petitioner or respondent to an order of protection initiates an action under this chapter, the party initiating the action shall make known to the court the existence and status of any orders of protection, which shall remain effective and enforceable until superseded by order of the court in which the case is filed.
- (3) If a family member or member of an unmarried couple files an action for dissolution of marriage, child custody, or visitation, the court hearing the case shall have jurisdiction to issue an order of protection upon the filing of a verified motion either at the commencement or during the pendency of the action.

KRS 403.7505 Certification standards for mental health professionals providing court-mandated treatment -- List of certified providers to Administrative Office of the Courts -- Collection of data.

- (1) The Cabinet for Health and Family Services shall, by administrative regulations promulgated pursuant to KRS Chapter 13A, establish certification standards for mental health professionals providing court-mandated treatment services for domestic violence offenders.
- (2) The standards created by the cabinet shall be based on the following principles:
- (a) Domestic violence is a pattern of coercive control which includes physical, sexual, psychological, and environmental abuse, and is considered to be criminal conduct;
 - (b) The primary goal of treatment programs for domestic violence offenders shall be the cessation of violence which will provide for the safety of victims and their children; and
 - (c) Domestic violence offenders are responsible and shall be held accountable for the violence which they choose to perpetrate.

- (3) The standards created by the cabinet shall address the following:
- (a) Qualifications of providers of court-mandated domestic violence offender treatment services which shall include appropriate requirements for degree, experience, training, and continuing education;
 - (b) Procedures for application by providers to receive certification which shall include methods of appeal if certification is denied, and sanctions for noncompliance with the standards which may include revocation of certification;
 - (c) Admittance and discharge criteria for domestic violence offenders to enter court-mandated treatment services provided pursuant to this section;
 - (d) Written protocols for referral by a court to certified providers and for progress reports to be made to the court by providers;
 - (e) Contracts for domestic violence offenders to sign prior to entering court-ordered treatment services provided pursuant to this section. The contract shall specify that certified providers may contact the victims of the offender if the victim chooses to be contacted. The contract shall authorize the provider to release information regarding the offender's progress in treatment to the court, victims, probation and parole officers, and other individuals authorized by the court to receive the information;
 - (f) Written procedures in compliance with KRS 202A.400, 209.030, and 620.030;
 - (g) Payment protocols which require the offender to pay the actual cost for any court-mandated evaluation or treatment pursuant to this section, subject to the offender's ability to pay; and
 - (h) Other provisions which shall further the availability and quality of court-mandated domestic violence offender services.
- (4) The cabinet shall:
- (a) Maintain a list of providers certified pursuant to this section and regularly submit the list to the Administrative Office of the Courts; and
 - (b) Collect data from certified providers, which shall include demographic information and clinical characteristics on offenders served, number of offenders admitted into treatment and discharge conditions, total clinical services provided to offenders, and other information necessary to monitor the safety and effectiveness of services provided, to be provided upon request.
- (5) No person, association, or organization shall conduct, operate, maintain, advise, or advertise any program that provides court-ordered treatment services for domestic violence offenders without first obtaining or maintaining valid certification under this chapter. If the cabinet has cause to believe that court-ordered treatment services for domestic violence offenders are being provided by a person or entity that does not possess valid certification under this chapter, the cabinet may institute proceedings, in the Circuit Court of the county in which the person or entity is located or in Franklin Circuit Court, for injunctive relief to terminate the provision of those services.
- (6) Any person certified under this section shall submit quarterly to the cabinet:
- (a) Demographic information and clinical characteristics on offenders served;
 - (b) Number of offenders admitted into treatment and discharge conditions;
 - (c) Total clinical services provided to offenders; and
 - (d) Other information as required by administrative regulation.

KRS 403.751 Entry of summons or order of protection issued pursuant to KRS 403.715 to 403.785 into Law Information Network of Kentucky.

- (1) All forms, affidavits, and orders of protection issued or filed pursuant to KRS 403.715 to 403.785 which require entry into the Law Information Network of Kentucky shall be entered on forms prescribed by the Administrative Office of the Courts after consultation with the Justice and Public Safety Cabinet. If the provisions of an order of protection are contained in an order which

is narrative in nature, the prescribed form shall be used in addition to the narrative order.

- (2) The circuit clerk, in cooperation with the court, shall cause a copy of each summons or order issued pursuant to KRS 403.715 to 403.785, or foreign protective order, fully completed and authenticated pursuant to KRS 403.715 to 403.785, to be forwarded, by the most expedient means reasonably available and within twenty- four (24) hours following its filing with the clerk, to the appropriate agency designated for entry of orders of protection into the Law Information Network of Kentucky and to the agency assigned service. Any order or court record superseding, modifying, or otherwise affecting the status of an earlier summons or order shall likewise be forwarded by the circuit clerk to the appropriate Law Information Network of Kentucky entering agency and to the agency assigned service, if service is required. The clerk and the court shall comply with all provisions and guidelines of the Law Information Network of Kentucky for entry of the records.
- (3) Each agency designated for entry of summonses and orders issued pursuant to KRS 403.715 to 403.785, or foreign protective orders authenticated pursuant to this chapter, into the Law Information Network of Kentucky shall, consistent with the provisions and guidelines of the Law Information Network of Kentucky, enter the records immediately upon receipt of copies forwarded to the agency in accordance with subsection (2) of this section.

KRS 403.7521 Foreign protective orders -- Rebuttable presumption of validity -- Enforcement -- Civil and criminal proceedings mutually exclusive.

- (1) All foreign protective orders shall have the rebuttable presumption of validity. The validity of a foreign protective order shall only be determined by a court of competent jurisdiction. Until a foreign protective order is declared to be invalid by a court of competent jurisdiction, it shall be given full faith and credit by all peace officers and courts in the Commonwealth.
- (2) All peace officers shall treat a foreign protective order as a legal document valid in Kentucky, and shall make arrests for a violation thereof in the same manner as for a violation of an order of protection issued in Kentucky.
- (3) The fact that a foreign protective order has not been entered into the Law Information Network of Kentucky shall not be grounds for a peace officer not to enforce the provisions of the order unless it is readily apparent to the peace officer to whom the order is presented that the order has either expired according to a date shown on the order, or that the order's provisions clearly do not prohibit the conduct being complained of. Officers acting in good faith shall be immune from criminal and civil liability.
- (4) If the order has expired or its provisions do not prohibit the conduct being complained of, the officer shall not make an arrest unless the provisions of a Kentucky statute have been violated, in which case the peace officer shall take the action required by Kentucky law.
- (5) Civil proceedings and criminal proceedings for violation of a foreign protective order for the same violation of the protective order shall be mutually exclusive. Once either proceeding has been initiated, the other shall not be undertaken, regardless of the outcome of the original proceeding.

KRS 403.7524 Statement to assist out-of-state court in determining whether order issued under KRS 403.715 to 403.785 is entitled to full faith and credit.

- (1) In order to assist a court of another state in determining whether an order issued under KRS 403.715 to 403.785 is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265:
 - (a) All domestic violence orders shall include a statement certifying that the issuing court had jurisdiction over the parties and the matter, and that reasonable notice and opportunity to be heard has been given to the person against whom the order is sought sufficient to protect that person's right to due process; and
 - (b) All emergency protective orders shall include a statement certifying that notice and opportunity to be heard has been provided within the time required by state law, and

in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

- (2) The Administrative Office of the Courts shall prescribe the form to be used for the purposes of this section.

KRS 403.7527 Filing of foreign protective order and affidavit -- Certification by issuing court official -- Entry into Law Information Network of Kentucky.

- (1) A copy of a foreign protective order may be filed in the office of the clerk of any court of competent jurisdiction of this state. A foreign protective order so filed shall have the same effect and shall be enforced in the same manner as an order of protection issued by a court of this state

- (2)
- (a) At the time of the filing of the foreign protective order, the person filing the order shall file with the clerk of the court an affidavit on a form prescribed and provided by the Administrative Office of the Courts. The affidavit shall set forth the name, city, county, and state or other jurisdiction of the issuing court. The person shall certify in the affidavit the validity and status of the foreign protective order, and attest to the person's belief that the order has not been amended, rescinded, or superseded by any orders from a court of competent jurisdiction. All foreign protective orders presented with a completed and signed affidavit shall be accepted and filed.
- (b) The affidavit signed by the applicant shall have space where the reviewing judge shall place information necessary to allow the order's entry into the Law Information Network of Kentucky in the same manner as a Kentucky order.

