

A Week in the Life of Your Family Court Judge

A primer on DNA and DV for the
Acronym Challenged

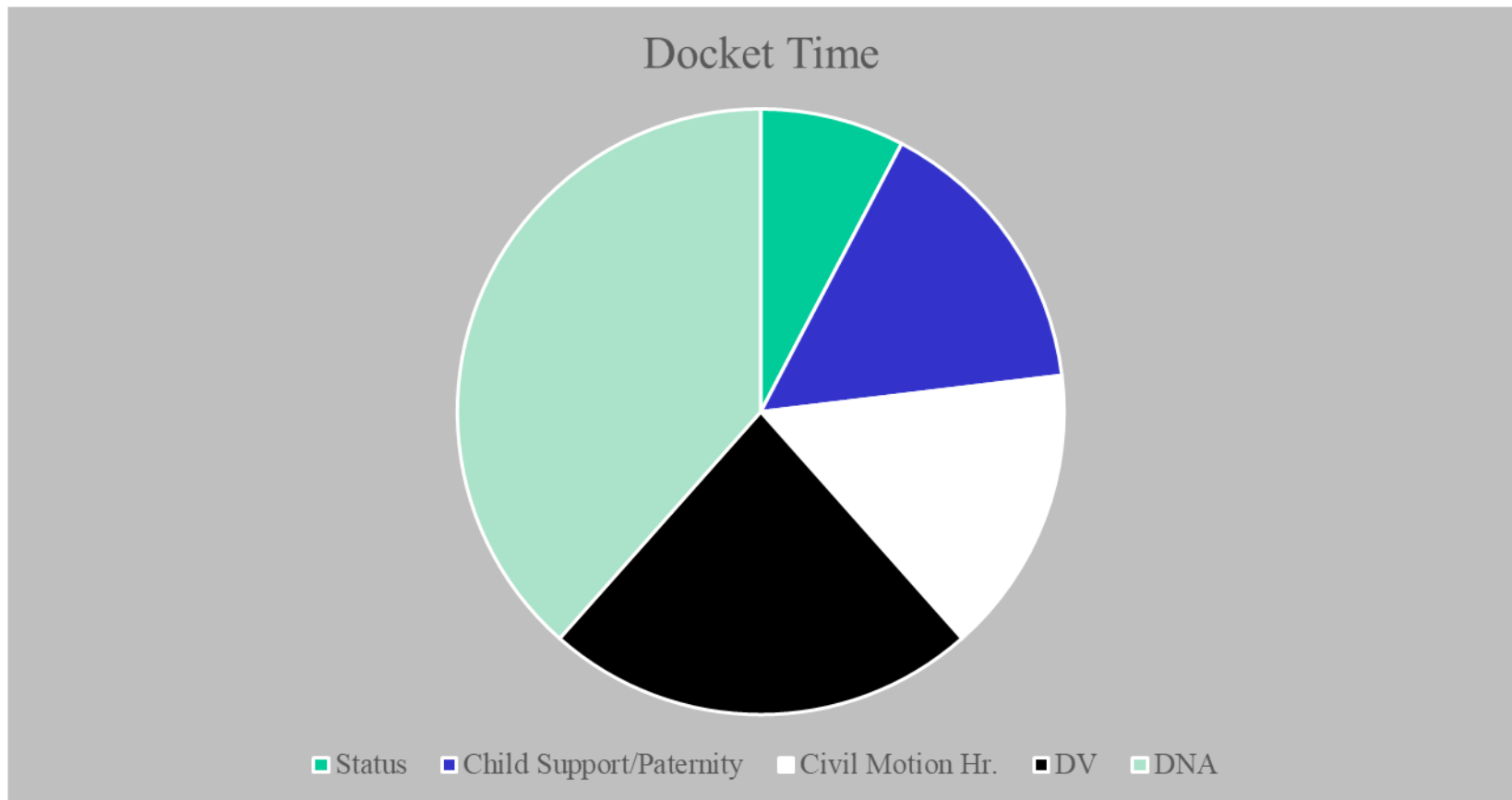


Bench and Bar CLE 2019, Judge Libby Messer

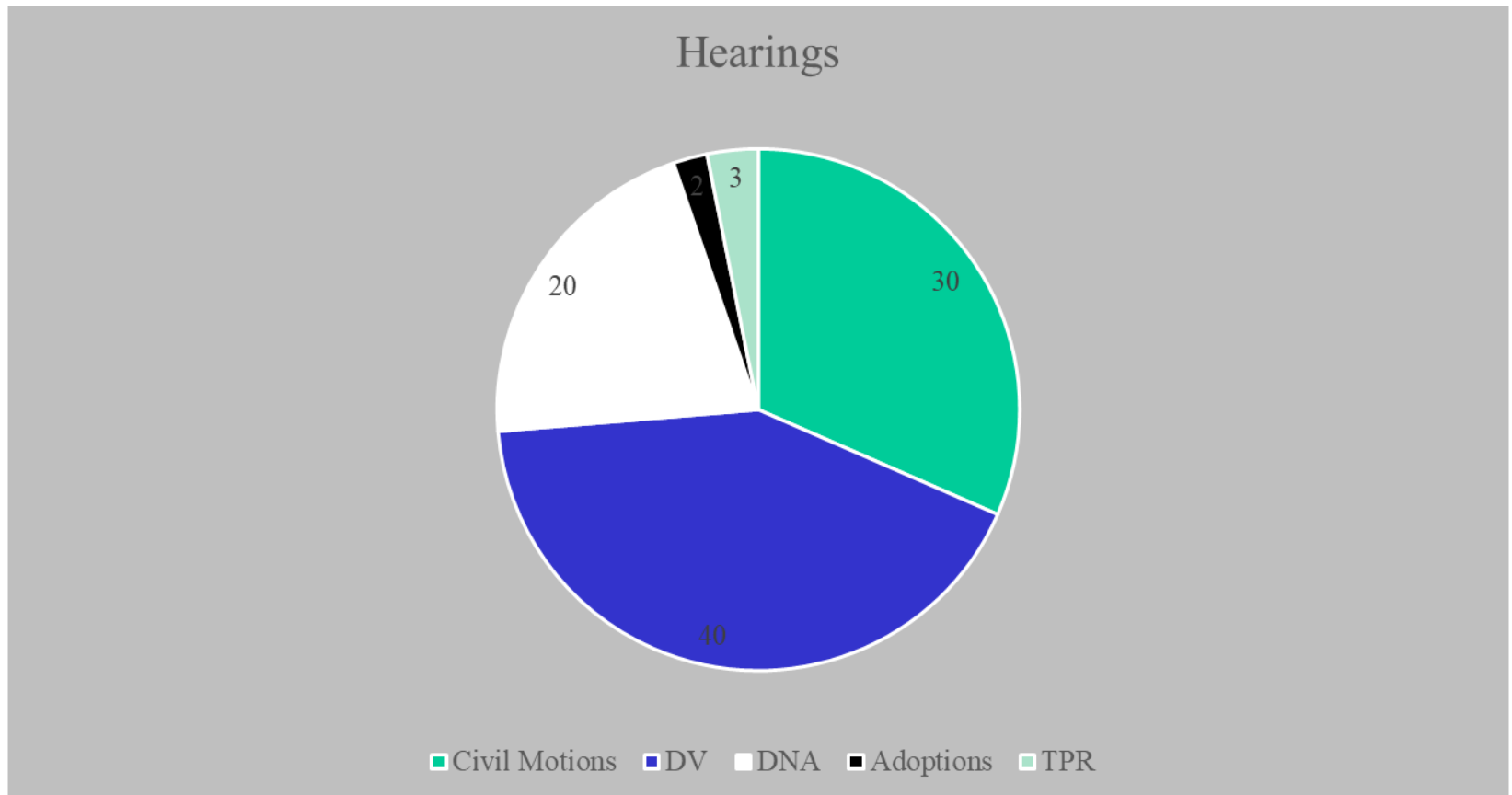
Family Court Jurisdiction

- Divorce
- Child Custody
- Timeshare/Visitation
- Paternity
- Child Support
- Status
- Domestic Violence (DV)
- Dependency Neglect and Abuse (DNA)
- TPR
- Adoption

