



LEGAL TRAINING FOR Dependency, Neglect and Abuse Cases



Table of Contents

Dependency, Neglect and Abuse Cases	1
How to Do the Job <i>Applying the Law to Practice</i>	45
Termination of Parental Rights Cases	58


Dependency, Neglect and Abuse Cases



**Legal Training for
Dependency
Neglect and Abuse
Cases**

Administrative Office of the Courts


1



**Dependency,
Neglect and Abuse
Cases**

Nathan Goins
Legal Liaison
Administrative Office of the Courts

2



Basics

3

**Dependency, Neglect and Abuse (DNA) Cases
The Basics**

- DNA cases are “temporary” cases intended to address a child’s unmet needs, but can end with “permanent” orders
- Often the first exposure of parents and children to the judicial system
- Can result in a stronger family or the deconstruction of a family
- Constant balancing of parental rights and what is in the child’s best interest



4

**Dependency, Neglect and Abuse (DNA) Cases
The Basics**

- **DNA Case**
 - Stated goal is to get the family services to reunite/keep the family together while addressing safety concerns
 - Adjudication/Disposition is often the real start of a case
 - Often the stages of the cases which most impact some getting their children back occur post-disposition
- **Criminal Case**
 - Punishment for bad behavior
 - For the attorney, a guilty finding/plea is often seen as the end of the fight



5

**Dependency, Neglect and Abuse (DNA) Cases
The Basics – Benefits of Practicing**

- Opportunity for almost immediate hearing practice
- Opportunity to earn steady income
- Opportunity to grow practice & establish reputation
- Opportunity for significant improvement of people’s lives



6

**Dependency, Neglect and Abuse (DNA) Cases
The Basics - Considerations**

- Opportunity for almost immediate hearing practice
- \$500 per case & \$500 for appeal
- Difficult subject matter – Take care of yourself
- Opportunity to grow practice & establish reputation



7

**Dependency, Neglect and Abuse (DNA) Cases
The Basics – Getting Started – FCRPP 36 & 37**

- Each judge keeps a list
- Statewide requirements to be added:
 - Must be in good standing
 - Meet practice standards in FCRPP Appendix D
 - Complete this training
 - Complete at least four hours of relevant training every two years



8

**Dependency, Neglect and Abuse (DNA) Cases
The Basics – Getting Started – FCRPP 36(3)**

Can be sanctioned, including removal from the list and active cases (provided it does not harm the client)



9

Dependency, Neglect and Abuse (DNA) Cases
The Basics – Getting Started

Gather information:

- Check local rules (call judge's office or clerk) about docket scheduling
- Ask to observe DNA court



10

Dependency, Neglect and Abuse (DNA) Cases
The Basics – Getting Started

To be added to list:

- Check with Court to see if there is a formal process
 - If so, follow it
- If no formal process:
 - Prepare letter explaining your interest and qualifications, include that you completed this training
 - Send to the judge(s) whose list you wish to join



11



Back to Law and Practice
Balancing

12

Dependency, Neglect and Abuse (DNA) Cases
The Basics

- Constant balancing of parental rights and what is in the child's best interest



13

Parental Rights

- A parent's constitutional right to raise their child is one of the most sacred interest protected by the US Constitution. Troxell v. Granville, 530 U.S. 57, 65 (2002).
- Parents are presumed to be fit and don't have to be perfect to retain custody of their children. Santosky v. Kramer, 455 U.S. 745, 753 (1982).



14

Unified Juvenile Code
KRS 600.010(g) - Intent

It shall [...] be the policy of this Commonwealth to **provide judicial procedures in which rights and interests of all parties, including the parents and victims, are recognized and all parties are assured prompt and fair hearings.** Unless otherwise provided, such **protections belong to the child individually and may not be waived by any other party.**



15

**Unified Juvenile Code
KRS 600.010(a) – Intent**

The Commonwealth shall direct its efforts to promoting protection of children; to the strengthening and encouragement of family life for the protection and care of children; to strengthening and maintaining the biological family unit; to ensuring that policies and practices utilized are supported by data and research and are monitored or measured for their effectiveness in achieving the intended results; and to offering all available resources to any family in need of them;



16

**Unified Juvenile Code
KRS 600.010(b) – Intent**

It also shall be declared to be the policy of this Commonwealth that:

1. All efforts shall be directed toward providing each child a safe and nurturing home;
2. Emphasis shall be placed on involving families in interventions developed for youth, providing families with access to services necessary to address issues within the family, and increasing accountability of the youth and families within the juvenile justice system;



17

**Unified Juvenile Code
KRS 600.010(c) & (d) – Intent**

- (c) The court shall show that other less restrictive alternatives have been attempted or are not feasible in order to insure that children are not removed from families except when absolutely necessary;
- (d) Any child brought before the court under KRS Chapters 600 to 645 shall have a right to treatment reasonably calculated, through the use of evidence-based programs when available, to bring about an improvement of his or her condition and, to the extent possible, have that treatment administered in the county of residence



18

Dependency, Neglect and Abuse (DNA) Cases
KRS 620.010 – Legislative Purpose

Children have certain fundamental rights which must be protected and preserved, including but not limited to, the rights to adequate food, clothing and shelter; the right to be free from physical, sexual or emotional injury or exploitation; the right to develop physically, mentally, and emotionally to their potential; and the right to educational instruction and the right to a secure, stable family. It is further recognized that upon some occasions, in order to protect and preserve the rights and needs of children, it is necessary to remove a child from his or her parents.



19



Roles and Goals

20

Persons involved in a DNA Action

Parties:

- Child
- Parent(s)
- PECCS(s)
- CHFS

Interested persons (not parties, but granted rights):

- Persons claiming to be de facto custodians (KRS 620.100(1)(c))
- Foster parents, pre-adoptive parents, or any caregiving relative



21

Persons involved in a DNA Action

Attorneys:

- County Attorney/Office of Legal Services (OLS)
- Court Appointed Counsel (CAC) - Parent/Custodian Attorneys
- Guardian Ad Litem
- De Facto Custodian Attorney(s)

Others

- Court Appointed Special Advocates (CASA)
- Citizen Foster Care Review Boards (CFCRB)
- Director of Pupil Personnel



22

County Attorney (or Office of Legal Services)

- The county attorney is designated as the person who "prosecutes" DNA cases
- It could be the county attorney, but is often an assistant county attorney
- County attorneys generally do not see themselves as representing the Cabinet – they see themselves as representing "the Commonwealth" as a whole
- Some county attorneys lead the discussion, and some are more deferential to the social services worker



23

County Attorney (or Office of Legal Services)

- The Office of Legal Services (OLS) is in the Cabinet and files terminations of parental rights
- If the judge and county attorney agree, an attorney from the Office of Legal Services (OLS) can step in for the Cabinet and "prosecute" the case
- Very rare



24

Social Services Worker (DCBS, CHFS)

- Goals set by statute and policy
- Return to parent, initially, then changes to another permanency goal
- "Permanency" is a term of art meaning the child is in a permanent place
- Must make reasonable efforts unless there is an exception



25

Parent/Custodian Attorney

- Same duties and responsibilities as any other attorney
 - Confidentiality
 - No conflict of interest
 - Communication and information gathering
 - Diligence in representation
- May ask to withdrawal if there is a conflict with client
- Must keep information confidential
- Sometimes silence is golden



26

Guardian Ad Litem

- Most of the same duties and responsibilities as attorney for an adult
 - Confidentiality
 - No conflict of interest
 - Communication and information gathering
 - Diligence in representation
- Exceptions:
 - Advocates for the child's best interest - GALs do not have to advocate for the client's wishes



27

Court Appointed Special Advocates

- CASA volunteers are community-based and are appointed by judges to serve in child abuse and neglect cases. Once assigned to a child, the volunteer researches the child's case, reviews documents, interviews relevant people, and makes a report to the court as to what is in the best interest of the child, in terms of services, placement, visitation, reunification, and permanency.
- Not in every county
- Not in every case



28

Citizen Foster Care Review Boards

- CFCRB volunteers review the cases of children in out-of-home care and make recommendations to the judge
- Might come up in review hearings
- Check court file



29



Jurisdiction and Procedure

30

**KRS 610.010
District Court Jurisdiction**

- The Juvenile session of the District Court of each county shall have *exclusive* jurisdiction of DNA proceedings concerning any child living or *found* within the county, who has not reached his/her 18th birthday.
- Family Court has concurrent jurisdiction



31

**KRS 23A.100
Family Court Jurisdiction**

Family Court (division of Circuit Court) has the following jurisdiction:

- Dissolution of Marriage/Property Division
- Child Custody
- Visitation
- Maintenance and Support
- Termination of Parental Rights (TPR)
- Adoptions
- Domestic Violence
- Paternity
- Status
- Dependency, Neglect and Abuse cases (DNA)



32

Format of Hearings

- Varies due to local rules, local practice, and judicial discretion
- Can be in-person, remote, or both
- Often appears less formal than other hearings



33

Order of Hearings

- Typically, DCBS speaks first – directly or through the county attorney
 - DCBS often has the burden of proof
- However, a parent attorney or GAL will speak first if there is something urgent or if they have a motion
- CASA, if appointed, is usually last
- Conversations (and arguments) can occur at any time



34

Statutory Steps in a DNA Case*



* Pre-Hearing Conferences, Motion Hearings, and other proceedings may, and are likely to, occur between each step in the case.



35



What Happens Before a DNA Case Begins?