- (3)
- (a) If the person seeking to file the order presents a copy of the foreign order which is current by the terms of the order and has been certified by the clerk or other authorized officer of the court which issued it, the circuit clerk shall present it to the District Judge or Circuit Judge, who shall read the order and enter on the affidavit the information necessary to allow the order's entry into the Law Information Network of Kentucky. The order shall not be subject to further verification and shall be accepted as authentic, current, and subject to full faith and credit.
- (b) If the order presented is current by the terms of the order but is not certified in the manner specified in paragraph (a) of this subsection, the circuit clerk shall present the order and the affidavit to the District Judge or Circuit Judge, who shall read the order and enter on the affidavit the information necessary to allow the order's entry into the Law Information Network of Kentucky. The order shall be subject to full faith and credit in the same manner as a Kentucky order of protection, but shall be subject to verification by the circuit clerk. The order shall be valid for a period of fourteen (14) days and may be renewed once for a period of fourteen (14) days if the circuit clerk has not received a certified copy of the order from the issuing jurisdiction. The clerk shall treat the foreign protective order in the same manner as an order of protection issued pursuant to KRS 403.740, except that no service on the adverse party shall be required pursuant to 18 U.S.C. sec. 2265.
- (c) Upon the filing of an uncertified foreign protective order, the circuit clerk shall, within two (2) business days, contact the issuing court to request a certified copy of the order. If the certified copy of the order is received by the circuit clerk within the initial fourteen (14) day period, the clerk shall cause the information that certification has been received to be entered into the Law Information Network of Kentucky and shall notify the applicant for the order of the fact of its certification. A facsimile copy of a certified foreign protective order shall be grounds for the issuance of an order of protection.
- (d) If the clerk has not received a certified copy of the foreign protective order within ten (10) days, the clerk shall notify the court and the applicant that the order has not been received.

The notice to the applicant, on a form prepared by the Administrative Office of the Courts, shall state that the foreign protective order will be extended for another fourteen (14) days, but will be dismissed at the expiration of that time. If the clerk informs the judge in writing that the certified foreign protective order has been requested but has not yet been received, the judge shall extend the foreign protective order for a period of fourteen (14) days. If certification of the foreign protective order is not received within twenty-eight (28) days, the foreign protective order shall expire and shall not be reissued. If the applicant meets the qualifications for the issuance of a Kentucky domestic violence order, the court may, upon proper application and showing of evidence, issue a Kentucky order in accordance with this chapter.

- (4) The right of a person filing a foreign protective order to bring an action to enforce the order instead of proceeding under this chapter remains unimpaired.

KRS 403.7529 Authentication of foreign protective order.

- (1) Upon ex parte review of the foreign protective order and the affidavit filed pursuant to KRS 403.7527, and after determining the order is entitled to full faith and credit in this Commonwealth pursuant to 18 U.S.C. sec. 2265, the court shall declare the order to be authenticated and record the finding on the affidavit.
- (2) If the court declares the order to be authenticated, the court shall:
- (a) Direct the appropriate law enforcement agency to assist the petitioner in having the provisions of the order complied with, if applicable; and
 - (b) Order its enforcement in any county of the Commonwealth in the same manner as an domestic violence order of this state issued pursuant to KRS 403.740.
- (3) The clerk shall notify the person who filed the foreign protective order of the decision of the court and provide the person a certified copy of the affidavit declaring the authentication of the order.

KRS 403.7531 Clearing of foreign protective orders from Law Information Network of Kentucky.

- (1) A foreign protective order which has been entered into the Law Information Network of Kentucky shall be immediately cleared as an active record from the computer system when:
- (a) The order expires according to its terms;
 - (b) A Kentucky court notifies the Law Information Network of Kentucky that a foreign protective order has been dismissed, either by court order or entry of notification by a circuit clerk; or
 - (c) A circuit clerk notifies the Law Information Network of Kentucky that a foreign protective order tendered to the clerk has not been authenticated in the time period specified in KRS 403.7527.
- (2) For validation purposes, the Law Information Network of Kentucky shall provide the circuit court clerk with a printout of foreign protective orders. The clerk shall validate each order annually by contacting the original issuing court or jurisdiction. If the clerk has not received information from the foreign jurisdiction within thirty- one (31) days, the clerk shall cause those orders to be cleared from the Law Information Network of Kentucky.

KRS 403.7535 Duty to notify court of change in foreign protective order.

- (1) A person who has filed a foreign protective order in a court in Kentucky is under a continuing obligation to inform the court of any expiration, vacation, modification, or other change in the order which the person filing the order has received from the issuing foreign court.
- (2) A person who has filed a foreign protective order in a court in Kentucky shall, within two (2) working days of the occurrence of any event specified in subsection (1) of this section, notify the clerk of the court in which the foreign protective order was filed of the fact of the changed order and present the clerk with a copy of the order for authentication as provided in this chapter. The clerk shall immediately notify the Law Information Network of Kentucky entering agency of the

modification.

- (3) No court in Kentucky and no peace officer in Kentucky shall be expected to enforce a provision of a foreign protective order which has been the subject of any action specified in subsection (1) of this section, unless proper notice has been given in accordance with this section.
- (4) Intentional failure of a person who has filed a foreign protective order to make the notifications required by this section in the manner required by this section shall constitute contempt of court and may be grounds for an appropriate civil action brought by any person damaged by the intentional act of omission by the person failing to act.

KRS 403.754 Petitioner for protective order may apply for temporary permit to carry concealed deadly weapon -- Criteria -- Denial of application final -- Conversion to concealed carry license -- Automated listing of temporary permit holders.

- (1) A petitioner for an order of protection granted under KRS 403.715 to 403.785 may apply for a temporary permit to carry a concealed deadly weapon on or about his or her person into those places and under the same conditions as a person holding a carry concealed deadly weapon license issued under KRS 237.110.
- (2) To request a temporary permit authorized by this section, the petitioner shall apply electronically for a license to carry a concealed deadly weapon in the manner set forth in KRS 237.110 and administrative regulation promulgated by the Department of Kentucky State Police, unless the electronic application is unavailable. If the electronic application is unavailable, applications for temporary permits under this section shall not be accepted.
- (3) Prior to the issuance of a temporary permit authorized by this section, the Department of Kentucky State Police, upon receipt of a completed application, application fee, and any documentation required by KRS 237.110 or administrative regulation promulgated by the Department of Kentucky State Police, shall conduct the background check as set forth in KRS 237.110.
- (4) The Department of Kentucky State Police shall issue a temporary permit authorized by this section if the applicant is not disqualified under the standards set forth in KRS 237.110(4)(a) to (h).
- (5) A temporary permit issued under this section shall be valid for forty-five (45) days from the date of issuance and not be subsequently extended or reissued. A temporary permit which has expired shall be void and shall not be valid for any purpose.
- (6) The Department of Kentucky State Police shall, within one (1) working day or as soon as practically possible after the date of receipt of the completed application, a recent color photograph of the applicant, and, for applicants who are not citizens of the United States, any documentation required under KRS 237.110, either issue the temporary permit or deny the application based solely on the grounds that the applicant fails to qualify under the criteria set forth in KRS 237.110.
- (7) In order to convert the temporary permit issued under this section into a license to carry a concealed deadly weapon issued under KRS 237.110, the applicant shall meet the firearms safety training requirement under KRS 237.110(4) within the forty-five (45) day period the temporary permit is valid. If firearms safety training is not completed within the forty-five (45) day temporary permit period, a new application for a license to carry a concealed deadly weapon shall be required.
- (8) If the Department of Kentucky State Police denies the application for a temporary permit, that decision shall be final but the applicant's application for a license to carry a concealed deadly license shall continue to be processed and either issued or denied in accordance with KRS 237.110.
- (9) The holder of a permit issued under this section shall carry the permit at all times the permit holder is carrying a concealed firearm or other deadly weapon and shall display the permit upon request of a law enforcement officer. Violation of the provisions of this subsection shall

constitute a noncriminal violation with a penalty of twenty-five dollars (\$25), payable to the clerk of the District Court, but no court costs shall be assessed.

