

1 AN ACT relating to guardian ad litem fees.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 625.080 is amended to read as follows:

4 In any involuntary action for termination of parental rights:

- 5 (1) The Circuit Court shall conduct a private hearing. An official stenographic or  
6 mechanical record shall be made of the proceedings and retained for a period of five  
7 (5) years. The court shall make findings of fact and conclusions of law, which may  
8 be made on the record, to support its judgment;
- 9 (2) Any child to whom an involuntary action directly relates shall be made a party to  
10 the action and a guardian ad litem shall be appointed to represent the best interests  
11 of the child. The person appointed as a guardian ad litem shall be paid a fee not to  
12 exceed ~~six[five]~~ hundred dollars ~~(\$500)~~, to be paid by the Finance and  
13 Administration Cabinet when the cabinet is the proposed custodian. When the  
14 cabinet is not the proposed custodian, the court may order the cost to be paid by the  
15 proposed adoptive parent, parents, agency, or the petitioner. Upon motion of any  
16 party, the child may be permitted to be present during the proceedings and to testify  
17 if the court finds such to be in the best interests of the child. In its discretion, the  
18 Circuit Court may interview the child in private, but a record of the interview shall  
19 be made, which, in the discretion of the court, may be sealed to be used only by an  
20 appellate court;
- 21 (3) The parents have the right to legal representation in involuntary termination actions.  
22 The Circuit Court shall determine if the parent is indigent and, therefore, entitled to  
23 counsel pursuant to KRS Chapter 31. If the Circuit Court so finds, the Circuit Court  
24 shall inform the parent; and, upon request, if it appears reasonably necessary in the  
25 interest of justice, the Circuit Court shall appoint an attorney to represent the parent  
26 pursuant to KRS Chapter 31 to be provided or paid for by the Finance and  
27 Administration Cabinet a fee to be set by the court and not to exceed ~~six[five]~~

1 hundred dollars ~~(\$500)~~ (\$600);

2 (4) If the parent is currently authorized to visit with the child, the court may continue to  
3 permit the parent to visit the child pending the final hearing unless it finds that  
4 visitation would not be in the best interest of the child.

5 (5) The hearing under this chapter shall be held within sixty (60) days of the motion by  
6 a party or the guardian ad litem for a trial date.

7 ➔Section 2. KRS 625.041 is amended to read as follows:

8 (1) The parties to an action for voluntary termination of parental rights shall be the  
9 parent seeking termination, whose presence is not required if represented by  
10 counsel for the parent when an appearance-waiver and consent-to-adopt form is  
11 filed with the court, but the court shall appoint a guardian ad litem to represent the  
12 best interest of the child.

13 (2) The guardian ad litem shall be paid a fee to be fixed by the court, not to exceed  
14 ~~six[five]~~ hundred dollars ~~(\$500)~~ (\$600), to be paid by the petitioner, except if the  
15 Cabinet for Health and Family Services receives custody of the child, the guardian  
16 ad litem shall be paid by the Finance and Administration Cabinet.

17 (3) The parent may sign an appearance-waiver and consent-to-adopt form when the  
18 parent chooses not to attend a voluntary termination of parental rights proceedings.  
19 This form, prescribed by the Administrative Office of the Courts, shall:

20 (a) Contain a statement of acknowledgment and agreement, regarding the  
21 appearance at the proceeding, signed by the parent, counsel for the parent, and  
22 the cabinet. If the parent is a minor, the form shall also be signed by the  
23 guardian of the minor parent;

24 (b) Contain the parent's notarized signature;

25 (c) Contain any address to which the parent requests the final judgment be  
26 served.

27 (4) If a joint petition is filed, counsel shall be designated as attorney for both parties.

1           ➔Section 3. KRS 625.0405 is amended to read as follows:

2       (1) A parent desiring the termination of his or her parental rights and a transfer of the  
3       parental rights to a person, persons, the cabinet, or a child-placing agency licensed  
4       by the cabinet for the purpose of adoption may prior to or upon the filing of the  
5       petition request the Circuit Court to appoint an attorney to represent the parent and  
6       provide legal representation in the termination action. If the court determines  
7       pursuant to KRS Chapter 31 that the requesting parent is indigent, the court shall  
8       appoint an attorney (within forty-eight (48) hours) to represent the indigent parent.  
9       The attorney for the indigent parent shall receive a fee to be fixed by the court, not  
10      to exceed ~~six~~~~five~~ hundred dollars (\$600)~~(\$500)~~ and assessed as costs, and the  
11      court may order the costs to be paid by the proposed adoptive parent, parents, or  
12      agency before the entry of a judgment of termination, except the attorney's fee shall  
13      be paid by the Finance and Administration Cabinet if termination is not granted, or  
14      if custody of the child is placed with the cabinet.

15      (2) (a) In every voluntary termination proceeding, the expenses paid, including but  
16      not limited to any fees for legal services, placement services, and expenses of  
17      the biological parent or parents, by the prospective adoptive parent for any  
18      purpose related to a termination of parental rights shall be submitted to the  
19      court, supported by an affidavit, setting forth in detail a listing of the expenses  
20      for the court's approval or modification.

21      (b) In the event the court modifies the expense request as it relates to legal fees  
22      and legal expenses only, the attorney for the prospective adoptive parents  
23      shall not have any claim against the prospective adoptive parents for the  
24      amount not approved.