36

Cabinet for Health and Family Services
Agency Procedure

- Cabinet intake and case processing
 - Allegations can be made using the Kentucky Child/Adult Protect Services Reporting System (<https://prd.webapps.chfs.ky.gov/reportabuse/home.aspx>) or the Kentucky Child/Adult Abuse Hotline (1-877-597-2331)
- Acceptance and referral to local office



37

Cabinet for Health and Family Services
Agency Procedure

- Investigation
 - Allegations are either substantiated or unsubstantiated
- On-Going
 - Plans, Reviews, Reports
- CHFS Manual:
<https://manuals.sp.chfs.ky.gov/Pages/index.aspx>



38

DNA Cases vs. Status Offense Cases
KRS 600.010(67)

- Status offenses (KRS Ch. 630) are offenses that would not be a crime if committed by an adult:
 - Beyond the control of school
 - Beyond the control of parent
 - Habitual runaway
 - Habitual truancy
 - Alcohol offenses under KRS 244.085



39

DNA Cases vs. Status Offense Cases

- DNA case – Parent accused
- Status offense case – Child accused
- Can have similar orders and outcomes



40



**Emergency Custody Order
Ex Parte Order**

41

**KRS 620.060
Emergency Custody Orders**

The Court for the county *where the child resides or will reside* or where the child is present may issue an *ex parte* emergency custody order (ECO) when any of the following circumstances exist:


- Child is in danger of *imminent* death or serious physical injury
- Child is being sexually abused
- Parent has repeatedly inflicted or allowed physical or emotional injury (not including reasonable discipline)
- Child is in *imminent* danger due to parent's failure or refusal to provide for the safety or needs of the child



42

KRS 620.060
Emergency Custody Orders


- If an ECO is granted, the Court must hold a temporary removal hearing (TRH) within 72 hours, exclusive of weekends and holidays
- The ECO is only effective during the timeframe above
- The ECO should be served upon parent
- If temporary custody is granted at the TRH, then custody is converted from Emergency Custody to Temporary Custody



43

KRS 620.060
Emergency Custody Orders


- A petition shall be filed with the Court within 72 hours of taking the child into custody
- A DNA action may be commenced by the filing of a Petition, by "any interested person" See FCRPP 19(3)



44

KRS 620.070
Service of Petition and Summons

- The petition and summons shall be served by the sheriff or other person authorized to serve process (other than a Cabinet employee) on the parent or person exercising custodial control or supervision (PECCS). See FCRPP 17(2)
- If person to be served is unknown or cannot be located, the petition and summons may be served as directed by the Court including:
 - Nearest adult relative
 - Mail to last known address
 - Other service directed by the Court and reasonably calculated to give actual notice
 - Warning order may be used if other means not effective



45



**Temporary
Removal Hearing
First Impression and
Opportunities**

Nathan Goins
Legal Liaison
Administrative Office of the Courts

46

Temporary Removal Hearing (TRH)

- First statutory hearing in
- Parent(s)
- PECCS(s)

Interested persons (not parties, but granted rights):


- Persons claiming to be de facto custodians (KRS 620.100(1)(c))
- Foster parents (KRS 620.360(1)(r))



47

**KRS 620.100(1)
Appointment of Separate Counsel – Post-TRH**


- The Court shall appoint a guardian *ad litem* (GAL) for the child
- The Court shall appoint separate counsel for the parent who exercises custodial control, if indigent
- The Court shall appoint counsel for any person claiming to be a *de facto* custodian, if indigent
- The Court may appoint separate counsel for a non-parent exercising custodial control or supervision, if indigent
- The Court may appoint a Court-Appointed Special Advocate (CASA)



48

KRS 620.080
Temporary Removal Hearing

- Unless waived by the child and parent(s)/PECCS(s), a temporary removal hearing shall be held:
 - Within 72 hours of an ECO being granted
 - Within 10 days of the filing of the petition, if no ECO was granted



49

KRS 620.080
Temporary Removal Hearing


- To grant temporary custody, the Court must find, by a preponderance of evidence, there are reasonable grounds to believe that the child would be dependent, neglected or abused if returned to parent(s)
- Hearsay may be admissible for “good cause”



50

KRS 620.130
Alternatives to Removal

- The Court must consider whether there is a less restrictive alternative to removal before removing the child from the home
- If the Court orders removal, services are to be provided to the parent(s) and the child; and must be designed to promote the protection of the child and return of the child safely back home



51

**Reasonable Efforts
Federal Law**

- States must make reasonable efforts to preserve and reunify families –
 - Prior to placement of a child in foster care; and
 - To make it possible for a child to safely return. 42 USC §671(15)(B).
- States must make reasonable efforts to finalize permanency plans. 42 USC §670(5)(i)(C).



52

Reasonable Efforts

Some specific examples:

- RE to prevent removal
- RE to find alternative placements – least restrictive
- RE to locate other parent, relatives, fictive kin
- RE to reunify
- RE toward finalizing permanency plan (achieving permanency)



53

**Reasonable Efforts
Kentucky - KRS 620.020(11)**

The exercise of ordinary diligence and care by the Cabinet, to utilize all preventative and all reunification services available to the community, which are necessary for the child to safely live at home.



54

**Reasonable Efforts
Waiver**

- **Requires a court order**
- **Best Practice:**
 - If the waiver is involuntary, based on a statutory exception, state the exception when requesting a waiver from the court.
 - If a parent wishes to voluntarily waive reasonable efforts, have the parent waive that right in court on the record instead of presenting a signed statement/form.



55

**Reasonable Efforts Exceptions
KRS 600.020(3)**

- No parent contact or attempted contact for 90 days
- Parent incarcerated and unavailable to care for child for a year
- Parent sexually abused the child and refused treatment
- Parent found by Cabinet to engage in abuse of the child resulting in 2 or more removals in the past 2 years
- Parent caused serious physical injury to the child
- Parent has committed murder, voluntary manslaughter, or a related inchoate offense against his/her child



56

**Reasonable Efforts Exceptions
KRS 610.127**

- Parent has convicted in a criminal proceeding of having caused or contributed to the death of his/her other child(ren)
- Committed felony assault against any of his/her children that ends in serious bodily injury
- Involuntary TPR of any of his/her other children
- Engaged in pattern of substance use disorder incapacitating the parent for 90 days, and the parent refused treatment



57

**Reasonable Efforts Exceptions
KRS 610.127**

- Mental illness, intellectual disability, or other developmental disability creating a substantial safety risk and that cannot be remedied with even 12 months of service
- Sexually abused the child or is required to register as a sex offender
- Other circumstances consistent with the child's best interest and the permanency plan



58

**KRS 620.350
Abandoned Newborn Infant**

- Upon notice from any emergency medical service provider or hospital staff that a newborn infant has been abandoned at a hospital, the Cabinet shall immediately seek an order for emergency custody
- The infant must be medically determined to be less than 30 days old
- No protective services investigation shall commence, unless indicators of abuse or neglect are present
- See also KRS 405.075



59

**Temporary Removal Hearing
KRS 620.080**

Low Burden of Proof

- Preponderance of Evidence (more likely than not)
- "Reasonable Grounds to Believe"
- Child would be dependent, neglected or abused
 - "Risk of..."
- Petitioner does not have to prove "who did it"



60

Temporary Removal Hearing Scenario

Facts:

- Mother, sole caregiver for child, was arrested for possession of meth and drug paraphernalia when pulled over for missing a red light
- Passenger, a “known meth addict” was also arrested
- Law enforcement reported possible neglect
- Cabinet obtained ECO and placed child with foster family
- It was not mom’s meth



61

Temporary Removal Hearing Scenario

More Facts:

- Mom was driving passenger to rehab after months of trying to convince them to go
- She knew they had drugs and told them to give them to her
- TRH is at 9:00 a.m.; Mom’s arraignment is at 1:00 p.m.
- Mom is joining TRH from jail (she called you before hearing)
- Mom expects to be released following arraignment
- Mom wants to fight the removal



62

Temporary Custody Order (TCO) KRS 620.090

- If the Court finds at the TRH that it is not safe to return the child back to parents, then the Court converts the ECO to a TCO
- If the Cabinet gets custody, then the Cabinet shall place the child in the least restrictive *appropriate* placement
- The adjudication hearing must be held, and a final disposition must be made, within 45 days of the child’s removal, unless the Court finds that extending the time is in the child’s best interest



63

**Essential Findings
42 U.S.C. § 675(5)(G)**

If the child is placed with the Cabinet, or out of home under supervision of the Cabinet, the Court must determine that:

- The state made reasonable efforts to prevent or eliminate the need for removal

AND

- Continuation in, or return to, the home would be contrary to the welfare of the child

*These findings affect Title IV-E reimbursement for the child



64

Pre-Adjudication Orders

- Do the orders fit the specific circumstances/allegations in the case?
- Will parenting classes benefit the family?
- Is there a better program/service?
- Is your client already participating in treatment or a program?
- Advocate for assessment over treatment. Assessment first, then treatment.



65

Pre-Adjudication Orders

- Do you need specific orders related to visitation?
- Do you need no-contact orders?
- Do you need orders for access to information (HIPAA/FERPA)?



66

**Ordering Participation in Treatment
KRS 620.160**

The Court can order any parent, guardian, or person exercising similar custodial control or supervision of a child to cooperate and actively participate in such treatment or social service programs which might reasonably be expected to meet the goal of enhancing the best interests of the child and family unit.