- (10) The Department of Kentucky State Police shall maintain an automated listing of temporary permit holders and pertinent information under the same circumstances and restrictions set forth in KRS 237.110.
- (11) Nothing in this section shall authorize the carrying of a concealed deadly weapon by a person prohibited from possessing such a weapon by state or federal law.

KRS 403.761 Amendment of domestic violence order to require participation in global positioning monitoring system -- Cost to be paid by respondent and system operator -- Shortening or vacating of order -- Penalty for violation.

- (1) Upon a petitioner's request and after an evidentiary hearing, a court may amend a domestic violence order to require a respondent to participate in a global positioning monitoring system if:
- (a) The respondent has committed a substantial violation of a previously entered domestic violence order;
 - (b) The court has reviewed an updated history of the respondent's Kentucky criminal and protective order history; and
 - (c) The court makes a factual determination that the use of a global positioning monitoring system would increase the petitioner's safety.
- (2) An order requiring participation in a global positioning monitoring system shall:
- (a) Require the respondent to pay the cost of participation up to the respondent's ability to pay, with the system operator bearing any uncovered costs for indigent respondents;
 - (b) State with specificity the locations or areas where the respondent is prohibited from being located or persons with whom the respondent shall have no contact;
 - (c) Include the date that the order expires, which shall be no longer than the expiration date of the domestic violence order, although participation may be extended if the underlying order is extended;
 - (d) Require the entity that operates the monitoring system to immediately notify the petitioner, the local law enforcement agency named in the order, and the court if a respondent violates the order; and
 - (e) Include any other information as the court deems appropriate.
- (3) The Administrative Office of the Courts shall prepare a publicly available informational pamphlet containing information on the method of applying for, hearing, amending, and terminating an order requiring participation in a global positioning monitoring system.
- (4)
- (a) The Supreme Court may establish by rule a sliding scale of payment responsibility for indigent defendants for use in establishing required payments under subsection (2) of this section.
 - (b) A person, county, or other organization may voluntarily agree to pay all or a portion of a respondent's monitoring costs specified in this section.
- (5) An order requiring participation in a global positioning monitoring system may be shortened or vacated by the court either:
- (a) Upon request of the petitioner; or
 - (b) Upon request of the respondent after an evidentiary hearing, if the respondent has not violated the order and:
 - 1. Three (3) months have elapsed since the entry of the order; and
 - 2. No previous request has been made by the respondent in the previous six (6) months.
- (6) A respondent who fails to wear, removes, tampers with, or destroys a global positioning monitoring system device in contravention of an order entered under this section shall be guilty of a Class D felony.

KRS 403.763 Violation of order of protection constitutes contempt of court and criminal offense.

- (1) Violation of the terms or conditions of an order of protection after the person has been served or given notice of the order shall constitute contempt of court and a criminal offense under this section. Once a criminal or contempt proceeding has been initiated, the other shall not be undertaken regardless of the outcome of the original proceeding.
- (2) (a) Court proceedings for contempt of court for violation of an order of protection shall be held in the county where the order was issued or filed.
(b) Court proceedings for a criminal violation of an order of protection shall follow the rules of venue applicable to criminal cases generally.
- (3) Nothing in this section shall preclude the Commonwealth from prosecuting and convicting the respondent of criminal offenses other than violation of an order of protection.
- (4) (a) A person is guilty of a violation of an order of protection when he or she intentionally violates the provisions of an order of protection after the person has been served or given notice of the order.
(b) Violation of an order of protection is a Class A misdemeanor.

KRS 15.440 (1) (h) Law Enforcement requirement to have domestic violence manual.

...

- (1)...(h)
Possesses a written policy and procedures manual related to domestic violence for law enforcement agencies that has been approved by the cabinet. The policy shall comply with the provisions of KRS 403.715 to 403.785. The policy shall include a purpose statement; definitions; supervisory responsibilities; procedures for twenty-four (24) hour access to protective orders; procedures for enforcement of court orders or relief when protective orders are violated; procedures for timely and contemporaneous reporting of adult abuse and domestic violence to the Cabinet for Health and Family Services, Department for Community Based Services; victim rights, assistance, and service responsibilities; and duties related to timely completion of records;

D. INTERPERSONAL PROTECTIVE ORDERS

KRS 456.010 Definitions for chapter.

As used in this chapter:

- (1) "Dating relationship" means a relationship between individuals who have or have had a relationship of a romantic or intimate nature. It does not include a casual acquaintanceship or ordinary fraternization in a business or social context. The following factors may be considered in addition to any other relevant factors in determining whether the relationship is or was of a romantic or intimate nature:
 - (a) Declarations of romantic interest;
 - (b) The relationship was characterized by the expectation of affection;
 - (c) Attendance at social outings together as a couple;
 - (d) The frequency and type of interaction between the persons, including whether the persons have been involved together over time and on a continuous basis during the course of the relationship;
 - (e) The length and recency of the relationship; and
 - (f) Other indications of a substantial connection that would lead a reasonable person to understand that a dating relationship existed;
- (2) "Dating violence and abuse" means physical injury, serious physical injury, stalking, sexual assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault occurring between persons who are or have been in a dating relationship;

- (3) "Foreign protective order" means any judgment, decree, or order of protection which is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 which was not issued on the basis of domestic violence and abuse;
- (4) "Global positioning monitoring system" means a system that electronically determines a person's location through a device worn by the person which does not invade his or her bodily integrity and which transmits the person's latitude and longitude data to a monitoring entity;
- (5) "Order of protection" means any interpersonal protective order, including those issued on a temporary basis, and includes a foreign protective order;
- (6) "Sexual assault" refers to conduct prohibited as any degree of rape, sodomy, or sexual abuse under KRS Chapter 510 or incest under KRS 530.020;
- (7) "Stalking" refers to conduct prohibited as stalking under KRS 508.140 or 508.150; and
- (8) "Substantial violation" means criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protection.

KRS 456.020 Interpretation of chapter.

- (1) This chapter shall be interpreted to:
 - (a) Allow victims to obtain effective, short-term protection against further wrongful conduct in order that their lives may be as secure and as uninterrupted as possible;
 - (b) Expand the ability of law enforcement officers to effectively respond to further wrongful conduct so as to prevent future incidents and to provide assistance to the victims;
 - (c) Provide peace officers with the authority to immediately apprehend and charge for violation of an order of protection any person whom the officer has probable cause to believe has violated an order of protection and to provide courts with the authority to conduct contempt of court proceedings for these violations;
 - (d) Provide for the collection of data concerning incidents of dating violence and abuse, sexual assault, and stalking in order to develop a comprehensive analysis of the numbers and causes of such incidents; and
 - (e) Supplement and not repeal or supplant any duties, responsibilities, services, or penalties under KRS Chapters 209, 209A, and 620.
- (2) Nothing in this chapter is intended to trigger the application of the provisions of 18 U.S.C sec. 922(g) as to an interpersonal protective order issued on the basis of the existence of a current or previous dating relationship

KRS 456.030 Petition for interpersonal protective order.

- (1) A petition for an interpersonal protective order may be filed by:
 - (a) A victim of dating violence and abuse;
 - (b) A victim of stalking;
 - (c) A victim of sexual assault; or
 - (d) An adult on behalf of a victim who is a minor otherwise qualifying for relief under this subsection.
- (2) The petition may be filed in the victim's county of residence or a county where the victim has fled to escape dating violence and abuse, stalking, or sexual assault.
- (3) The petition shall be verified and contain:
 - (a) The name, age, address, occupation, residence, and school or postsecondary institution of the petitioner;
 - (b) The name, age, address, occupation, residence, and school or postsecondary institution of the person or persons who have engaged in the alleged act or acts complained of in the petition;
 - (c) The facts and circumstances which constitute the basis for the petition; and
 - (d) The names, ages, and addresses of the petitioner's minor children, if applicable.