25      (3) Any person who violates subsection (2) of this section shall be guilty of a Class A  
26      misdemeanor.

27           ➔Section 4. KRS 620.100 is amended to read as follows:

- 1 (1) If the court determines, as a result of a temporary removal hearing, that further  
2 proceedings are required, the court shall advise the child and his parent or other  
3 person exercising custodial control or supervision of their right to appointment of  
4 separate counsel:
- 5 (a) The court shall appoint counsel for the child to be paid for by the Finance and  
6 Administration Cabinet. Counsel shall document participation in training on  
7 the role of counsel that includes training in early childhood, child, and  
8 adolescent development. The clerk of the court shall arrange for service on all  
9 parties, including the local representative of the Cabinet for Health and  
10 Family Services, of the order appointing counsel. The fee to be fixed by the  
11 court shall not exceed ~~six~~<sup>five</sup> hundred dollars ~~(\$600)~~<sup>(\$500)</sup>; however, if  
12 the action has final disposition in the District Court, the fee shall not exceed  
13 ~~two hundred fifty~~<sup>six hundred</sup> dollars ~~(\$600)~~<sup>(\$250)</sup>;
- 14 (b) The court shall appoint separate counsel for the parent who exercises  
15 custodial control or supervision if the parent is unable to afford counsel  
16 pursuant to KRS Chapter 31. The clerk of the court shall arrange for service  
17 on all parties, including the local representative of the Cabinet for Health and  
18 Family Services, of the order appointing counsel. The parent's counsel shall  
19 be provided or paid for by the Finance and Administration Cabinet. The fee to  
20 be fixed by the court shall not exceed ~~six~~<sup>five</sup> hundred dollars  
21 ~~(\$600)~~<sup>(\$500)</sup>; however, if the action has final disposition in the District  
22 Court, the fee shall not exceed ~~two hundred fifty~~<sup>six hundred</sup> dollars  
23 ~~(\$600)~~<sup>(\$250)</sup>;
- 24 (c) The court shall appoint separate counsel for a person claiming to be a de facto  
25 custodian, as defined in KRS 403.270, if the person is unable to afford  
26 counsel pursuant to KRS Chapter 31. The clerk of the court shall arrange for  
27 service on all parties, including the local representative of the Cabinet for

1 Health and Family Services, of the order appointing counsel. The person's  
2 counsel shall be provided or paid for by the Finance and Administration  
3 Cabinet. The fee to be fixed by the court shall not exceed ~~six~~<sup>five</sup> hundred  
4 dollars ~~(\$600)~~<sup>(\$500)</sup>; however, if the action has final disposition in the  
5 District Court, the fee shall not exceed ~~two hundred fifty~~<sup>six hundred</sup> dollars  
6 ~~(\$600)~~<sup>(\$250)</sup>;

7 (d) The court may, in the interest of justice, appoint separate counsel for a  
8 nonparent who exercises custodial control or supervision of the child, if the  
9 person is unable to afford counsel, pursuant to KRS Chapter 31. The clerk of  
10 the court shall arrange for service on all parties, including the local  
11 representative of the Cabinet for Health and Family Services, of the order  
12 appointing counsel. Counsel for the person shall be provided or paid for by  
13 the Finance and Administration Cabinet. The fee to be fixed by the court shall  
14 not exceed ~~six~~<sup>five</sup> hundred dollars ~~(\$600)~~<sup>(\$500)</sup>; however, if the action  
15 has final disposition in the District Court, the fee shall not exceed ~~two~~  
16 ~~hundred fifty~~<sup>six hundred</sup> dollars ~~(\$600)~~<sup>(\$250)</sup>; and

17 (e) The court may, in the interest of justice, appoint a court-appointed special  
18 advocate volunteer to represent the best interests of the child pursuant to KRS  
19 620.500 to 620.550. The clerk of the court shall arrange for service on all  
20 parties, including the local representative of the cabinet, of the order  
21 appointing the court-appointed special advocate volunteer.

22 (2) If the court determines that further proceedings are required, the court also shall  
23 advise the child and his parent or other person exercising custodial control or  
24 supervision that they have a right to not incriminate themselves, and a right to a full  
25 adjudicatory hearing at which they may confront and cross-examine all adverse  
26 witnesses, present evidence on their own behalf and to an appeal.

27 (3) The adjudication shall determine the truth or falsity of the allegations in the

1 complaint. The burden of proof shall be upon the complainant, and a determination  
2 of dependency, neglect, and abuse shall be made by a preponderance of the  
3 evidence. The Kentucky Rules of Civil Procedure shall apply.

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

6 (5) Foster parents, preadoptive parents, or relatives providing care for the child shall  
7 receive notice of, and shall have a right to be heard in, any proceeding held with  
8 respect to the child. This subsection shall not be construed to require that a foster  
9 parent, preadoptive parent, or relative caring for the child be made a party to a  
10 proceeding solely on the basis of the notice and right to be heard.

11 (6) If the court determines that further proceedings are required, the court shall, in the  
12 interest of justice, have the ability to request that separate counsel is available to  
13 advise a cabinet employee in court anytime that the cabinet employee is required to  
14 be in court.