67

**Grandparents and Temporary Custody Orders
KRS 620.090(6)**

- If one grandparent is granted temporary custody, then the Court must consider grandparent visitation for any other grandparent if the Court determines that the other grandparent has a significant and viable relationship with the child as established in KRS 405.021(1)(c)



68

**Immediate Entitlement
KRS 620.110**

- Any person aggrieved by the issuance of a temporary removal order may file a petition in Circuit Court for Immediate Entitlement to Custody
- The Circuit Court must expeditiously hold a hearing on the petition
- The original order(s) remain in effect until the Circuit Court rules on the petition



69

Case Permanency Plans KRS 620.230

Within 30 days of a court order committing a child to the Cabinet's custody, the Cabinet shall file a case permanency plan that includes:

- Reasons why the child is in care
- Actions taken to date
- Proposed actions for the next 6 months
- Contemplated placements
- Reasons the child is not safe at home
- Steps taken to minimize harm
- Placement type and why appropriate
- If outside of original county, then why
- Description of services
- Parent(s) objectives and tasks
- Schedule of time intervals
- If the child remains in home: potential harm, protective measures, and why foster care is not needed



70

Case Progress Reports KRS 620.240

Every 6 months after receiving custody, the Cabinet must file a report that includes:

- Length of time in foster care
- Number, date, and location for each placement
- Description of services provided or arranged by the Cabinet to the parents
- Efforts and progress of the parents
- Barriers to returning the child home
- Evaluation of the child's current placement
- Recommendations for necessary services
- Timetable for the child's permanent placement
- If return to home is not recommended, a specific recommendation for permanent placement



71

Permanency Options Under ASFA Adoption and Safe Families Act 42 U.S.C. § 675(5)(C)

- Return to the Parent
- Adoption
- Legal Guardianship (Permanent Custody)
- Permanent Placement with a Fit and Willing Relative (Permanent Relative Placement)
- Another Planned Permanent Living Arrangement (APPLA)



72

**Return to Parent
922 KAR 1:140(5)**

- The Cabinet will recommend return if it determines the family has made sufficient progress toward completing the case permanency plan and reunification is in the best interest of the child
- The Court may recommend a change in the permanency goal if the family is not making progress or a circumstance occurs negating reasonable efforts



73

Tampering with Drug Tests

- KRS 516.108 - Criminal Simulation in the First Degree (Class D Felony)
 - "Knowingly manufactures, markets, or distributes any product which is intended to defraud a test designed to detect alcohol or a controlled substance"
- KRS 516.110 Criminal Simulation in the Second Degree (Class A Misdemeanor)
 - "Uses any product to alter the results of a test designed to detect alcohol or a controlled substance" or
 - "Possesses an object so simulated with knowledge of its character"
- KRS 524.100 Tampering with Physical Evidence (Class D Felony)
 - "Fabricates any physical evidence with intent that it be introduced in the official proceeding or offers any physical evidence knowing it to be fabricated or altered"



74



**Adjudication
Hearing
What Happened**

Nathan Goins
Legal Liaison
Administrative Office of the Courts

75



Adjudication Hearing

What is the Truth or Falsity of the Allegations in the Complaint?

76

Adjudication Hearings
KRS 620.100

What is the truth or falsity of the allegations in the complaint?



77

Adjudication Hearings
KRS 620.100

- The Civil Rules apply
- The burden of proof is on the complainant to prove DNA by a preponderance of the evidence
- Designed as a full evidentiary hearing, but could resolve through stipulation



78

**Adjudication Hearings
KRS 620.100**

- All cases involving children in DNA Court shall be heard by the Court – not a jury
- The child, parents, and PECCS each have a right to confront and cross-examine witnesses
- Foster parents, pre-adoptive parents, and relatives providing care to the child have a right to notice, to appear, and to be heard



79

**Adjudication Hearings
KRS 620.100**

The Court must determine whether the child was dependent, neglected or abused at the time the petition was filed



80



Definitions

81

**Definition of an “Abused or Neglected Child”
KRS 600.020**

(1)(a) A child whose health or welfare is harmed or threatened with harm, when his parent, guardian, person in a position of authority or special trust, or other person exercising custodial control or supervision (PECCS) of the child does the following:



82

**Definition of an “Abused or Neglected Child”
KRS 600.020(1)(a)**

- Inflicts or allows to be inflicted upon the child “physical” or “emotional” injury by other than accidental means
- Creates or allows to be created a **RISK** of physical or emotional injury
- Engages in a pattern of conduct rendering the parent incapable of caring for the child, which may include incapacity due to alcohol or drugs



83

**Definition of an “Abused or Neglected Child”
KRS 600.020(1)(a)**

- Repeatedly or continuously fails to provide care and protection for child
- Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution
- Creates or allows to be created a **RISK** of sexual abuse, sexual exploitation, or prostitution



84

**Definition of an “Abused or Neglected Child”
KRS 600.020(1)(a)**

- Abandons or exploits the child
- Does not provide supervision, food, clothing, shelter, education or medical care for child (religious belief exception for medical care)
- Failed to make sufficient progress and child in care 15 of 48 months
- Commits or allows female genital mutilation as defined in KRS 508.125 to be committed



85

**Definition of an “Abused or Neglected Child”
KRS 600.020(1)(b)**

**Also, regardless of relationship to child:
A person twenty-one (21) years of age or older commits/allows sexual abuse, exploitation, or prostitution against child under sixteen (16)**



86

**Definition of “Emotional Injury”
KRS 600.020(26)**

- Applies to abuse/neglect under KRS 600.020(1)(a)(1) & (2)
- An injury to the mental or psychological capacity or emotional stability of a child
- Must be testified to by a Qualified Mental Health Professional (QMHP) (defined in following slide)



87

**Definition of a “Qualified Mental Health Professional”
KRS 600.020(52)**

Must be one of the following:

- Physician
 - Psychiatrist
 - Psychologist, psychological practitioner, or psychological associate
 - Registered Nurse (RN) with Master’s Degree in psychiatric nursing
 - Licensed clinical social worker (LCSW)
 - Marriage and family therapist with 3 years of experience
 - Credentialed professional counselor with 3 years of experience
- *See R.C. v. Commonwealth, 101 S.W.3d 897 (Ky. App. 2002)



88

**Definition of “Physical Injury”
KRS 600.020(49)**

- Applies to abuse/neglect under KRS 600.020(1)(a)(1) & (2)
- Means “substantial physical pain or any impairment of physical condition”
- NOTE: Per KRS 620.060(1), a physical Injury does not necessarily give grounds for an emergency custody order (ECO), unless the Court finds that the injury was:
 - “Repeatedly inflicted” or
 - A “serious physical injury”



89

**Definition of “Serious Physical Injury”
KRS 600.020(60)**

Means physical injury which:

- Creates a substantial risk of death
- Causes serious and prolonged disfigurement
- Causes prolonged impairment of health
- Prolonged loss or impairment of the function of any bodily member or organ



90

Definition of "Serious Physical Injury" KRS 600.020(60)

- Any contacts or interactions in which a person listed in KRS 600.020(1)(a) uses or allows, permits, or encourages the use of the child for the sexual stimulation of the perpetrator or another person.
- There may be some overlap with human trafficking offenses. See KRS Ch. 529



91

Definition of "Sexual Abuse" KRS 600.020(61)

- Any contacts or interactions in which a person listed in KRS 600.020(1)(a) uses or allows, permits, or encourages the use of the child for the sexual stimulation of the perpetrator or another person.
- There may be some overlap with human trafficking offenses. See KRS Ch. 529



92

Definition of a "Dependent Child" KRS 600.020(20)

- Any child, other than an abused or neglected child, who is under improper care, custody, or guardianship that is not due to an intentional act of a parent, guardian, or person exercising custodial control or supervision (PECCS) of the child
- Generally, thought to be through no fault of the parent, or it would be abuse or neglect
- A child cannot be both "Dependent" and "Abused or Neglected" See J.H. v. Com., 767 S.W.2d 330 (Ky. App. 1988)



93

Children Needing Extraordinary Services KRS 600.050

- Allows commitment if a child needs “extraordinary services” because the child is mentally or emotionally ill **OR** requires medical attention **AND:**
 - Parents cannot provide for the treatment/care
 - Inability is due primarily to parent's lack of financial means
 - Parent, guardian, or PECCS made reasonable efforts
 - Inability is not due to abuse or neglect
 - Commitment is not opposed by parent, guardian, or PECCS



94



Preparation and Practice

95

Art of Persuasion

- When deciding what evidence to present and what objections to make against opposing counsel(s), the decisions are guided by the strategic reason for holding the hearing.
 - Are allegations in the petition false, exaggerated, or misconstrued?
 - How do you convince this judge that you are right?
 - How do you build a record that may be helpful as state moves forward against your client and/or an appeal?



96

Preparation

- Advocate for your client by defending them against DNA allegations but consider the need to insulate them from negative testimony (positive drug screens, violations of court orders, collateral criminal consequences) that might impair them from reunification if the defense is unsuccessful.
- Craft and present a theory of the case that explains your client's position and is supported by relevant evidence.



97

Preparation

- If applicable, establish that the Cabinet failed to provide adequate (if any) interventions and/or supports before bringing the petition or make reasonable efforts to prevent removal.
- Ensure you only make the hurdles as high as you need to in order to prevail.
- Remember the state's burden is not at the same level as a TPR action or a criminal charge, so make sure that your client knows the risks of a contested adjudication.



98

Expert Witnesses

- The Cabinet will have access to expert witnesses – mental health providers, assessments, forensic psychologists
- Can you defend your client without your own expert?



99

Expert Witnesses

- Consider a motion for expert witness
- Can you defend your client without your own expert?
- Should you file a motion for expert witness funding?



100

Funding for Expert Witness

Cabinet for Health & Family Services v. K.S., 610 S.W.3d 205 (Ky. 2020).

The benefit of expert testimony depends upon of the facts presented in a given case. Thus, the question of whether due process requires a court-appointed expert is best left to the judgment of the trial court, subject to appellate review. *Id.* at 216.



101

Funding for Expert Witness

Cabinet for Health & Family Services v. K.S., 610 S.W.3d 205 (Ky. 2020).

A trial court reviewing a request for expert assistance must consider (1) whether the request was pleaded with specificity; (2) whether the funding is reasonably necessary; and (3) whether due process weighs in favor of appointing an expert. *Id.* at 216 (Ky. 2020) *applying Benjamin v. Commonwealth*, 266 S.W.3d 775, 789 (Ky. 2008).



102

Funding for Expert Witness

Cabinet for Health & Family Services v. K.S., 610 S.W.3d 205 (Ky. 2020).

A parent must show in specific terms that medical or other expert testimony or assistance is likely to play a significant role in the adjudication of dependency, neglect, and abuse. In doing so, the parent must demonstrate how an expert would help her case. The request must contain more than a general affirmation that a medical or other expert would help. The requesting parent must specify the type of expert and explain why that expert is needed in light of the particular allegations of neglect or abuse set forth in the petition. Id. at 216-217.



103

Funding for Expert Witness

Cabinet for Health & Family Services v. K.S., 610 S.W.3d 205 (Ky. 2020).

In considering the parent's request, the trial court should focus on the risk of erroneous deprivation posed by the expert's absence. The court should consider the volume and complexity of the medical or other evidence involved in the case. Additionally, the court should consider whether the medical or other evidence is likely to be a significant factor in the determination of neglect or abuse. In cases where there is significant lay witness testimony concerning the allegations or the nature of the injuries clearly suggests physical harm, the aid of an appointed expert is less likely to be necessary. Id. at 217.