- (4) The petition shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief by the circuit clerk or by another individual authorized by the court to provide and verify petitions in emergency situations, such as law enforcement officers, Commonwealth's or county attorneys, and regional rape crisis centers or domestic violence shelters.
- (5) All petitions requested, completed, and signed by persons seeking protection under this chapter shall be accepted and filed with the court.
- (6)
 - (a) Jurisdiction over petitions filed under this chapter shall be concurrent between the District Court and Circuit Court.
 - (b) The Court of Justice shall provide a protocol for twenty-four (24) hour access to interpersonal protective orders in each county with any protocol, whether statewide or local, being subject to Supreme Court review and approval of the initial protocol and any subsequent amendments. This protocol may allow for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection.
 - (c) The Court of Justice may authorize by rule that petitions in a specific county be filed in accordance with a supplemental jurisdictional protocol adopted for that county. This protocol may provide for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection.
 - (d)
 1. In addition to the protocols for twenty-four (24) hour access established under paragraphs (b) and (c) of this subsection, before January 1, 2019, the Court of Justice shall provide protocols for filing, including electronic filing, of petitions for orders of protection at those regional rape crisis centers designated under KRS 211.600, or regional domestic violence shelters designated under KRS 209A.045, that elect to participate in any county's twenty-four (24) hour access protocol.
 2. These protocols shall be subject to Supreme Court review for approval of the initial protocol and any subsequent amendments.
- (7) Any judge to whom a petition is referred under subsection (6) of this section shall have full authority to review and hear a petition and subsequently grant and enforce an interpersonal protective order.
- (8) If the judge of a court in which there is a pending request for modification or enforcement of an existing order of protection is unavailable or unable to act within a reasonable time, the proceedings may be conducted by any judge of the county in accordance with court rules.

KRS 456.040 Review of petition for interpersonal protective order -- Temporary interpersonal protective order.

- (1)
 - (a) The court shall review a petition for an interpersonal protective order immediately upon its filing. If the review indicates that dating violence and abuse, stalking, or sexual assault exists, the court shall summons the parties to an evidentiary hearing not more than fourteen (14) days in the future. If the review indicates that such a basis does not exist, the court may consider an amended petition or dismiss the petition without prejudice.
 - (b) Service of the summons and hearing order under this subsection shall be made upon the adverse party personally and may be made in the manner and by the persons authorized to serve subpoenas under Rule 45.03 of the Rules of Civil Procedure. A summons may be reissued if service has not been made on the adverse party by the fixed court date and time.
- (2)
 - (a) If the review under this section also indicates the presence of an immediate and present danger of dating violence and abuse, sexual assault, or stalking, the court shall, upon proper motion, issue ex parte a temporary interpersonal protective order that:

1. Authorizes relief appropriate to the situation utilizing the alternatives set out in KRS 456.060;
 2. Expires upon the conclusion of the evidentiary hearing required by this section unless extended or withdrawn by subsequent order of the court; and
 3. Does not order or refer the parties to mediation unless requested by the petitioner, and the court finds that:
 - a. The petitioner's request is voluntary and not the result of coercion; and
 - b. Mediation is a realistic and viable alternative to or adjunct to the issuance of an order sought by the petitioner.
- (b) If an order is not issued under this subsection, the court shall note on the petition, for the record, any action taken or denied and the reason for it.

KRS 456.050 Hearing on petition for interpersonal protective order.

- (1) Prior to or at a hearing on a petition for an interpersonal protective order:
- (a) The court may obtain the respondent's Kentucky criminal and protective order history and utilize that information to assess what relief and which sanctions may protect against danger to the petitioner or other person for whom protection is being sought, with the information so obtained being provided to the parties in accordance with the Rules of Civil Procedure; and
 - (b) If the petitioner or respondent is a minor, the court shall inquire whether the parties attend school in the same school system to assist the court in imposing conditions in the order that have the least disruption in the administration of education to the parties while providing appropriate protection to the petitioner.
- (2)
- (a) If the adverse party is not present at the hearing ordered pursuant to KRS 456.040 and has not been served, a previously issued temporary interpersonal protective order shall remain in place, and the court shall direct the issuance of a new summons for a hearing set not more than fourteen (14) days in the future. If service has not been made on the adverse party before that hearing or a subsequent hearing, the temporary interpersonal protective order shall remain in place, and the court shall continue the hearing and issue a new summons with a new date and time for the hearing to occur, which shall be within fourteen (14) days of the originally scheduled date for the continued hearing. The court shall repeat the process of continuing the hearing and reissuing a new summons until the adverse party is served in advance of the scheduled hearing. If service has not been made on the respondent at least seventy-two (72) hours prior to the scheduled hearing, the court may continue the hearing no more than fourteen (14) days in the future. In issuing the summons, the court shall simultaneously transmit a copy of the summons or notice of its issuance and provisions to the petitioner.
 - (b) The provisions of this section permitting the continuance of an interpersonal protective order shall be limited to six (6) months from the issuance of the temporary interpersonal protective order. If the respondent has not been served within that period, the order shall be rescinded without prejudice. Prior to the expiration of the temporary interpersonal protective order, the court shall provide notice to the petitioner stating that, if the petitioner does not file a new petition, the order shall be rescinded without prejudice.

KRS 456.060 Ruling on petition for interpersonal protective order -- Duration of order.

- (1) Following a hearing ordered under KRS 456.040, if a court finds by a preponderance of the evidence that dating violence and abuse, sexual assault, or stalking has occurred and may again occur, the court may issue an interpersonal protective order:
- (a) Restraining the adverse party from:
 1. Committing further acts of dating violence and abuse, stalking, or sexual assault;

2. Any unauthorized contact or communication with the petitioner or other person specified by the court;
 3. Approaching the petitioner or other person specified by the court within a distance specified in the order, not to exceed five hundred (500) feet;
 4. Going to or within a specified distance of a specifically described residence, school, or place of employment or area where such a place is located; and
 5. Disposing of or damaging any of the property of the parties;
- (b) Directing or prohibiting any other actions that the court believes will be of assistance in eliminating future acts of dating violence and abuse, stalking, or sexual assault, except that the court shall not order the petitioner to take any affirmative action; and
 - (c) Directing that either or both of the parties receive counseling services available in the community in dating violence and abuse cases.
- (2) In imposing a location restriction described in subsection (1)(a)4. of this section, the court shall:
 - (a) Afford the petitioner and respondent, if present, an opportunity to testify on the issue of the locations and areas from which the respondent should or should not be excluded;
 - (b) Only impose a location restriction where there is a specific, demonstrable danger to the petitioner or other person protected by the order;
 - (c) Specifically describe in the order the locations or areas prohibited to the respondent; and
 - (d) Consider structuring a restriction so as to allow the respondent transit through an area if the respondent does not interrupt his or her travel to harass, harm, or attempt to harass or harm the petitioner.
 - (3) An interpersonal protective order shall be effective for a period of time fixed by the court, not to exceed three (3) years, and may be reissued upon expiration for subsequent periods of up to three (3) years each. The fact that an order has not been violated since its issuance may be considered by a court in hearing a request for a reissuance of the order.

KRS 456.070 When protective order becomes effective and binding on respondent -- Mutual protective orders -- Petition hearing testimony later admissible only for impeachment purposes -- Interpersonal protective order intake center.

- (1) A temporary or ordinary interpersonal protective order shall become effective and binding on the respondent when the respondent is given notice of the existence and terms of the order by a peace officer or the court or upon personal service of the order, whichever is earlier. A peace officer or court giving notice of an unserved order shall make all reasonable efforts to arrange for the order's personal service upon the respondent. Once effective, a peace officer or the court may enforce the order's terms and act immediately upon their violation.
- (2) Costs, fees, or bond shall not be assessed against or required of a petitioner for any filing, hearing, service, or order authorized by or required to implement this chapter.
- (3) A court shall not require mediation, conciliation, or counseling prior to or as a condition of issuing an interpersonal protective order.
- (4) Mutual protective orders may be issued only if:
 - (a) Separate petitions have been filed by both parties; and
 - (b) The orders are written with sufficient specificity to allow any peace officer to identify which party has violated the order.
- (5) Upon proper filing of a motion, either party may seek to amend an interpersonal protective order.
- (6) Testimony offered by an adverse party in a hearing ordered pursuant to KRS 456.040 shall not be admissible in any criminal proceeding involving the same parties except for purposes of impeachment.
- (7)
 - (a) The Court of Justice, county and Commonwealth's attorneys, law enforcement agencies, and victim services organizations may jointly operate an interpersonal protective order

intake center to assist persons who apply for relief under this chapter.

