

NO.

COMMONWEALTH OF KENTUCKY
JEFFERSON CIRCUIT COURT
FAMILY DIVISION THREE (3)

PETITIONER

v.

ORDER

RESPONDENT

* * * * *

This matter was before the Court on September 9, 2026 on Petitioner's Petition/Motion for Order of Protection. Petitioner, _____, was present and represented by the Hon. Nolia Batey O'Dea and the Hon. Katie Brophy. Respondent, _____ was present and represented by the Hon. John H. Helmers. The Hon. A. Holland Houston was present at the Guardian ad Litem (GAL) for the parties' children.

At the beginning of the hearing, the Court heard arguments on Respondent's Motion to Hold Senate Bill 122 Unconstitutional. Respondent filed a Motion to Hold SB 122 Unconstitutional on August 16, 2026. On September 9, 2026, the GAL filed a Memorandum on SB 122. The Court also heard arguments on September 9, 2026.

In his motion, Respondent argues that SB 122 is unconstitutional as a matter of law because (1) the General Assembly substantially replaced and expanded the bill after its first and second readings, in violation of Section 46 of the Kentucky Constitution; (2) the Act embraces multiple subjects concealed beneath the generic title "judicial proceedings," in violation of Section 51 of the Kentucky Constitution; (3) Several provisions intrude upon the Kentucky Supreme Court's exclusive authority over judicial practice and procedure under Sections 27, 28, and 116 of the Kentucky Constitution; and (4) the Act imposes automatic and potentially indefinite restrictions upon custody and parenting time without individualized findings of present danger, parental unfitness, or harm to the child, in violation of state and federal due process and equal protection

D06CDE43-4F67-4C77-A179-7F381EB0C222 : 000001 of 000010

OG : 000001 of 000010

guarantees. At the hearing, counsel for Respondent, Mr. Helmers, again argued that SB 122 is unconstitutional as a matter of law. Mr. Helmers called SB 122 a “two strike rule,” and stated that if the Court takes up this rule, it will have a negative effect on Respondent’s ability to see his children, in the instant case. But on a global level, it usurps the Court’s discretion, and parents and children are entitled to individualized decisions in Family Court.

At the hearing, counsel for Petitioner, Ms. Batey O’Dea stated that this Court does not need to decide constitutionality of SB 122 at this time. Arguing that it does not affect the domestic violence statutes and that it is not ripe for this case. Ms. Batey O’Dea argued that Respondent’s motion is more appropriate for the parties’ custody action.

The GAL argues in her motion that SB 122 is a violation of the Separation of Powers Doctrine enshrined in Kentucky’s Constitution and that SB 122 fails to define essential terms rendering consistent application impossible across the Commonwealth which exposes parties and their children to uncertain results. At the hearing, the GAL, Ms. Houston, argued that SB 122 is a two strikes rule and that the Act creates more questions than answers. For example, what is the definition of “act”? What is the timeline for when the acts have to have happened? Ms. Houston further argued that it usurps and entirely takes away the Court’s ability to decide cases.

The parties and the Court agreed that there was proper service of Respondent’s motion on the Attorney General.

Having considered Respondent’s motion, the GAL’s response, and the arguments of the parties, the Court finds that SB 122, and the changes it makes to KRS 403.315, to be unconstitutional. The Court agrees with the arguments of Respondent and the GAL.

Section 51 of the Kentucky Constitution provides: “No law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in the title.” SB 122,

as passed, is titled simply: “AN ACT relating to judicial proceedings.” That title does not identify a meaningful legislative subject. It is a category broad enough to encompass virtually every civil, criminal, domestic, probate, juvenile, and administrative law in the Commonwealth. The Act contains at least three distinct legislative programs: 1. Alternative criminal sentencing for defendants who are caretakers; 2. Custody, parenting time, domestic violence, and protective-order proceedings; and; 3. Involuntary psychiatric treatment, forensic commitment, guardianship, and termination of parental rights. These subjects involve different populations, governmental interests, legal standards, constitutional rights, and portions of the Kentucky Revised Statutes. Their only common feature is that a court may become involved.