104

Funding for Expert Witness

Cabinet for Health & Family Services v. K.S., 610 S.W.3d 205 (Ky. 2020).

In any event, the trial court should set out in specific terms on the record its reasons for approving or denying a parent's request. Appellate review of such a determination, as is the case in the criminal context, will be for abuse of discretion and limited to the reasons presented to the trial court. Id. at 217.



105

Evidence

- Make an “Exhibit Chart” with columns for “Relevance” (shorthand), “Admissibility” (to counter opponent’s objections), and “Admission into Evidence” (check off after moving to admit).
 - Have all exhibits marked and ready to go before the hearing.
 - Check with the Clerk at the hearing to ensure you have met her/his, and the Judge’s, standards for marking.
- Make an extra copy for the Judge, all opposing counsel, and your trial notebook. Keep your copies together and place a post it on each indicating which document goes to whom.



106

Evidence

- Identify the exhibits you want to keep at the witness chair during their testimony. It can be the original to be filed or a copy.
- Lay the foundation for admitting the exhibit.
- Have your witness explain the exhibit in sufficient detail or, if through cross, by your leading questions, so that the court understands its importance.
- Introduce the exhibit into evidence before your witness leaves the stand.
- Mark that you did so on your exhibit chart in your trial notebook.




107

Evidence

- Lay the foundation before the hearing if helpful.
- Consider whether to agree on admissions and stipulations with opposing counsel(s)
- Prove authentication and first-hand knowledge.
 - Ex. Photo – Did the witness take it or will witness acknowledge it is a true and accurate representation of the matter depicted?



108



**Disposition Hearing
and Reviews
What Needs to
Happen**

Nathan Goins
Legal Liaison
Administrative Office of the Courts

109




Disposition Hearing
What is in the Best Interest of the Child?

110

Disposition Hearing
KRS 620.100(4)


**The disposition shall determine the
action to be taken by the court on behalf
of the child and his parent or other
person exercising custodial control or
supervision**



111

Disposition Hearing


- **Who will have custody?**
- **Visitation**



112

**Dispositional Alternatives
KRS 620.140**


- Informal adjustment (dismissal)
- Return the child to home of removal with protective orders such as:
 - Protective orders prohibiting custodians from action or requiring Cabinet supervision
 - Supervision of the child by the Cabinet
 - Any orders authorized in law for DVO (KRS 403.715-785) and IPO (KRS Chapter 456)
- Removal of the child to custody of an individual or agency
- Commitment of the child to the custody of the Cabinet
- Extend or reinstate the child's commitment if requested by the child before he/she turns 19 years of age



113

**Permanent Custody
KRS 620.027**

- District Courts have concurrent jurisdiction with Circuit Court to determine permanent child custody and visitation in DNA cases
- "In order to grant permanent custody via a custody decree in a dependency action arising under KRS Chapter 620, the court must comply with the standards set out by the General Assembly in KRS 403.270(2)[.]" *N.L. v. W.F.*, 368 S.W.3d 136, 148 (Ky. App. 2012).



114

**Procedure for Removing Committed Children
KRS 605.090(3)**

- Any child committed to the Cabinet and placed back in the home of the parents may be removed by the Cabinet without Court order if there is reasonable grounds to believe that the child is:
 - In danger of imminent death or imminent serious physical injury
 - Being sexually abused
 - **AND** parents are unable or unwilling to protect the child
- Within 72 hours of removal, the Cabinet shall petition the Court for an expeditious hearing for review of the agency removal
- If the situation is not as serious, the Cabinet must file a petition and obtain Court approval prior to removal



115



Review Hearings

116

**Qualified Residential Treatment Program Review
FCRPP 28(3)**

- A qualified residential treatment program (QRTP) is an improved version of a congregate care home
- A hearing is require if the Cabinet places, or wishes to place, a child in a QRTP
- Steps in the QRTP process:
 - DCBS notifies the court of the QRTP placement
 - DCBS files a report showing the need for the placement
 - The Court reviews and determines whether QRTP placement is appropriate
- Approval is tied to Federal reimbursement



117

**Permanency Progress Review
FCRPP 28(1)**

- **Must be conducted no later than 6 months after the child is placed in foster care, in the home of a non-custodial parent, or other person/agency**
- **May not occur if the child was older than 16 when the DNA petition was filed**



118

**Annual Permanency Reviews
KRS 610.125**

- **If a child enters foster care, the Court shall conduct a permanency review hearing within 12 months and every 12 months that custody and out-of-home placement continues**
- **The Court shall address the permanency goal:**
 - **Should the child return home?**
 - **Should the child be placed for adoption?**
 - **Should the child be placed with a permanent custodian?**
 - **If the child is 16 or older, has the Cabinet documented a compelling reason why it is in the best interest of the child to be placed in another planned permanent living arrangement?**



119

**Independent Living Review
FCRPP 28(2)**

- **Must be conducted at least 6 months prior to the child's 18th birthday**
- **Court reviews the child's independent living plan to ensure the child is receiving training on independent living and other appropriate services**



120



CASE LAW

121

Parent / Sex Offender

R.S., et al. v. Commonwealth of Kentucky, Cabinet for Health and Family Services, 2016-CA-001764-ME (Ky. App. Sept. 29, 2017)

Cabinet for Health & Family Services v. R.S., 570 S.W.3d 538 (Ky. 2018)

- The Cabinet brought DNA action on behalf of sons as father was a registered sex offender. Their action was not precipitated by any violation of the law. The family court entered orders requiring all contact between sons and father to be supervised.
- **The Court of Appeals** agreed with parents, reversing the family court and remanding the case to be dismissed holding that "a finding of neglect cannot be sustained solely on a child living with a biological parent who is a registered sex offender." The Cabinet presented no facts indicating any actual harm or any facts indicating a risk or threat of harm to the children. Thus, there was no basis for the family court "to further interfere in the rights of mother and father to rear their two sons."

- **The Kentucky Supreme Court** reversed the decision of the Court of Appeals and reinstated the trial court's decision.
- However, the Court declined to set a bright line test and specifically stated that these types of cases must be evaluated individually. The Supreme Court did not find that the trial court abused its discretion considering the father's prior criminal acts which were committed against an underage family member, and his inability to complete probation supervision successfully.



122

Consideration for Fictive Kin Placement

G.P. v. Cabinet for Health and Family Services, 572 S.W.3d 484 (Ky. App. 2019)

- **The Trial Court** committed the minor child to the Cabinet. Father argued the trial court erred when it failed to place the minor child with Stepmother, or, alternatively, with one of three blood relatives. Stepmother was not biologically related to the minor child and Father failed to present any evidence that Stepmother had standing to seek custody of the minor child. One of the three blood relatives proposed by Father was living with a drug trafficker and the two remaining blood relatives proposed by Father were drug traffickers.
- **The Court of Appeals** upheld the trial court's decision of placing the minor child with Foster Mother rather than with Stepmother or any of the three blood relatives proposed by Father. Father did not produce any evidence establishing Stepmother had standing to seek custody and, although the Cabinet must consider relative placement over other options, it is not required to choose relative placement.



123

Responsibility of Accused

Cabinet for Health and Family Services, Commonwealth of Kentucky on Behalf of the Minor Child C.R. v. C.B., 556 S.W.3d 568 (Ky. 2018)

- **The Trial Court** found the child born with drugs in her system to be neglected by Father who had a history of drug addiction, was not compliant with his case plan with the Cabinet, and had a previous involuntary termination of parental rights case involving other children.
- **The Court of Appeals** found the child could not be found to be neglected because Father had never exercised "custodial control or supervision" over the child, as the child had previously been placed in the care of her maternal grandmother.
- **The Kentucky Supreme Court** held that a parent does not have to be exercising "custodial control or supervision" to be found to have neglected or abused a child.



124

Educational Neglect

Commonwealth v. H.K., 2019-CA-000775 (Ky. App. Dec. 20, 2019)

The Commonwealth appealed from a summary dismissal of a DNA petition filed due to excessive absenteeism from school by a kindergartener on the basis that the facts presented did not meet the statutory requirements for abuse or neglect. By a 2-1 vote, the Court of Appeals affirmed, holding that there can be no educational neglect of a five-year-old for excessive absenteeism pursuant to KRS 600.020(1)(a)(8) because school attendance for a child of that age is optional rather than mandatory pursuant to KRS 158.030(2).



125

Intent not required by KRS 600.020(1)?

Cabinet for Health & Family Servs. v. P.W., 582 S.W.3d 887 (Ky. 2019); and K.W.W. v. Cabinet for Health and Family Services et al., 2018-CA-000028-ME and 2018-CA-000029-ME (Ky. App. Nov. 15, 2019)

The Supreme Court reversed the determination that sufficient evidence did not exist for the termination of the mother's rights and remanded to the Court of Appeals to determine whether sufficient evidence supported the trial court's finding that the remaining requirements of KRS 625.090 were met, holding:

- (1) Under the plain language of KRS 600.020(1) and relevant case law, one need not intend to abuse or neglect a child for that child to be adjudged an "abused or neglected child," and
- (2) Substantial evidence supported the lower court's finding of neglect in the termination of parental rights proceeding.



126

Intent not required by KRS 600.020(1)?

Cabinet for Health & Family Servs. v. P.W., 582 S.W.3d 887 (Ky. 2019); and **K.W.W. v. Cabinet for Health and Family Services et al.**, 2018-CA-000028-ME and 2018-CA-000029-ME (Ky. App. Nov. 15, 2019) (Cont.)

The Court of Appeals (On Remand) affirmed the trial court, holding:
“While we might not have reached the same conclusions as the trial court with respect to those requirements, we are unable to say that the trial court’s findings and conclusions amount to an abuse of discretion. Substantial evidence supports them.”



127

Questions?