- (b) In cases where criminal conduct is alleged, a court may suggest that a petitioner voluntarily contact the county attorney. A court may not withhold or delay relief if the petitioner elects to not contact the county attorney.
- (8) A person's right to apply for relief under this chapter shall not be affected by that person leaving his or her residence to avoid dating violence and abuse, sexual assault, or stalking.
- (9) A court shall order the omission or deletion of the petitioner's address and the address of any minor children from any orders or documents to be made available to the public or to any person who engaged in the acts complained of in the petition.
- (10)
 - (a) If a petition under this chapter did not result in the issuance of a non- temporary interpersonal protective order, the court in which the petition was heard may for good cause shown order the expungement of the records of the case if:
 - 1. Six (6) months have elapsed since the case was dismissed; and
 - 2. During the six (6) months preceding the expungement request, the respondent has not been bound by an order of protection issued for the protection of any person including an order of protection as defined in KRS 403.720.
 - (b) As used in this subsection, "expungement" has the same meaning as in KRS 431.079.

KRS 456.080 Disclosure of interpersonal protective orders upon filing KRS Chapter 403 action.

If the petitioner or respondent to an interpersonal protective order initiates an action under KRS Chapter 403, the party initiating the action shall make known to the court the existence and status of any interpersonal protective orders, which shall remain effective and enforceable until superseded by order of the court in which the KRS Chapter 403 case is filed.

KRS 456.090 Law enforcement to assist protective order petitioner and victim of dating violence and abuse, sexual assault, or stalking -- Statewide enforcement -- Civil and criminal immunity.

- (1) A court issuing an interpersonal protective order shall direct the appropriate law enforcement agency to assist the petitioner in having the provisions of the order complied with.
- (2) When a law enforcement officer has reason to suspect that a person has been the victim of dating violence and abuse, sexual assault, or stalking, the officer shall use all reasonable means to provide assistance to the victim, including but not limited to:
 - (a) Remaining at the location of the call for assistance so long as the officer reasonably suspects there is danger to the physical safety of individuals there without the presence of a law enforcement officer;
 - (b) Assisting the victim in obtaining medical treatment, including transporting the victim to the nearest medical facility capable of providing the necessary treatment; and
 - (c) Advising the victim immediately of the rights available to them, including the provisions of this chapter.
- (3) Orders of protection shall be enforced in any county of the Commonwealth.
- (4) Officers acting in good faith under this chapter shall be immune from criminal and civil liability.

KRS 456.100 Amendment of interpersonal protective order to require participation in global positioning monitoring system.

- (1) Upon a petitioner's request and after an evidentiary hearing, a court may amend an interpersonal protective order to require a respondent to participate in a global positioning monitoring system if:
 - (a) The respondent has committed a substantial violation of a previously entered interpersonal protective order;
 - (b) The court has reviewed an updated history of the respondent's Kentucky criminal and protective order history; and

- (c) The court makes a factual determination that the use of a global positioning monitoring system would increase the petitioner's safety.
- (2) An order requiring participation in a global positioning monitoring system shall:
 - (a) Require the respondent to pay the cost of participation up to the respondent's ability to pay, with the system operator bearing any uncovered costs for indigent respondents;
 - (b) State with specificity the locations or areas where the respondent is prohibited from being located or persons with whom the respondent shall have no contact;
 - (c) Include the date that the order expires, which shall be no longer than the expiration date of the underlying interpersonal protective order, although participation may be extended if the underlying order is extended;
 - (d) Require the entity that operates the monitoring system to immediately notify the petitioner, the local law enforcement agency named in the order, and the court if a respondent violates the order; and
 - (e) Include any other information as the court deems appropriate.
- (3) The Administrative Office of the Courts shall prepare a publicly available informational pamphlet containing information on the method of applying for, hearing, amending, and terminating an order requiring participation in a global positioning monitoring system.
- (4)
 - (a) The Supreme Court may establish by rule a sliding scale of payment responsibility for indigent defendants for use in establishing required payments under subsection (2) of this section.
 - (b) A person, county, or other organization may voluntarily agree to pay all or a portion of a respondent's monitoring costs specified in this section.
- (5) An order requiring participation in a global positioning monitoring system may be shortened or vacated by the court either:
 - (a) Upon request of the petitioner; or
 - (b) Upon request of the respondent after an evidentiary hearing, if the respondent has not violated the order and:
 - 1. Three (3) months have elapsed since the entry of the order; and
 - 2. No previous request has been made by the respondent in the previous six (6) months.
- (6) A respondent who fails to wear, removes, tampers with, or destroys a global positioning monitoring system device in contravention of an order entered under this section shall be guilty of a Class D felony.

KRS 456.110 Entry of forms, affidavits, and orders of protection into Law Information Network of Kentucky.

- (1) All forms, affidavits, and orders of protection issued or filed pursuant to this chapter which require entry into the Law Information Network of Kentucky shall be entered on forms prescribed by the Administrative Office of the Courts after consultation with the Justice and Public Safety Cabinet. If the provisions of an interpersonal protective order are contained in an order which is narrative in nature, the prescribed form shall be used in addition to the narrative order.
- (2) The circuit clerk, in cooperation with the court, shall cause a copy of each summons or order issued pursuant to this chapter, or foreign protective order, fully completed and authenticated pursuant to this chapter, to be forwarded, by the most expedient means reasonably available and within twenty-four (24) hours following its filing with the clerk, to the appropriate agency designated for entry of interpersonal protective order records into the Law Information Network of Kentucky and to the agency assigned service. Any order or court record superseding, modifying, or otherwise affecting the status of an earlier summons or order shall likewise be forwarded by the circuit clerk to the appropriate Law Information Network of Kentucky entering agency and to the agency assigned service, if service is required. The clerk and the court shall

comply with all provisions and guidelines of the Law Information Network of Kentucky for entry of the records.

- (3) Each agency designated for entry of summonses and orders issued pursuant to this chapter, or foreign protective orders authenticated pursuant to this chapter, into the Law Information Network of Kentucky shall, consistent with the provisions and guidelines of the Law Information Network of Kentucky, enter the records immediately upon receipt of copies forwarded to the agency in accordance with subsection (2) of this section.

KRS 456.120 Foreign protective orders.

- (1) All foreign protective orders shall have the rebuttable presumption of validity. The validity of a foreign protective order shall only be determined by a court of competent jurisdiction. Until a foreign protective order is declared to be invalid by a court of competent jurisdiction, it shall be given full faith and credit by all peace officers and courts in the Commonwealth.
- (2) All peace officers shall treat a foreign protective order as a legal document valid in Kentucky, and shall make arrests for a violation thereof in the same manner as for a violation of an order of protection issued in Kentucky.
- (3) The fact that a foreign protective order has not been entered into the Law Information Network of Kentucky shall not be grounds for a peace officer not to enforce the provisions of the order unless it is readily apparent to the peace officer to whom the order is presented that the order has either expired according to a date shown on the order, or that the order's provisions clearly do not prohibit the conduct being complained of. Officers acting in good faith shall be immune from criminal and civil liability.
- (4) If the order has expired or its provisions do not prohibit the conduct being complained of, the officer shall not make an arrest unless the provisions of a Kentucky statute have been violated, in which case the peace officer shall take the action required by Kentucky law.
- (5) Civil proceedings and criminal proceedings for violation of a foreign protective order for the same violation of the protective order shall be mutually exclusive. Once either proceeding has been initiated, the other shall not be undertaken, regardless of the outcome of the original proceeding.

KRS 456.130 Information required in interpersonal protective order to assist in full faith and credit determination.

- (1) In order to assist a court of another state in determining whether an order issued under this chapter is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265:
 - (a) All interpersonal protective orders shall include a statement certifying that the issuing court had jurisdiction over the parties and the matter, and that reasonable notice and opportunity to be heard has been given to the person against whom the order is sought sufficient to protect that person's right to due process; and
 - (b) All temporary interpersonal protective orders shall include a statement certifying that notice and opportunity to be heard has been provided within the time required by state law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.
- (2) The Administrative Office of the Courts shall prescribe the form to be used for the purposes of this section.

KRS 456.140 Filing copy of foreign protective order -- Effect -- Required affidavit -- Certification by issuing court -- Uncertified order.

- (1) A copy of a foreign protective order may be filed in the office of the clerk of any court of competent jurisdiction of this state. A foreign protective order so filed shall have the same effect and shall be enforced in the same manner as an interpersonal protective order issued by a court of this state.