Sections 27 and 28 of the Kentucky Constitution divide governmental power among three branches and prohibit one branch from exercising the powers assigned to another. Kentucky’s separation-of-powers provisions are express and unusually strict.¹ Section 116 separately grants the Kentucky Supreme Court the power to prescribe rules of practice and procedure for the Court of Justice. The General Assembly possesses substantial authority to define substantive custody law. It may direct courts to consider domestic violence when determining a child’s best interests. It may create presumptions and substantive eligibility requirements if those provisions otherwise comply with constitutional protections. SB 122, however, goes beyond defining substantive rights. It prescribes the internal manner in which family courts must adjudicate cases. For example:

- KRS 403.270(3) dictates that domestic-violence and abuse allegations must be considered “prior to” all other custody factors;
- It requires written findings concerning the impact of mere allegations before the court considers other evidence;
- KRS 403.315(3)(b) dictates that one evidentiary hearing must precede unsupervised visitation and that a “second or subsequent hearing” must precede an award of custody;
- KRS 403.727 and KRS 456.035 import procedural safeguards from juvenile proceedings into protective-order litigation;

¹ See *Legislative Research Commission v. Brown*, 664 S.W.2d 907, 912 (Ky. 1984).

- The Act prescribes guardian ad litem appointments, compensation, and participation; and
- The Act dictates who may attend certain evidentiary hearings.

The order in which a court considers evidence, the findings required at intermediate stages, the number of evidentiary hearings, and the persons permitted to participate are matters of judicial procedure.

If left intact, the legislation violates the federal and state constitutions by denying citizens due process protections. Importantly, these protections apply to both adults and the children involved in family court litigation. If left unchecked by Family Court judges, parents would be denied meaningful contact with their children. Additionally, and perhaps more importantly, children would be denied contact with their mothers and fathers without any protections. Rather, the legislature has enacted an arbitrary algorithm that would label parents as being a danger, rather than weighing individual facts in unique cases.

The Fourteenth Amendment protects parents' fundamental liberty interest in the care, custody, and control of their children. This right is part and parcel of the fabric of a free society with a limited government. It has been addressed on multiple occasions by the Supreme Court of the United States of America.² Further, it is difficult to understate the importance of this right for both parents and children alike.

Kentucky recognizes the same fundamental rights. In *Pinto v. Robison*,³ the Kentucky Supreme Court facially invalidated a statutory grandparent-visitation presumption because it failed to give sufficient constitutional weight to the decisions of a fit parent. The *Pinto* Court emphasized that a statutory burden shift based merely upon a preponderance of the evidence could not displace the constitutional presumption protecting parental authority.

² *Troxel v. Granville*, 530 U.S. 57, 65–66 (2000); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972).

³ 607 S.W.3d 669 (Ky. 2020).

Domestic violence is unquestionably relevant to custody and parenting time. The Commonwealth has a compelling interest in protecting children and victims from actual danger. But the means selected must remain connected to that interest and must allow an individualized determination of necessity. KRS 403.315(3) does not require the family court to find that, the parent abused the child, the child witnessed the domestic violence, the conduct affected the parent's relationship with the child, unsupervised contact would endanger the child, the parent is presently dangerous, the parent has a substance-use disorder, the parent suffers from a mental-health condition, or the parent lacks adequate parenting skills. Instead, the statute treats two acts against another party as conclusive proof that the parent requires batterer's intervention, parenting classes, a mental-health evaluation, a substance-use evaluation, all recommended treatments, and supervised visitation, while failing to provide a definition for "acts." That statutory shortcut is both overinclusive and poorly tailored. Two acts may arise from a single event. They may have occurred years earlier. The child may not have been present or affected. The parent may have safely exercised substantial parenting time before and after the incident. Yet the statute removes judicial discretion and imposes the entire package of restrictions. The Constitution permits a court to restrict parenting time when individualized proof demonstrates that a restriction is necessary to protect a child or another parent. It does not permit the legislature to declare categorically that two acts establish mental illness, substance misuse, deficient parenting, and present danger to a child.