128

How to Do the Job

Applying the Law to Practice



**CHILDREN'S
LAW CENTER**
PROTECTING THE RIGHTS OF CHILDREN AND YOUTH


**How to Do the Job –
Applying the Law to Practice**
Spring/Summer 2026

childrenslawky.org

This presentation is for informational purposes only. It does not constitute legal advice or create any attorney-client relationship. Every person's situation is different. For an individualized assessment or answers to specific questions, consult an attorney.




130




CLC Mission

Children's Law Center, Inc. (CLC) is a nonprofit legal service center that protects the rights of children and youth — so they can grow up in safe, healthy ways. We achieve our mission through direct legal assistance, policy reform, community education, and information & referral.

CLC works to achieve its mission through direct representation, community education, policy advocacy and impact litigation.




131




Outline

- What is a GAL? – *Morgan v. Getter*
- Relationship with the Client
- Procedural Fairness
- Child Development Stages
- Steps of Representation
- Conclusion of the DNA case
- GALs in Protection Order Cases




132




What is a GAL?

- KRS 620.100(1)(a): Court shall appoint counsel in DNA cases
- *Morgan v. Getter*, 441 S.W.3d 94 (Ky. 2014)
 - Question: What are the GALs required qualifications and role?
 - Holdings:
 - GAL represents the child, and is not an agent of the court
 - GAL represents the child's best interest




133




What is a GAL?

Qualifications

- “[T]he guardian ad litem shall be ‘a practicing attorney,’ CR 4.04(3), appointed to act in that capacity.” *Getter* at 107.
- Training
 - FCRPP 37: DNA training by AOC; 4 hours bi-annually
 - KRS 620.100(1)(a): “Counsel shall document participation in training on the role of counsel that includes training in early childhood, child, and adolescent development.”




134




What is a GAL?

Role – Whom GAL serves

- GAL is counsel for the child, not an agent for the court
- GAL ≠ Friend of Court (FOC) (KRS 403.090)
 - FOC's make a recommendation report to assist the court
 - GAL: “a child's representative appointed to participate actively as legal counsel for the child, to make opening and closing statements, to call and to cross-examine witnesses, to make evidentiary objections and other motions, and to further the child's interest in expeditious, non-acrimonious proceedings...” (*Getter* at 111)
- “The GAL should not file reports, testify, make recommendations, or otherwise put his own credibility at issue.” (*Getter* at 114)




135




What is a GAL?

Role – Whom GAL serves (cont.)

- Ethical Concerns for hybrid GAL/FOC role:
 - Conflicting duties of loyalty (SCR 3.130(1.7)) and confidentiality (SCR 3.130(1.6))
 - Also, conflict between party's right to confront, and attorney's duty to not act as advocate where likely to be a witness (SCR 3.130(3.7))




136




What is a GAL?

Role – Best v. Expressed Interest

- Best interest (KRS 620.023)
- Expressed interest
 - Must be considered (*Getter* at 118)
 - Best interest overcomes expressed if child wants “an outcome significantly at odds with the child’s best long-term interests...” (*Getter* at 116).
 - “Consideration of the child’s wishes is especially important where the GAL’s best-interest determination has resulted in a conflict with the child.” (*Getter* at 18)




137




What is a GAL?

Role – Best v. Expressed Interest (cont.)

- Duty when expressed interest diverges from best interest:
 - “The lawyer should explain to the child...why [they] feel bound not to pursue what the child wants and...if the child wishes, advise the court that the child disagrees with the assessment of the case.” (*Getter* at 116)
 - “[T]he GAL should make the court aware of the conflict and briefly inform the court what disposition the child desires. The attorney should not, however, engage in fact-based explanation outside the facts to be proved at the hearing.” (*Getter* at 118)
 - It is “especially important for the court to both hear the evidence that has persuaded the attorney to be informed of conflicting views of attorney and child.” (*Getter* at 116)




138




What is a GAL?

Role – Best v. Expressed Interest (cont.)

- Ethical questions related to best interest representation
 - Does substituting “best interest” determination violate duty to advocate zealously for client’s position?
 - SCR 3.130(1.14): When client’s capacity diminished...when lawyer reasonably believes cannot act in own interest, lawyer must take reasonably necessary protective action




139




Relationship with the Client

- SCR 3.130(1.14): When client’s capacity at issue, lawyer shall maintain normal client-lawyer relationship, as far as reasonably possible.
- Applies to court-appointed counsel for adults AND children
- Advise, consult, advocate and adhere to all other duties to client
- GALs not an authority figure to the child




140



Keys to an Effective Attorney-Client Relationship

- Applies equally to adults and children
- People’s perceptions of fairness in decision-making processes matter more than the outcomes.
- Individuals are more likely to accept decisions (i.e. buy in) and view decisions as legitimate when they believe procedures are fair
- Procedural Justice/Procedural Fairness



141

CHILDREN'S LAW CENTER

Keys to an Effective Attorney-Client Relationship (cont.)

- Key elements of Procedural Fairness:
 - **Voice** – meaningful opportunities to express views
 - **Neutrality** – unbiased decision-makers that use transparent, consistent process
 - **Respect** – treated with dignity and their rights acknowledged
 - **Trustworthiness** – demonstrate sincere concern for welfare




142

CHILDREN'S LAW CENTER

How to Implement Procedural Fairness

- **Voice:**
 - Ensure client has every opportunity to express what they want
 - Don't force client to change their voice even if you disagree
 - Validate their feelings, even if not aligned with outcome
- **Neutrality**
 - Check all preconceived notions at the door
 - Start relationship with genuine curiosity
 - Ask follow-up questions to understand



143

CHILDREN'S LAW CENTER

How to Implement Procedural Fairness (cont.)

- **Respect:**
 - No matter their viewpoints, decisions, behaviors
 - "Behavior is communication."
- **Trustworthiness:**
 - Keep all promises, especially confidentiality
 - Be honest about disagreements
 - Explain the process without guessing outcomes




144

CHILDREN'S LAW CENTER

Child Development

- Age 5 (Early Childhood)
 - **Communication:** Uses 5-6 word sentences but concrete thinking dominates; struggles with abstract concepts like "court" or "custody"
 - **Time concept:** Limited understanding of past/future; "yesterday" might mean last week
 - **Attention span:** 5-10 minutes for focused conversation
 - **Attorney interaction tip:** Use simple language, visual aids, and play-based rapport building. Ask about their daily routine rather than legal abstractions. Short, frequent meetings work better than long sessions.




145

CHILDREN'S LAW CENTER

Child Development

- Age 7 (Early Elementary)
 - **Logical thinking:** Beginning to understand cause and effect but still very literal
 - **Perspective:** Struggles to see situations from multiple viewpoints simultaneously
 - **Memory:** Can recall specific events but may confuse details or sequence
 - **Attorney interaction tip:** Ask open-ended questions but clarify their understanding. They may say what they think adults want to hear.




146


CHILDREN'S LAW CENTER

Child Development

- Age 9 (Middle Childhood)
 - **Abstract reasoning:** Beginning to emerge but inconsistent
 - **Peer awareness:** Friendships and school life become central concerns
 - **Moral reasoning:** Developing sense of fairness; rules matter
 - **Attorney interaction tip:** They can engage in longer conversations about preferences and concerns. Ask about school, friends, activities to understand their world. Can better understand confidentiality if explained clearly.




147




Child Development

- Age 13 (Early Adolescence)
 - **Abstract thinking:** Can understand legal concepts, consequences, hypotheticals
 - **Identity formation:** Questioning authority, seeking autonomy, peer influence peaks
 - **Emotional volatility:** Mood swings, strong reactions, testing boundaries
 - **Attorney interaction tip:** Respect their growing autonomy while providing structure. They may be defensive or secretive. Explain legal processes thoroughly - they can handle complexity.




148



Child Development

- Age 17 (Late Adolescence)
 - **Adult-level reasoning:** Can think through complex scenarios, long-term consequences
 - **Risk assessment:** Still developing (brain maturation continues to ~25), may discount future implications
 - **Independence:** Strong desire for control over decisions affecting their life
 - **Attorney interaction tip:** Engage as a near-peer while maintaining professional boundaries. They can be full participants in case strategy. Address their goals directly, explain when legal realities may conflict with preferences, and involve them meaningfully in decision-making.



149



Child Development

- Cross-cutting considerations for all ages:
 - Trauma may cause regression to earlier developmental stages
 - Cultural and individual variation is significant
 - Build rapport before diving into difficult topics
 - Watch for signs of coaching or fear
 - Consider whether the child needs breaks, snacks, or support persons present



150



Steps of Representation

GAL-Client Meetings

- Guardian involvement
- Outline the meeting (with flexibility)
- Explain GAL role and confidentiality
- Private meeting
- Meeting space/options
- Explain court process (appropriate language)
- Assess wants, needs, interests
- Allow client to tell story in own way



151



Steps of Representation

Adult-Client Meetings

- Outline the meeting (with flexibility)
- Explain role and confidentiality
- Allow client to tell story in own way
- Explain court process (language matters here too)
- Assess wants, needs, interests



152




Steps of Representation

Investigation

- Talk to all potential witnesses:
 - CHFS
 - Parents
 - Other involved family/friends
 - Therapists
 - Anyone else who can provide insight into the child's best interest




153




Steps of Representation

Alternate Resolutions

- Duty to act as negotiator (SCR 3.130 (Preamble))
- Understanding the interests and positions for the County Attorney and parents/guardians
- Leveraging your clients interests that you are authorized to disclose
- Make reasonable attempts to avoid child testimony without sacrificing their best interest




154




Steps of Representation

Preparing for the Hearing

- Prepare client by explaining hearing process
- Prepare client for direct and cross
- Can call own witnesses
- GAL Note: Due to the nature of DNA cases, often in child-client's interest to get more info in front of the court
 - Be prepared to overcome objections to relevancy, hearsay, etc.