- (2)
- (a) At the time of the filing of the foreign protective order, the person filing the order shall file with the clerk of the court an affidavit on a form prescribed and provided by the Administrative Office of the Courts. The affidavit shall set forth the name, city, county, and state or other jurisdiction of the issuing court. The person shall certify in the affidavit the validity and status of the foreign protective order, and attest to the person's belief that the order has not been amended, rescinded, or superseded by any orders from a court of competent jurisdiction. All foreign protective orders presented with a completed and signed affidavit shall be accepted and filed.
 - (b) The affidavit signed by the applicant shall have space where the reviewing judge shall place information necessary to allow the order's entry into the Law Information Network of Kentucky in the same manner as a Kentucky order.
- (3)
- (a) If the person seeking to file the order presents a copy of the foreign protective order which is current by the terms of the order and has been certified by the clerk or other authorized officer of the court which issued it, the circuit clerk shall present it to the District Judge or Circuit Judge, who shall read the order and enter on the affidavit the information necessary to allow the order's entry into the Law Information Network of Kentucky. The order shall not be subject to further verification and shall be accepted as authentic, current, and subject to full faith and credit.
 - (b) If the order presented is current by the terms of the order but is not certified in the manner specified in paragraph (a) of this subsection, the circuit clerk shall present the order and the affidavit to the District or Circuit Judge, who shall read the order and enter on the affidavit the information necessary to allow the order's entry into the Law Information Network of Kentucky. The order shall be subject to full faith and credit in the same manner as a Kentucky interpersonal protective order, but shall be subject to verification by the circuit clerk. The order shall be valid for a period of fourteen (14) days and may be renewed once for a period of fourteen (14) days if the circuit clerk has not received a certified copy of the order from the issuing jurisdiction. The clerk shall treat the foreign protective order in the same manner as an interpersonal protective order of this state issued pursuant to KRS 456.060, except that no service on the adverse party shall be required pursuant to 18 U.S.C. sec. 2265.
 - (c) Upon the filing of an uncertified foreign protective order, the circuit clerk shall, within two (2) business days, contact the issuing court to request a certified copy of the order. If the certified copy of the order is received by the circuit clerk within the initial fourteen (14) day period, the clerk shall cause the information that certification has been received to be entered into the Law Information Network of Kentucky and shall notify the applicant for the order of the fact of its certification. A facsimile copy of a certified foreign protective order shall be grounds for the issuance of an interpersonal protective order.
 - (d) If the clerk has not received a certified copy of the foreign protective order within ten (10) days, the clerk shall notify the court and the applicant that the order has not been received. The notice to the applicant, on a form prepared by the Administrative Office of the Courts, shall state that the foreign protective order will be extended for another fourteen (14) days, but will be dismissed at the expiration of that time. If the clerk informs the judge in writing that the certified foreign protective order has been requested but has not yet been received, the judge shall extend the foreign protective order for a period of fourteen (14) days. If certification of the foreign protective order is not received within twenty-eight (28) days, the foreign protective order shall expire and shall not be reissued. If the applicant meets the qualifications for the issuance of a Kentucky interpersonal protective order, the court may, upon proper application and showing of evidence, issue a Kentucky order in accordance with this chapter.

- (4) The right of a person filing a foreign protective order to bring an action to enforce the order instead of proceeding under this chapter remains unimpaired.

KRS 456.150 Authentication of foreign protective order.

- (1) Upon ex parte review of the foreign protective order and the affidavit filed pursuant to KRS 456.140, and after determining the order is entitled to full faith and credit in this Commonwealth pursuant to 18 U.S.C. sec. 2265, the court shall declare the order to be authenticated and record the finding on the affidavit.
- (2) If the court declares the order to be authenticated, the court shall:
 - (a) Direct the appropriate law enforcement agency to assist the petitioner in having the provisions of the order complied with, if applicable; and
 - (b) Order its enforcement in any county of the Commonwealth in the same manner as an interpersonal protective order of this state issued pursuant to KRS 456.060.
- (3) The clerk shall notify the person who filed the foreign protective order of the decision of the court and provide the person a certified copy of the affidavit declaring the authentication of the order.

KRS 456.160 Clearing of foreign protective order as active record from Law Information Network of Kentucky.

- (1) A foreign protective order which has been entered into the Law Information Network of Kentucky shall be immediately cleared as an active record from the computer system when:
 - (a) The order expires according to the terms contained therein;
 - (b) A Kentucky court notifies the Law Information Network of Kentucky that a foreign protective order has been dismissed, either by court order or entry of notification by a circuit clerk; or
 - (c) A circuit clerk notifies the Law Information Network of Kentucky that a foreign protective order tendered to the clerk has not been authenticated in the time period specified in KRS 456.140.
- (2) For validation purposes, the Law Information Network of Kentucky shall provide the circuit court clerk with a printout of foreign protective orders. The clerk shall validate each order annually by contacting the original issuing court or jurisdiction. If the clerk has not received information from the foreign jurisdiction within thirty- one (31) days, the clerk shall cause those orders to be cleared from the Law Information Network of Kentucky.

KRS 456.170 Notice to court of foreign protective order's expiration, vacation, modification, or other change.

- (1) A person who has filed a foreign protective order in a court in Kentucky is under a continuing obligation to inform the court of any expiration, vacation, modification, or other change in the order which the person filing the order has received from the issuing foreign court.
- (2) A person who has filed a foreign protective order in a court in Kentucky shall, within two (2) working days of the occurrence of any event specified in subsection (1) of this section, notify the clerk of the court in which the foreign protective order was filed of the fact of the changed order and present the clerk with a copy of the order for authentication as provided in this chapter. The clerk shall immediately notify the Law Information Network of Kentucky entering agency of the modification.
- (3) No court in Kentucky and no peace officer in Kentucky shall be expected to enforce a provision of a foreign protective order which has been the subject of any action specified in subsection (1) of this section, unless proper notice has been given in accordance with this section.
- (4) Intentional failure of a person who has filed a foreign protective order to make the notifications required by this section in the manner required by this section shall constitute contempt of court and may be grounds for an appropriate civil action brought by any person damaged by the intentional act of omission by the person failing to act.

KRS 456.180 Violation of order of protection.

- (1) Violation of the terms or conditions of an order of protection after the person has been served or given notice of the order shall constitute contempt of court and a criminal offense under this section. Once a criminal or contempt proceeding has been initiated, the other shall not be undertaken regardless of the outcome of the original proceeding.
- (2)
 - (a) Court proceedings for contempt of court for violation of an order of protection shall be held in the county where the order was issued or filed.
 - (b) Court proceedings for a criminal violation of an order of protection shall follow the rules of venue applicable to criminal cases generally.
- (3) Nothing in this section shall preclude the Commonwealth from prosecuting and convicting the respondent of criminal offenses other than violation of an order of protection.
- (4)
 - (a) A person is guilty of a violation of an order of protection when he or she intentionally violates the provisions of an interpersonal protective order after the person has been served or given notice of the order.
 - (b) Violation of an order of protection is a Class A misdemeanor.

E. DOMESTIC RELATIONS (FAMILY LAW)

Victims of sexual violence may face a variety of family law issues. Because of the focus of this Handbook, this section includes only those statutes that specifically address victims of violence.

KRS 402.020 Other prohibited marriages.

NOTE: Amended to protect youth under 18. Effective: July 14, 2018.

- (1) Marriage is prohibited and void:
 - (a) With a person who has been adjudged mentally disabled by a court of competent jurisdiction;
 - (b) Where there is a husband or wife living, from whom the person marrying has not been divorced;
 - (c) When not solemnized or contracted in the presence of an authorized person or society;
 - (d) Between members of the same sex;
 - (e) Between more than two (2) persons; and
 - (f) Except as provided in KRS 402.210, with a person who at the time of marriage is under eighteen (18) years of age.
- (2) Subsection (1)(f) of this section shall not apply to a lawful marriage entered into in the Commonwealth of Kentucky prior to July 14, 2018, or to a lawful marriage in another state or country prior to the parties' residence in the Commonwealth of Kentucky.