KRS 403.315(2) expressly uses a preponderance-of-the-evidence standard to create a presumption against joint custody and equal parenting time. Subsection (3) does not provide a higher standard for imposing its absolute prohibition against custody and unsupervised visitation. A preponderance standard may ordinarily govern a best-interest determination between parents. Subsection (3), however, does more than guide an ordinary allocation of parenting time. It imposes

D06CDE43-4F67-4C77-A179-7F381EB0C222 : 000005 of 000010

OG : 000005 of 000010

a categorical legal disability and may confine a parent to supervised contact for months or years. In *Santosky v. Kramer*,⁴ the United States Supreme Court held that due process requires clear and convincing evidence before the government terminates parental rights. Although supervised visitation is not formal termination, the constitutional analysis turns upon the nature and practical duration of the deprivation. A supposedly temporary restriction can become functionally indefinite when completion depends upon private providers, waiting lists, treatment recommendations, cost, and repeated court hearings. *Pinto* further demonstrates that Kentucky will not permit an ordinary preponderance standard to displace the constitutional protection afforded to parental authority.⁵

Before a parent may be automatically deprived of unsupervised contact, due process must require clear and convincing proof that the parent presently presents a danger and that supervision is necessary to protect the child or the other parent. A finding that two acts occurred is not constitutionally equivalent to those individualized findings with respect to a unique family. Finally, there is nothing in the new law that addresses the need for a finding beyond 50.1% proof of domestic violence. It is worth noting that the Supreme Court of Texas has addressed this issue in the context of a domestic violence case.⁶ In that case, the Texas Court reversed a long-term “No Contact Order” based on findings of domestic violence, finding that such a holding violates fundamental federal rights. The Kentucky law is even more violative of federal and state protections.

By its terms, the newly enacted law violates the equal protections afforded to all citizens. The statute facially applies to all citizens. However, in reality, the justice system would be severely tilted toward those in populated areas and towards the affluent in the Commonwealth. Thus, those

⁴ 455 U.S. 745 (1982).

⁵ *Pinto v Robinson*, 607 S.W.3d 669 (Ky. 2020).

⁶ *See Stary v. Ethridge*, 712 S.W.3d 584 (Tx, 2025).

on the margins of society, including vulnerable children in the Bluegrass, would be the most in danger of losing a parent or family. The law makes many sweeping changes across multiple sections of the statutory codes. However, many of the most important reforms are left unaddressed.

Some of them are outlined below. SB 122 does not address who must pay for:

- Batterer's intervention;
- Parenting classes;
- Mental-health and substance-use assessments;
- Recommended treatment;
- Supervised visitation;
- Transportation; or
- Repeated evidentiary hearings.

Nor does it address what happens when:

- No certified provider operates in the parent's county;
- A provider has a lengthy waiting list;
- A parent cannot afford the required services;
- Employment or disability prevents attendance;
- The supervising agency is unavailable; or
- The family court's docket delays the required hearings.

The result is predictable. An affluent parent in an urban county, where services are more readily available, may complete the statutory checklist relatively quickly. An indigent parent in a rural county, where services are limited, may be required to have supervised visitation indefinitely, even when the court finds no present danger to the child. The Supreme Court has repeatedly rejected laws that make a serious deprivation of liberty or family rights turn exclusively on a person's financial ability.⁷ SB 122 contains no ability-to-pay determination, no indigency exception, no state-funding mechanism, no substantial-compliance provision, and no authority to excuse an unavailable service. If the Commonwealth makes completion of these services a condition of

⁷ See *Bearden v. Georgia*, 461 U.S. 660 (1983); *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996).

parent-child contact, due process requires the Commonwealth to ensure that the services are actually available and affordable.