155




Steps of Representation

Child Testimony

- Assess ability to testify by talking to client and their support (custodians, therapists)
- **If believe testimony would be too traumatic, be prepared to argue to the court why undue trauma would outweigh the additional information provided by their testimony.**
 - Prior behavioral concerns, self harm
 - Therapy letter
- Courts have some discretion over whether children testify.
 - KRE 611: Court shall exercise control over witnesses to protect witnesses from harassment and undue embarrassment




156




Steps of Representation Testimonial Accommodations

- Judges have some discretion to allow accommodations for child testimony (e.g. closed-circuit testimony)
- KRS 421.350: If sexual act committed against child under 12,
 - AND showing of compelling need,
 - Court may allow CCTV testimony
- KRS 26A.140: court environment to be modified for child witnesses, shielding from perpetrator in appropriate cases




157



Steps of Representation Testimonial Accommodations (cont.)

- Best practice:
 - Get party agreement, or
 - Establish accommodation is “necess[ary] for the well-being of the child. *Z.T. v. M.T.*, 258-SW3d 31 (Ky. App. 2008)
- Make sure they are familiar with the environment and the actors.
- Review your questions and potential questions from alternate parties.



158



Steps of Representation Case Conclusion


- Ensure client fully understands the dispositional outcome
- Leave space and opportunity for follow-up clarification
- Be sure to follow up with client and necessary witnesses for post-disposition progress reviews



159

CHILDREN'S LAW CENTER GALs in Protection Order Cases


- *Smith v. Doe*, 627 S.W.3d 913 (Ky. 2021):
 - “Unrepresented minors to an IPO action must have a GAL appointed to represent them.”
- *Hamilton v. Milbry*, 2023 WL 6165482 (Ky. App. 2023):
 - “We believe Smith requires that a minor child who is listed as a party on the petition for protection is in need of an appointed guardian.”
- HB 436 (2024) made protection order GAL mandate mandatory
 - Updated KRS 403.727 (DVO) & KRS 456.035 (IPO)
 - Authorizes attorney fees in same fashion as DNA
 - Mandated confidentiality of protection order hearings and records



160

CHILDREN'S LAW CENTER GALs in Protection Order Cases
Law


- Domestic Violence Orders (DVO)
 - KRS 403.715-785
 - Family members
 - Initial emergency order: Emergency Protection Order (EPO)
- Interpersonal Protection Orders
 - KRS 456.010-180
 - Dating relationships and victims of stalking or sexual assault
 - Initial emergency Order: Temporary Interpersonal Protection Order
 - Process: EPO/TIPO granted/denied → hearing within 2 weeks → DVO/IPO granted or denied



161

CHILDREN'S LAW CENTER GALs in Protection Order Cases
GAL Role

- Best Interest
- Interview/Investigation
- Whether the child should/shouldn't testify (trauma, anxiety, criminal case implications, family court implications)
- Negotiate alternate resolutions
- Preparing the child for testimony/Testimonial accommodations
- Preparing to present the case
- Maintain Confidentiality



162



**CHILDREN'S
LAW CENTER**
PROTECTING THE RIGHTS OF CHILDREN AND YOUTH

Questions?


Contact
Nick Caprino
ncaprino@childrenslawky.org
Office: (859) 431-3313, ext. 151
Cell: (260) 235-0391
childrenslawky.org



This presentation is for informational purposes only. It does not constitute legal advice or create any attorney-client relationship. Every person's situation is different. For an individualized assessment or answer to specific questions, consult an attorney.

163

Termination of Parental Rights Cases



**Termination of
Parental Rights
Cases**

Nathan Goins
Legal Liaison
Administrative Office of the Courts

164




**Involuntary Termination of
Parental Rights (TPR)**

165

KRS 625.050(2)
Involuntary TPR Petition

Jurisdiction for an involuntary TPR is in the Circuit/Family Court in any of the following counties:

- Where either parent resides or may be found
- Where any juvenile court actions concerning the child have been commenced
- Where the child resides or is present




166

KRS 625.050(2)
Involuntary TPR Petition

A petition may be brought by:


- Cabinet for Health and Family Services (CHFS)
- Any child-placing agency licensed by CHFS
- County attorney
- Commonwealth attorney
- Parent



167

KRS 625.050(4)
Contents of Petition


(a) Name and mailing address of each petitioner
 (b) Name, sex, date of birth and place of residence of the child
 (c) Name and address of the living parents of the child
 (d) Name, date of death and cause of death, if known, of any deceased parent
 (e) Name and address of the putative father, if known by the petitioner, of the child if not the same person as the legal father
 (f) Name and address of the person, cabinet or agency having custody of the child
 (g) Name and identity of the person, cabinet or authorized agency to whom custody is sought to be transferred
 (h) Statement that the person, cabinet or agency to whom custody is to be given has facilities and is willing to receive the custody of the child
 (i) All pertinent information concerning termination or disclaimers of parenthood or voluntary consent to termination
 (j) Information as to the legal status of the child and the court so adjudicating
 (k) A concise statement of the factual basis for the termination of parental rights



168

KRS 625.050(5)
Involuntary TPR Petition


- **No petition [for involuntary TPR] may be filed [...] prior to five (5) days after the birth of the child**



169

KRS 625.050(6)
No Petition May be Filed...


- **Against a woman for neonatal substance abuse if she enrolls in and is substantially compliant with:**
 - **A substance abuse treatment or recovery program, and**
 - **A regimen of prenatal care as recommended by her health care practitioner**



170

KRS 625.050(6)
No Petition May be Filed...

- **Against (b) Any parent solely because of a disability as defined in Section 1 of this Act unless the parent has been provided, or unless the parent has knowingly and affirmatively rejected in writing, adaptive and supportive services based on an individual assessment of the parent.**




171

KRS 199.011(8)
Definition of "Disability"

"Disability" means:


- A physical or mental impairment, whether congenital or acquired, that substantially limits one (1) or more of the major life activities of an individual and is demonstrable by medically accepted clinical or laboratory diagnostic techniques;
- A record of having such an impairment; or
- Being regarded as having such an impairment.



172

KRS 199.011(8)
Definition of "Disability"


An individual who is currently engaging in the illegal use of drugs or the abuse of alcohol, drugs, or other substances is not an individual with a "disability" for purposes of this definition



173

KRS 625.060
Parties to Involuntary TPR

- Child
- Petitioner
- CHFS, if not the Petitioner
- Biological parents (if known) and if their rights have not been previously terminated
 - Putative father need not be a party if he is exempted by KRS 625.065
- Child's foster parent may intervene as a matter of right either by name or anonymously



174

**KRS 625.065
Putative Father**

Six circumstances when the unmarried biological father becomes a putative father, and therefore must be a party:

- He is known and voluntarily identified by the mother by affidavit
- He has registered with the cabinet pursuant to KRS 199.503 as a putative father prior to the birth of the child, or if he did not have notice prior to the birth of the child, within twenty-one (21) days after the birth of the child
- He has caused his name to be affixed to the birth certificate of the child
- He has commenced a judicial proceeding claiming parental right
- He has contributed financially to the support of the child, either by paying the medical or hospital bills associated with the birth of the child or financially contributing to the child's support
- He has married the mother of the child or has lived openly or is living openly with the child or the person designated on the birth certificate as the biological mother of the child



175

**KRS 625.065
Putative Father**

- For any man who may be a father but is not/has not:
 - Married the mother prior to the child's birth
 - Established paternity through court or agency prior to the filing of the adoption petition
 - Completed an acknowledgment of paternity affidavit prior to the filing of the adoption petition



176

**KRS 625.065
Putative Father**

- The putative father may register by providing:
 - His name, birthdate, birthplace, residence, and service address
 - If known - the mother's and child's name, birthdate, birthplace, residence, and mailing address
- CHFS maintains the registry and must attempt to contact any man registered in relation to the mother or child
- \$25 fee for the search (certified check or money order)



177

KRS 625.070
Service of Process

- Personal service should be used "where possible," otherwise constructive service can be used pursuant to civil rules
- Service is not necessary if there has been a disclaimer of paternity or a voluntary TPR petition filed by parent, or TPR entered
- Service of petition to GAL shall be sufficient for personal jurisdiction over the child
- Petitioner must send courtesy copy of petition to foster



178

KRS 625.080
Hearing for Involuntary TPR

- The court shall conduct a private hearing
- The child is a party and GAL shall be appointed to represent the child's best interests if CHFS is to be the custodian
- Parents have the right to counsel
- If indigent, the court shall appoint a separate attorney for each parent
 - If CHFS is seeking post-TPR custody, the cost is paid by the Finance and Administration Cabinet
 - Otherwise, the court may order that the cost be paid by the adoptive parent, biological parents, agency, or the petitioner
- Appointed attorneys may receive a fee up to \$500



179

CAC/GAL Ethical Considerations

- Z.T. v. M.T., 258 S.W.3d 31 (Ky. App. 2008) – Father argues counsel failed to zealously pursue his position. The Court held, "if counsel's errors were so serious that it is apparent from the record that the parent was denied a fair and meaningful opportunity to be heard so that due process was denied, this Court will consider a claim that counsel was ineffective."
- L.L.R. v. W.C., K.C., 2012-CA-000716-ME, 2013 WL 760641 (Ky. App. Mar. 1, 2013) unpublished – Mother argues counsel's failure to file pre-trial disclosures which prevented her from calling witnesses.
- J.W. v. Commonwealth, 2009-CA-002054-ME, 2010 WL 3189597 (Ky. App. Aug. 13, 2010) unpublished – Incarcerated Mother argues ineffective assistance of counsel.



180

CAC/GAL Ethical Considerations

- Cabinet for Health & Family Services v. H.C., 581 S.W.3d 580 (Ky. 2019) – Excusable neglect necessary for an extension to file a notice of appeal.
- D.J.V. v. G.W.D., 2017-CA-000773-ME, 2019 WL 2406970 (Ky. App. June 7, 2019) unpublished – Incarcerated Father argues ineffective assistance of appointed GAL.



181

Effective Assistance of Counsel

T.W. v. Cabinet for Health and Family Services, 484 S.W.3d 302 (Ky. App. 2016) – Counsel represented both parents at TPR hearing where the basis for the TPR was that the Cabinet could not ascertain which of the parents had perpetrated abuse on the child. The Court held that where “counsel had an actual conflict of interest, a parent is not required to demonstrate prejudice caused by that representation and it must be presumed. Consequently, the only remedy is reversal and remand for a new termination hearing.”