KRS 402.205 Petition to court by seventeen year old for permission to marry -- Evidentiary hearing -- Reasons for denying petition -- Effect of pregnancy -- Emancipation of minor -- Other court-imposed condition -- Fee. *Note: Effective 2018.*

- (1) A minor who is seventeen (17) years of age may petition the family court in the county in which the minor resides, or the District Court in that county if a family court division has not been established in that county, for an order granting permission to marry. The petition shall contain the following:
 - (a) The petitioner's name, gender, age, date of birth, address, and how long the petitioner has resided at that address, as well as prior addresses and dates of residence for the six (6)

- months preceding the petition;
- (b) The intended spouse's name, gender, age, date of birth, address, and how long the intended spouse has resided at that address, as well as prior addresses and dates of residence for the six (6) months preceding the petition;
 - (c) An affidavit attesting to the consent to marry signed by:
 1. The father or the mother of the petitioner, if the parents are married, the parents are not legally separated, no legal guardian has been appointed for petitioner, and no court order has been issued granting custody of petitioner to a party other than the father or mother;
 2. Both the father and the mother, if both are living and the parents are divorced or legally separated, and a court order of joint custody to the parents of the petitioner has been issued and is in effect;
 3. The surviving parent, if the parents were divorced or legally separated, and a court order of joint custody to the parents of the petitioner was issued prior to the death of either the father or mother, which order remains in effect;
 4. The custodial parent, as established by a court order which has not been superseded, where the parents are divorced or legally separated and joint custody of the petitioner has not been ordered; or
 5. Another person having lawful custodial charge of the petitioner;
 - (d) A statement of the reasons why the petitioner desires to marry, how the parties came to know each other, and how long they have known each other;
 - (e) Evidence of the petitioner's maturity and capacity for self-sufficiency independent of the petitioner's parents and the intended spouse, including but not limited to:
 1. Proof that the petitioner has maintained stable housing or employment for at least three (3) consecutive months prior to the petition; and
 2. Proof that the petitioner has completed high school, obtained a High School Equivalency Diploma, or completed a vocational training or certificate program;
 - (f) Copies of any criminal records of either party to be married; and
 - (g) Copies of any domestic violence order or interpersonal protective order involving either party to be married.
- (2) Upon the filing of the petition for permission to marry, the court shall set a date for an evidentiary hearing on the petition that is no sooner than thirty (30) days but not later than sixty (60) days from the date of the filing.
- (3) The petitioner may be represented by counsel in court proceeding pertaining to the petition to marry.
- (4) The court shall take reasonable measures to ensure that any representations made by a minor party are free of coercion, undue influence, or duress. Reasonable measures shall include but are not limited to in camera interviews.
- (5) Following an evidentiary hearing, the court shall grant the minor's petition for permission to marry unless:
- (a) The age difference between the parties is more than four (4) years;
 - (b) The intended spouse was or is a person in a position of authority or a position of special trust as defined in KRS 532.045 in relation to the minor;
 - (c) The intended spouse has previously been enjoined by a domestic violence order or interpersonal protective order, regardless of whether or not the person to be protected by the order was the minor petitioner;
 - (d) The intended spouse has been convicted of or entered into a diversion program for a criminal offense against a victim who is a minor as defined in KRS 17.500 or for a violent or sexual criminal offense under KRS Chapter 506, 507, 507A, 508, 509, 510, 529, 530, or 531;
 - (e) The court finds by a preponderance of the evidence that the minor was a victim and that the intended spouse was the perpetrator of a sexual offense against the minor under KRS

- 510.040, 510.050, 510.060, 510.110, 510.120, or 510.130;
- (f) The court finds by a preponderance of the evidence that abuse, coercion, undue influence, or duress is present; or
 - (g) The court finds that it would otherwise not be in the minor party's best interest to grant the petition to marry.
- (6) A past or current pregnancy of the minor or the intended spouse shall not be sufficient evidence to establish that the best interests of the minor would be served by granting the petition for marriage.
 - (7) The granting of a petition for permission to marry filed under subsection (1) of this section shall remove the disabilities of minority. A minor emancipated by the petition shall be considered to have all the rights and responsibilities of an adult, except for specific constitutional or statutory age requirements, including but not limited to voting, the use of alcoholic beverages, and other health and safety regulations relevant to him or her because of his or her age.
 - (8) The minor shall be advised by the court of the rights and responsibilities of parties to a marriage and of emancipated minors. The minor shall be provided with a fact sheet on these rights and responsibilities to be developed by the Office of the Attorney General and the Cabinet for Health and Family Services. The fact sheet shall include referral information for legal aid agencies in the Commonwealth and national hotlines for domestic violence and sexual assault.
 - (9) The court may make any other orders that the court deems appropriate for the minor's protection and may impose any other condition on the grant of the petition that the court determines is reasonable under the circumstances for the minor's protection.
 - (10) The court may set a fee not to exceed twenty dollars (\$20) to file a petition for permission to marry under this section.

KRS 403.036 Mediation not to be ordered unless conditions are met.

In any court proceeding conducted pursuant to KRS 403.010 to 403.350, if there is a finding of domestic violence and abuse, as defined in KRS 403.720, the court shall not order mediation unless requested by the victim of the alleged domestic violence and abuse, and the court finds that:

- (1) The victim's request is voluntary and not the result of coercion; and
- (2) Mediation is a realistic and viable alternative to or adjunct to the issuance of an order sought by the victim of the alleged domestic violence and abuse.

KRS 403.100 Compensation of guardian ad litem when petitioner is victim of KRS Chapter 507, 508, 509, or 510 offense committed by respondent.

In any court proceeding conducted pursuant to KRS 403.010 to 403.350, if the respondent is incarcerated for a conviction pursuant to KRS Chapter 507, 508, 509, or 510, where the petitioner is the victim, the guardian ad litem shall be paid by the Finance and Administration Cabinet.

KRS 403.160 Temporary orders -- Maintenance, child support, injunction -- Disclosure of information on domestic violence or child abuse.

- (1) In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.
- (2) (a) In a proceeding for dissolution of marriage, legal separation, or child support, either party, with notice to the opposing party, may move for temporary child support. The motion shall be accompanied by an affidavit setting forth the number of children of the marriage and the information required to calculate the combined adjusted parental gross income set

forth in KRS 403.212(2)(g), and the Social Security numbers, provided in accordance with KRS 403.135, of all parties subject to the motion. The court shall, within fourteen (14) days from the filing of said motion, order an amount of temporary child support based upon the child support guidelines as provided by law, and the ordered child support shall be retroactive to the date of the filing of the motion unless otherwise ordered by the court.

- (b) Upon a showing of good cause, either party may move the court to enter an order for temporary child support without written or oral notice to the adverse party. After reviewing the affidavit required by paragraph (a) of this subsection, the court may issue a temporary child support order based upon the child support guidelines. The order shall provide that the order becomes effective seven (7) days following service of the order and movant's affidavit upon the adverse party unless the adverse party, within the seven (7) day period, files a motion for a hearing before the court. The motion for hearing shall be accompanied by the affidavit required by paragraph (a) of this subsection. Pending the hearing, the adverse party shall pay child support in an amount based upon the guidelines and the adverse party's affidavit. The child support order entered following the hearing shall be retroactive to the date of the filing of the motion for temporary support unless otherwise ordered by the court.
- (3) As part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction or restraining order pursuant to the Rules of Civil Procedure.
- (4) If the court or agent of the court is made aware that there is reasonable evidence of domestic violence or child abuse, the court shall determine whether disclosure to any other person of the information could be harmful to the parent or child, and if the court determines that disclosure to any person could be harmful, the court and its agents shall not make the disclosure.
- (5) On the basis of the showing made and in conformity with KRS 403.200, the court may issue a temporary injunction or restraining order and an order for temporary maintenance in amounts and on terms just and proper in the circumstances.
- (6) A temporary order or temporary injunction:
 - (a) Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;
 - (b) May be revoked or modified before final decree on a showing of the facts necessary to revocation or modification under the circumstances; and
 - (c) Terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

KRS 403.270 Custodial issues -- Best interests of child shall determine -- Rebuttable presumption that joint custody and equally shared parenting time is in child's best interests -- De facto custodian.

- (1)
 - (a) As used in this chapter and KRS 405.020, unless the context requires otherwise, "de facto custodian" means a person who has been shown by clear and convincing evidence to have been the primary caregiver for, and financial supporter of, a child who has resided with the person for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older or has been placed by the Department for Community Based Services. Any period of time after a legal proceeding has been commenced by a parent seeking to regain custody of the child shall not be included in determining whether the child has resided with the person for the required minimum period.
 - (b) A person shall not be a de facto custodian until a court determines by clear and convincing evidence that the person meets the definition of de facto custodian established in paragraph (a) of this subsection. Once a court determines that a person meets the

definition of de facto custodian, the court shall give the person the same standing in custody matters that is given to each parent under this section and KRS 403.280, 403.340, 403.350, 403.822, and 405.020.