The phrase “two or more acts” is impermissibly vague when it triggers automatic loss of custody eligibility. The statute does not define what constitutes a separate “act.” One domestic dispute might include a threatening statement, interference with a telephone, and physical contact. That may constitute one continuing episode or three separate acts. The answer determines whether the parent remains eligible for unsupervised parenting time. The Act does not answer several additional questions:

- May two components of one incident be counted separately?
- May conduct from an expired DVO be combined with recent conduct?
- Does a default DVO constitute the required finding?
- Does an agreed order entered without an admission qualify?
- May conduct occurring years apart be aggregated?
- Must the prior finding identify two separate acts?
- Does an appellate reversal or expiration affect the calculation?

Because the number “two” triggers an automatic and substantial impairment of parental rights, the absence of a limiting definition invites arbitrary and inconsistent enforcement. What counts as one act in Jefferson County may count as three elsewhere. That uncertainty supports a due process challenge under the Fourteenth Amendment and Section 2 of the Kentucky Constitution, particularly where a court divides one continuous episode into multiple acts or relies upon an old, default, or agreed order.

In addition, the statute creates irrational classifications unrelated to present child safety. This, again, violates the federal and state constitutions. The statutory classifications are badly mismatched to the law’s asserted purpose. Under the statutory language:

- Two comparatively minor acts trigger the mandatory prohibition, while one extremely serious act may not;
- Two acts against another party trigger the prohibition, while similar conduct against a person who is not a party may not;

- Domestic violence automatically requires a substance-use assessment without evidence of substance use;
- It automatically requires a mental-health assessment without evidence of mental illness;
- It automatically requires parenting classes without evidence of deficient parenting; and
- Restoration of parenting rights depends on completing programs rather than demonstrating that the child is safe.

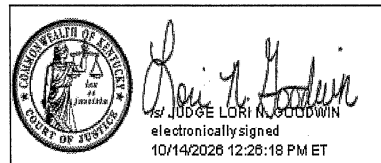
Ordinary equal protection review is deferential, and persons accused of domestic violence are not a protected class. The classification under this rubric is clumsy at best and facially void at worst. The unreasonable classifications reinforce the substantive due process claim that KRS 403.315(3) is not sufficiently connected to, or tailored to, promote child safety.

Finally, SB 122 has the consequence of inextricably intertwining domestic violence hearings and custody hearings. Parties and issues that were previously reserved for and heard on the Court's circuit docket will now first want to be heard on the Court's domestic violence docket. Domestic violence hearings have and will continue to be more involved and drawn-out, further clogging already-heavy domestic violence dockets and delaying access to justice for victims of domestic violence.

Having considered Respondent's motion, the GAL's response, and the arguments of the parties, reviewed the pleadings, exhibits, and the Court's record in this matter; and being otherwise sufficiently advised the Court enters the following:

IT IS HEREBY ORDERED that Respondent's Motion to Hold Senate Bill 122 Unconstitutional is **GRANTED**.

IT IS FURTHER ORDERED that this is a final and appealable order; there is no just cause for delay.



JUDGE LORI GOODWIN
JEFFERSON CIRCUIT COURT
FAMILY DIVISION THREE (3)

cc: Hon. Nolia Batey O'Dea
Hon. Katie Brophy
Former Counsel for Petitioner

Hon. Elizabeth McConahy Jenkins
Hon. Kylie King
Counsel for Petitioner

Hon. John H. Helmers
Hon. Melina Hettiaratchi
Counsel for Respondent

Hon. A. Holland Houston
Guardian ad Litem

Hon. Russell Coleman
Attorney General for the Commonwealth of Kentucky
1024 Capital Center Dr., Ste. 200
Frankfort, KY 40601
servethecommonwealth@ky.gov

D06CDE43-4F67-4C77-A179-7F381EB0C222 : 000010 of 000010

OG : 000010 of 000010