182

Effective Assistance of Counsel

A.P. v. Commonwealth, 270 S.W.3d 418 (Ky. App. 2008) – TPR reversed where Mother's counsel was not present for the first day of TPR trial and failed to cross-examine critical witnesses who testified on that date. Counsel also did not confer with Mother before consenting to the trial proceeding in his absence.



183

Pre-trial Disclosures Must Be Filed

Commonwealth, Cabinet for Health and Family Services v. S.H., 476 S.W.3d 254 (Ky. 2015) – The Supreme Court upheld the Court of Appeals' opinion reversing and remanding a TPR judgment where Cabinet failed to comply with FCRPP 7(1), which requires parties to provide a list of expected witnesses and exhibits in a permanent custody action. The Supreme Court held that FCRPP 7(1) applies to TPRs and that “a parent facing a termination hearing should be afforded every procedural protection the law allows.”



184

Procedural/Evidentiary Rules Apply

Prater v. Cabinet for Human Resources, Commonwealth of Ky., 954 S.W.2d 954 (Ky. 1997) – The Supreme Court reversed TPR where the circuit court's findings in support were based at least in part on impermissible hearsay. The Court noted that the business records exception for Cabinet records does not provide carte blanche admission of everything therein. “The factual observations of social workers recorded in CHR case records are admissible under the business records exception, because such observations would be admissible if the social worker testified in person; but the recorded opinions and conclusions of social workers are not admissible, because the persons offering those opinions are insufficiently qualified to render expert opinions.”



185

Procedural/Evidentiary Rules Apply

Prater v. Cabinet for Human Resources, Commonwealth of Ky., 954 S.W.2d 954 (Ky. 1997) (Cont.) – The Court holds, “Hearsay statements made by children to social workers in the course of an abuse or neglect investigation, or otherwise, do not become admissible simply because they are memorialized in a CHR case record.” The Court follows by stating, “There is no recognized exception to the hearsay rule for social workers or the results of their investigations.”



186

Procedural/Evidentiary Rules Apply

- **N.P. v. Commonwealth, 2002-CA-001781-MR, 2004 WL 68521** (Ky. App. Jan. 16, 2004) unpublished – The Court of Appeals reversed TPR where the circuit court relied on hearsay evidence of the Cabinet worker to establish that parent abused or neglected the child. The Court of Appeals also noted that the circuit court erred in taking judicial notice of a psychological evaluation of the father contained in a district court file because the hearsay statements and opinions contained therein were not “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”



187

KRS 625.080

Hearing for Involuntary TPR

- The court may allow parent visitation to continue pending the hearing if in the child’s best interest
- Hearing to be held within sixty (60) days of a motion by party or the GAL



188

KRS 625.080

Timing for Involuntary TPR Judgment

Involuntary TRP petition must be fully adjudicated and final judgment entered within 6 months of service of the petition on the parents




189

KRS 625.090
Findings for Termination

Four requirements:

1. One of four threshold requirements
2. CHFS filed a DNA petition OR a TPR petition was filed by CHFS, a licensed child-placing agency, county attorney, commonwealth attorney, or parent
3. TPR in the child's best interest
4. One of ten grounds for termination




190

KRS 625.090(1)(a)
1. Thresholds for Termination

Court must find one of the following four by "clear and convincing" evidence:

- Child has been adjudged to be an abused or neglected child, by any court
- Child is found to be abused or neglected in the TPR proceeding
- Child is found to have been diagnosed with neonatal abstinence syndrome at birth unless:
 - Mother was properly using prescribed medication, or
 - Mother is currently, or within 90 days of the child's birth, enrolled in and maintaining substantial compliance with both a substance abuse treatment and recovery program and a regimen of prenatal/postnatal care
- Parent has been convicted of a criminal charge relating to physical abuse or sexual abuse and the conduct is likely to occur if parental rights are not terminated




191

Intent

DNA Action vs. TPR Action

- Cabinet for Health & Family Services v. K.S., 585 S.W.3d 202 (Ky. 2019)
- Cabinet for Health & Family Services v. P.W., 582 S.W.3d 887 (Ky. 2019)
- Cabinet v. C.R. & C.B., 556 S.W.3d 568 (Ky. 2018): As stated in KRS 600.020(1)(a)(2), a court can find neglect if an individual "creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means." "The statute, as written, permits the court's finding where a *risk of abuse* exists and *does not require actual abuse* prior to the child's removal from the home or limitation on the contact with an abusive parent." Citing Z.T. v. M.T., 258 S.W.3d 31, 36 (Ky. App. 2008) (emphasis added).



192

Individualized Determinations are Required

Cabinet for Health and Family Services v. K.H., 423 S.W.3d 204 (Ky. 2014) – “[KRS 625.090(6)] clearly mandates that the trial court must find that each parent satisfies the three prongs found in the TPR statute, including whether the child qualifies as an abused or neglected child.” Unless it is a situation in which the court can infer joint responsibility, an individualized determination that each parent abused or neglected the child is needed.



193

KRS 625.090(1)(b) & (c)

2. & 3. Other Required Findings for Termination

2. The court must find that:
 - CHFS filed a DNA petition OR
 - TPR petition was filed by CHFS, a licensed child-placing agency, county attorney, commonwealth attorney, or parent
3. Termination would be in the best interest of the child



194

KRS 625.090(2)

4. Grounds for Termination

The court must find that 1 or more of the following 11 grounds exists:

- Abandonment for no less than 90 days
- Parent has inflicted/allowed non-accidental “serious physical injury”
- Parent has continuously/repeatedly inflicted/allowed non-accidental “physical injury or emotional harm”
- Parent convicted of felony involving serious physical injury toward any child



195

KRS 625.090(2)

Grounds for Termination

- Parent has failed to provide, or has been incapable of providing, “essential parental care” for 6 months; and there is no reasonable expectation of improvement
- Parent caused or allowed sexual abuse to occur
- For reasons other than poverty alone, parent has repeatedly failed to provide essential food, clothing, shelter, medical care, or education
- **Involuntary TPR** of another child and conditions or factors supporting the previous TPR have not been corrected



196

KRS 625.090(2)

Grounds for Termination

- Parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical abuse, sexual abuse, or neglect
- Child has been in foster care 15 out of 48 months preceding the filing of the petition for TPR
- Court or CHFS has removed the child from parents more than 2 times in a 24-month period



197

KRS 625.090(3)

Child's Best Interest in TPR

The court shall consider:

- Mental illness or intellectual disability of parent that renders a parent consistently unable to tend to the child's needs
 - Effective June 27, 2025, also consider a disability as defined by KRS 199.011(8)
- Whether reasonable efforts were made, unless not required
 - Effective June 27, 2025, also consider whether the Cabinet provided a disabled parent targeted adaptive and supportive services based on an individual assessment of the parent, or has received a written acknowledgement from the parent knowingly and affirmatively rejecting the offered services




198

KRS 199.011(8)
Definition of "Disability"

"Disability" means:

- A physical or mental impairment, whether congenital or acquired, that substantially limits one (1) or more of the major life activities of an individual and is demonstrable by medically accepted clinical or laboratory diagnostic techniques;
- A record of having such an impairment; or
- Being regarded as having such an impairment.




199

KRS 625.090(3)
Child's Best Interest in TPR

The court shall consider:


- Acts of abuse or neglect toward any child in the family
- Whether rehabilitation efforts of parent make it in the child's best interest to be returned to the home within reasonable time
- Physical, mental and emotional health of the child, AND
- Payment of substitute physical care and maintenance, or failure to pay if financially able to do so



200

Best Interest Requirement

D.G.R. v. Commonwealth, Cabinet for Health and Family Services, 364 S.W.3d 106 (Ky. 2012) – "The trial court was presented with testimony from both sides. The Cabinet's witnesses were firmly set against reunification. But the parents' witnesses had experience with the family in more direct ways than the Cabinet witnesses did, and if believed, established that the parents were loving and had the potential to learn to care for their child. The parents' witnesses were not interested parties; they included school employees and mental health workers, all of whom had obligations to protect the child. The trial court chose to believe the parents' witnesses. Their testimony was relevant and substantive; it was sufficient to lead a reasonable person to find that the Cabinet had failed to show that termination was in the child's best interest. This Court cannot say that the trial court was clearly erroneous in choosing to believe the witnesses offered by the parents, nor that their testimony was insufficient to support the trial court's determination."



201

Best Interest Requirement

Cabinet for Health and Family Services v. T.N.S., 2016-CA-001765-ME, 2017 WL 3971614 (Ky. App. Sept. 8, 2017) unpublished – The Court of Appeals affirmed the family court's denial of TPR. In finding that termination was not in the child's best interest, the family court noted the child was not in a permanent foster placement and placed significant weight on Mother's testimony, her tangible improvements in the year leading up to trial, and her apparent desire to continue to improve her care of the children.



202

Best Interest Requirement

Cabinet for Health and Family Services v. T.J., 2011-CA-001342-ME, 2012 WL 5077169 (Ky. App. Oct. 19, 2012) unpublished – “[T]he child's age and prospects for adoption are not, by themselves, factors which the trial court should consider in determining whether termination would be in the best interests of the child.”



203

Best Interest Requirement

Commonwealth, Cabinet for Health and Family Services v. S.A.D., 2009-CA-000287-ME, 2009 WL 2837540 (Ky. App. Sept. 4, 2009) unpublished – The Court of Appeals affirmed the circuit court's denial of TPR where the record sufficiently supported the decision. The parents were cooperating with parenting classes and treatment and continued to have at least some measure of a parental bond with their children. Additionally, one child indicated she did not wish to be adopted and the other was right on the cusp of emancipation.



204

Best Interest Requirement

S.M. v. Cabinet for Health and Family Services, 2019-CA-000480-ME, 2020 WL 598346 (Ky. App. Feb. 7, 2020) unpublished – The Court of Appeals remanded for additional findings on the best interest prong of TPR. The Court noted that there was little evidence regarding the physical, emotional, or mental health of the child or the child’s prospects for improvement if TPR were granted. The extent of such evidence was CHFS worker’s hearsay statement that the child is doing well, goes to school daily, makes good grades, is happy, and calls foster mother “mom.”