- (2) The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent and to any de facto custodian. Subject to KRS 403.315, there shall be a presumption, rebuttable by a preponderance of evidence, that joint custody and equally shared parenting time is in the best interest of the child. If a deviation from equal parenting time is warranted, the court shall construct a parenting time schedule which maximizes the time each parent or de facto custodian has with the child and is consistent with ensuring the child's welfare. The court shall consider all relevant factors including:
- (a) The wishes of the child's parent or parents, and any de facto custodian, as to his or her custody;
 - (b) The wishes of the child as to his or her custodian, with due consideration given to the influence a parent or de facto custodian may have over the child's wishes;
 - (c) The interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may significantly affect the child's best interests;
 - (d) The motivation of the adults participating in the custody proceeding;
 - (e) The child's adjustment and continuing proximity to his or her home, school, and community;
 - (f) The mental and physical health of all individuals involved;
 - (g) A finding by the court that domestic violence and abuse, as defined in KRS 403.720, has been committed by one (1) of the parties against a child of the parties or against another party. The court shall determine the extent to which the domestic violence and abuse has affected the child and the child's relationship to each party, with due consideration given to efforts made by a party toward the completion of any domestic violence treatment, counseling, or program;
 - (h) The extent to which the child has been cared for, nurtured, and supported by any de facto custodian;
 - (i) The intent of the parent or parents in placing the child with a de facto custodian;
 - (j) The circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence as defined in KRS 403.720 and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school; and
 - (k) The likelihood a party will allow the child frequent, meaningful, and continuing contact with the other parent or de facto custodian, except that the court shall not consider this likelihood if there is a finding that the other parent or de facto custodian engaged in domestic violence and abuse, as defined in KRS 403.720, against the party or a child and that a continuing relationship with the other parent will endanger the health or safety of either that party or the child.
- (3) The abandonment of the family residence by a custodial party shall not be considered where said party was physically harmed or was seriously threatened with physical harm by his or her spouse, when such harm or threat of harm was causally related to the abandonment.
- (4) If the court grants custody to a de facto custodian, the de facto custodian shall have legal custody under the laws of the Commonwealth.

403.315 Presumption that joint custody and equally shared parenting time is in best interest of child inapplicable if domestic violence order entered against a party.

When determining or modifying a custody order pursuant to KRS 403.270, 403.280, 403.340, or 403.740, the court shall consider the safety and well-being of the parties and of the children. If a domestic violence order is being or has been entered against a party by another party or on behalf of a child at issue in the custody hearing, the presumption that joint custody and equally shared parenting time is in the best interest of the child shall not apply as to the party against whom the domestic violence order is being or has been entered. The court shall weigh all factors set out in KRS 403.270(2) in determining the best interest of the child.

KRS 403.320 Visitation of minor child.

- (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health. Upon request of either party, the court shall issue orders which are specific as to the frequency, timing, duration, conditions, and method of scheduling visitation and which reflect the development age of the child.
- (2) If domestic violence and abuse, as defined in KRS 403.720, has been alleged, the court shall, after a hearing, determine the visitation arrangement, if any, which would not endanger seriously the child's or the custodial parent's physical, mental, or emotional health.
- (3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health.

KRS 403.322 Custody, visitation, and inheritance rights denied parent convicted of felony sexual offense from which victim delivered a child -- Waiver -- child support obligation.

- (1) The Commonwealth recognizes that certain victims of sexual assault may conceive a child as a result of the sexual assault and may choose to bear and raise the child. The Commonwealth also recognizes that victims of a sexual assault who have elected to raise a child born as a result of the sexual assault, as well as that child, may suffer serious emotional or physical trauma if the perpetrator of the assault is granted parental rights with the child.
- (2) Except as provided in subsection (3) of this section, any person who has been convicted of a felony offense under KRS Chapter 510, in which the victim of that offense has conceived and delivered a child, shall not have custody or visitation rights, or the rights of inheritance under KRS Chapter 391 with respect to that child.
- (3) The mother of the child may waive the protection afforded under subsection (2) of this section regarding visitation and request that the court grant reasonable visitation rights with the child if paternity has been acknowledged.
- (4) Unless waived by the mother and, if applicable, the public agency substantially contributing to the support of the child, a court shall establish a child support obligation against the father of the child pursuant to KRS 403.211.

KRS 403.325 Visitation denied parent convicted of homicide of other parent -- Exception -- Hearing required.

- (1) Notwithstanding the provisions of KRS 403.320, if a parent of a child is convicted of murder or manslaughter in the first degree of the other parent, a court shall not grant the convicted parent visitation rights with respect to that child unless the court, through a hearing, determines that visitation is in the child's best interest.
- (2) If the court later modifies a denial of visitation to grant visitation, the court shall do so only after a hearing which establishes that visitation is in the child's best interest.
- (3) In any hearing conducted under subsection (1) or (2) of this section:
 - (a) Jurisdiction shall lie with the Circuit Court of the county where the child resides; and
 - (b) The convicted parent, to obtain visitation, shall have to meet the burden of proving that visitation is in the child's best interest.

KRS 403.340 Modification of custody decree -- Modification based on active duty deployment to revert back on parent or custodian's return.

- (1) As used in this section, "custody" means sole or joint custody, whether ordered by a court or agreed to by the parties.
- (2) No motion to modify a custody decree shall be made earlier than two (2) years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe that:
 - (a) The child's present environment may endanger seriously his physical, mental, moral, or emotional health; or
 - (b) The custodian appointed under the prior decree has placed the child with a de facto custodian.
- (3) If a court of this state has jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act, the court shall not modify a prior custody decree unless after hearing it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian, and that the modification is necessary to serve the best interests of the child. When determining if a change has occurred and whether a modification of custody is in the best interests of the child, the court shall consider the following:
 - (a) Whether the custodian agrees to the modification;
 - (b) Whether the child has been integrated into the family of the petitioner with consent of the custodian;
 - (c) The factors set forth in KRS 403.270(2) to determine the best interests of the child;
 - (d) Whether the child's present environment endangers seriously his physical, mental, moral, or emotional health;
 - (e) Whether the harm likely to be caused by a change of environment is outweighed by its advantages to him; and
 - (f) Whether the custodian has placed the child with a de facto custodian.
- (4) In determining whether a child's present environment may endanger seriously his physical, mental, moral, or emotional health, the court shall consider all relevant factors, including, but not limited to:
 - (a) The interaction and interrelationship of the child with his parent or parents, his de facto custodian, his siblings, and any other person who may significantly affect the child's best interests;
 - (b) The mental and physical health of all individuals involved;
 - (c) Repeated or substantial failure, without good cause as specified in KRS 403.240, of either parent to observe visitation, child support, or other provisions of the decree which affect the child, except that modification of custody orders shall not be made solely on the basis of failure to comply with visitation or child support provisions, or on the basis of which parent

is more likely to allow visitation or pay child support

- (d) If domestic violence and abuse, as defined in KRS 403.720, is found by the court to exist, the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parent.
- (5) (a) Except as provided in paragraph (b) of this subsection, any court-ordered modification of a child custody decree, based in whole or in part on:
 - 1. The active duty of a parent or a de facto custodian as a regular member of the United States Armed Forces deployed outside the United States; or
 - 2. Any federal active duty of a parent or a de facto custodian as a member of a state National Guard or a Reserve component;shall be temporary and shall revert back to the previous child custody decree at the end of the deployment outside the United States or the federal active duty, as appropriate.
- (b) A parent or de facto custodian identified in paragraph (a) of this subsection may consent to a modification of a child custody decree that continues past the end of the deployment outside the United States or the federal active duty, as appropriate.
- (6) Subject to KRS 403.315, if the court orders a modification of a child custody decree, there shall be a presumption, rebuttable by a preponderance of evidence, that it is in the best interest of the child for the parents to have joint custody and share equally in parenting time. If a deviation from equal parenting time is warranted, the court shall construct a parenting time schedule which maximizes the time each parent or de facto custodian has with the child and is consistent with ensuring the child's welfare.
- (7) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.