205

Reasonable Efforts by the Cabinet

M.E.C. v. Commonwealth, Cabinet for Health and Family Services, 254 S.W.3d 846 (Ky. App. 2008) – “[W]e find that reasonable services to reunite the family were not provided to M.E.C. and her children. The goal from reunification to termination was changed after only eight months’ time, of which M.E.C. was either incarcerated or hospitalized. The Cabinet never changed its plan for reunification to accommodate M.E.C. during this time. In addition, the Cabinet never provided any rationale for changing the goal.”



206

Reasonable Efforts by the Cabinet

H.M.R. v. Cabinet for Health and Family Services, 521 S.W.3d 221 (Ky. App. 2017) – The Court of Appeals reversed TPR where no individualized finding of abuse or neglect was made regarding Father and where the Cabinet failed to meaningfully attempt at reunification. Prior to Court action, Father had regular contact with the child and provided support. Father participated in court action and requested custody. Despite requests, Father was never given a formal case plan.



207

Reasonable Efforts by the Cabinet

H.M.R. v. Cabinet for Health and Family Services, 521 S.W.3d 221 (Ky. App. 2017) – The Court of Appeals reversed TPR where no individualized finding of abuse or neglect was made regarding Father and where the Cabinet failed to meaningfully attempt reunification. Prior to Court action, Father had regular contact with the child and provided support. Father participated in court action and requested custody. Despite requests, Father was never given a formal case plan.



208

Terminating Parental Rights of a Low Functioning Parent

Cabinet for Health and Family Services, et al. v. K.S., 585 S.W.3d 202 (Ky. 2019)

- **The Trial Court** rendered a judgment terminating Mother's parental rights. It found that while Mother had completed most tasks in her case plan, her disabilities impeded return of Child. It found that Mother had not made significant progress toward identified goals and that she was unable to achieve self-sufficiency or the necessary parenting skills to care for Child.
- **The Court of Appeals** vacated the family court's judgment and remanded the case to the family court for additional services to Mother to determine whether she is capable of parenting Child.



209

Terminating Parental Rights of a Low Functioning Parent

Cabinet for Health and Family Services, et al. v. K.S., 585 S.W.3d 202 (Ky. 2019)
(Cont.)

The Kentucky Supreme Court reversed the decision of the Court of Appeals and found that there was sufficient testimony that there were no additional services that could be offered to Mother that could result in a safe return of the child within a reasonable period of time. Justice Lambert's Dissent relied on the reasonable efforts requirement and the Americans with Disabilities Act to argue that more should have been done for the mother.



210

KRS 625.090(4)

Evidence Refuting Termination

If the child is placed with CHFS, the parent may present testimony concerning reunification services offered and whether additional services would likely bring about lasting parental adjustment enabling a return of the child to the parent



211

KRS 625.090(5)

Permissive Defense to Termination

The court may determine not to terminate if the parent proves by a preponderance of evidence that:

- The child will not continue to be abused or neglected if returned to the parent, OR
- Effective June 27, 2025, Appropriate and specifically targeted adaptive or supportive services based upon an individual assessment of the parent have not been offered or provided to the parent



212

TPR is Discretionary

D.G.R. v. Commonwealth, Cabinet for Health and Family Services, 364 S.W.3d 106 (Ky. 2012) – Even when a court finds clear and convincing grounds to terminate, “[a] court is never *required* to terminate under the statute as its authority to terminate is couched in the permissive ‘may’ rather than the mandatory ‘shall,’ KRS 625.090(1), and the trial court has substantial discretion in determining the best interests of the child under KRS 625.090(1)(b) and (3).”



213

TPR is Discretionary

D.G.R. v. Commonwealth, Cabinet for Health and Family Services, 364 S.W.3d 106 (Ky. 2012) (Cont.) – “Indeed, the bulk of the statute, reflects a default preference against termination, which is why it states that no termination of parental rights shall be ordered *unless* the court makes the statutory findings based on the higher standard of proof of clear and convincing evidence. The Constitution itself requires the state to meet this burden of proof before a parent’s rights may be terminated because of the ‘fundamental liberty interest’ a parent has in the relationship with a child.”



214

TPR is Discretionary

D.G.R. v. Commonwealth, Cabinet for Health and Family Services, 364 S.W.3d 106 (Ky. 2012) (Cont.) – “Termination proceedings are—and should be—weighted against the State. Thus, the default position in such a proceeding is that the child is to be left with the parents or returned to them, with or without ongoing services as needed. The State cannot disturb this natural order lightly. When there is substantial competent evidence that the trial court finds persuasive, as is the case here, an appellate court should not intercede.”



215

Incarcerated Parents

M.P.R. v. Cabinet for Health & Family Services, 520 S.W.3d 409 (Ky. App. 2017) – “Certainly, *if* the court’s decision to terminate Father’s rights had been based *solely* on the fact that he was incarcerated, it would be in error. [...] That, however, is not what happened in the present case. Father testified to the fact that he had not attempted to contact, support, or visit with Child since the Cabinet was awarded temporary custody of Child. This was not solely due to Father’s incarceration.”



216

KRS 625.090(6)

Findings and Conclusions

The court shall enter findings of fact, conclusions of law, a and decision as to each parent-respondent within 30 days of either:

- Terminating the right of the parent; or
- Dismissing the petition and stating whether
 - The child should be returned to the parent, or
 - The child should remain in state custody



217

Relative Placement

- J.L.C. v. Cabinet for Health & Family Services, 539 S.W.3d 692 (Ky. App. 2018) – The Court of Appeals affirmed termination of parental rights and rejected appellant’s argument that the Cabinet violated KRS 620.090 & 922 KAR Sec. 1:140 by not placing children with a relative. The Cabinet is not mandated to choose relative placement over other placement options.
- P.W. v. Cabinet for Health & Family Services, 417 S.W.3d 758 (Ky. App. 2013) – There is no mandate to choose relatives over other options.



218




Voluntary Termination of Parental Rights

219

KRS 625.020
Voluntary TPR Petitions


- Petitions shall be filed in Circuit Court
- However, District Court has jurisdiction to enter TPR judgement if consent is filed in DNA court pursuant to KRS 625.0403



220

KRS 625.040
Voluntary TPR Petitions


A petition for the voluntary termination of parental rights shall be filed in the Circuit Court of the judicial circuit where the petitioner or child resides or in the Circuit Court in the county in which juvenile court actions, if any, concerning the child have commenced



221

KRS 625.040
Voluntary TPR Petitions

- Voluntary TPRs can be filed by a parent or counsel for parent with appearance-waiver forms and consent-to-adopt forms per KRS 625.041(3) & (4)
- Voluntary TPRs cannot be filed until at least three (3) days after the child's birth



222

**KRS 625.040 & 625.0403
Two Paths to Voluntary TPR**

- KRS 625.040 – Traditional path with separate TPR court case
- KRS 625.0403 – Termination within the DNA case after signing AOC form waiver



223

**KRS 625.0403
TPR in DNA Case**

Initiated by executing the “AOC-DNA-20 – Affidavit of Consent (Voluntary Termination)”



224

**KRS 625.040
Voluntary TPR Petitions**

- Voluntary TPRs can be filed by a parent or counsel for parent with appearance-waiver forms and consent-to-adopt forms per KRS 625.041(3) & (4)
- Voluntary TPRs cannot be filed until at least three (3) days after the child’s birth




225

KRS 625.040
Voluntary TPR Petitions

ANY VOLUNTARY TPR PETITION MUST CONTAIN:


- Name & place of residence of petitioner
- Name, sex, date of birth, residence of the child
- Relationship of petitioner to the child
- Statement of factual basis for TPR
- Name of person/agency to which rights are sought to be transferred
- Statement that person who will have custody is willing and able to care for the child



226

KRS 625.041
Parties Involved


- Parent seeking termination
- Child, through the *guardian ad litem*
- Person/Agency that will be receiving the child following termination(?)
 - D.L.B. v. Cabinet for Health and Family Services, 418 S.W.3d 426 (Ky. App. 2014) – Voluntary consent to TPR was not valid because, in part, CHFS did not sign anything in the record to indicate that it would/could take custody.
- NOTE: A parent seeking voluntary TPR does not need to be present at hearing if he/she executed the appearance-waiver and consent-to-adopt forms prescribed by the Administrative Office of the Courts



227

KRS 625.041
GAL to be Appointed

- The court shall appoint a *guardian ad litem* to represent the best interest of the child
- The GAL shall be paid a fee not to exceed \$500, which is paid by the petitioner unless CHFS receives custody of the child, in which case the Finance and Administration Cabinet shall pay



228

KRS 625.0405

Appointment of Attorney for Indigent Parent

- Any parent desiring to voluntarily terminate his/her parental rights may request that the Court appoint an attorney to represent him/her, even "prior to" the filing of the petition
- The attorney shall be appointed within 48 hours of request
- The attorney shall receive a fee not to exceed \$500
 - The fee is paid by the Finance and Administration Cabinet if TPR is not granted or if the Cabinet takes post-TPR custody
 - Otherwise, the court may order fee to be paid by proposed adoptive parents, biological parents, or the agency



229

KRS 625.0405

Appointment of Attorney for Indigent Parent

- In a voluntary TPR, the attorney cannot represent **both** the biological and prospective adoptive parents
- Violation is a Class A misdemeanor



230

KRS 625.042

Hearing

- Within 3 days of the filing of the voluntary TPR petition, the court shall set a date for the final hearing. The date shall not be more than 30 calendar days after the petition is filed.
- All hearings shall be confidential
- The best interest of the child shall be paramount in deciding whether TPR is granted
- The judgment must be entered within 6 months of filing the petition



231

**KRS 625.044
Inheritance**

- Following a voluntary TPR, the child retains the right to inherit from his parent until, and unless, the child is subsequently adopted
- The same applies if there is an involuntary TPR (See KRS 625.104)



232

**KRS 625.046
Effect of Termination Order**

**Any order for voluntary TPR shall be
conclusive and binding on all parties**



233



Questions?

234