Time Spent Per Docket

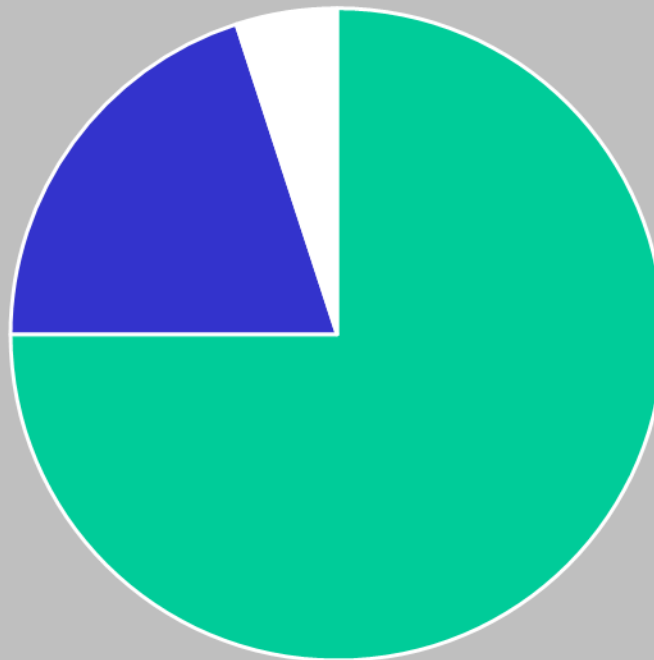


Time Spent on Hearings



On Call 24/7

Calls in the Middle of the Night (usually 3:00 am!)



■ DV ■ DNA ■ Status

Dependency, Neglect and Abuse

“DNA”

KY Children in Out of Home Care

- 8,624 children in foster care in KY as of January 1, 2018
- Approximately 53,000 children currently being raised by their grandparents or other relatives in Kentucky
- Average length of stay for all children in foster care in KY is 25 months
- Average number of placements: 3.2

Relative Placement/Fictive Kin

- "Fictive kin" means an individual who is not related by birth, adoption, or marriage to a child, but who has an emotionally significant relationship with the child.
- DCBS reports 450 children placed in DCBS custody, and placed with relatives.
- Many times more relatives have custody of children without DCBS custody.

Federal Law and DNA Court

- Child Abuse Prevention and Treatment Act (CAPTA) 1974
- Adoption and Safe Families Act (ASFA) 1997
- Keeping Children & Families Safe Act (KCFSA) 2003
- Families First Prevention Services Act 2018

Legislative Purpose of DNA

KRS 610.010

Children have certain fundamental rights:

- Right to adequate food, clothing & shelter;
- Right to be free from physical, sexual or emotional injury (or the Risk of);
- Right to educational instruction;
- Right to a secure, stable family.

Duty to Report D/N/A

KRS 620.030

- Any person..who knows or has reasonable cause to believe a child is D/N/A, shall report to police, commonwealth, county attorney, or cabinet within 48 hours.
- Limited exceptions; Attorney/Client & Clergy/Penitent Apply.

Definitions

KRS 600.020

“ABUSED or NEGLECTED CHILD” means a child:

- Any child whose health or welfare is harmed, or *threatened* with harm, when his parent, guardian, or other person exercising custodial control or supervision of the child does any of the following:

“ABUSED or NEGLECTED CHILD”

Definition Continued

- Inflicts or allows to be inflicted upon the child “physical” or “emotional” injury;
- 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 due to alcohol or drugs;

CONT>

“ABUSED or NEGLECTED CHILD”

Definition Continued:

- Repeatedly fails to provide care and protection for child;
- Commits or allows to be committed an act of sexual abuse;
- Creates or allows to be created a **RISK** of sexual abuse;
- Abandons or exploits the child; or
- Does not provide supervision, food, clothing, shelter, education or medical care for child.
- ASFA added “child in foster care for 15-22 months.”

“Dependent Child”

- A Dependent Child is any child, other than an abused or neglected child, who is under improper care, custody or guardianship;
- 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 “Dependent” and “Neglected.”
- See J.H.v.Commonwealth, 767 SW2d, 330 (Ky.App. 1988).

“Emotional Injury”

KRS 600.020(26)

Means an injury to the mental or psychological capacity or emotional stability of a child.

Very few DNA petitions filed are filed as Emotional Abuse petitions, because of proof requirement.

- Must be testified to by a “Qualified Mental Health Professional (QMHP)”:

“Physical Injury”

KRS 600.020(49)

Means “substantial physical pain or any impairment of physical condition.”

- Physical Injury does not necessarily mean an ECO will be granted, unless:
 - Physical Injury is “repeatedly inflicted” or
 - Court finds “Serious Physical Injury.”
- (See KRS 620.060(1)(b))

“Serious Physical Injury”

KRS 600.020(60)

Means physical injury which:

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

“Sexual Abuse”

KRS 600.020(61)

Contacts or interactions in which parent uses or allows, permits or encourages:

- The use of the child,
- for the sexual stimulation of the perpetrator or another person.

“Reasonable Efforts”

KRS 620.020(9)

Means:

- 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.
- *Waiting to see how Families First changes our view of “reasonable efforts”













02/27/2006

















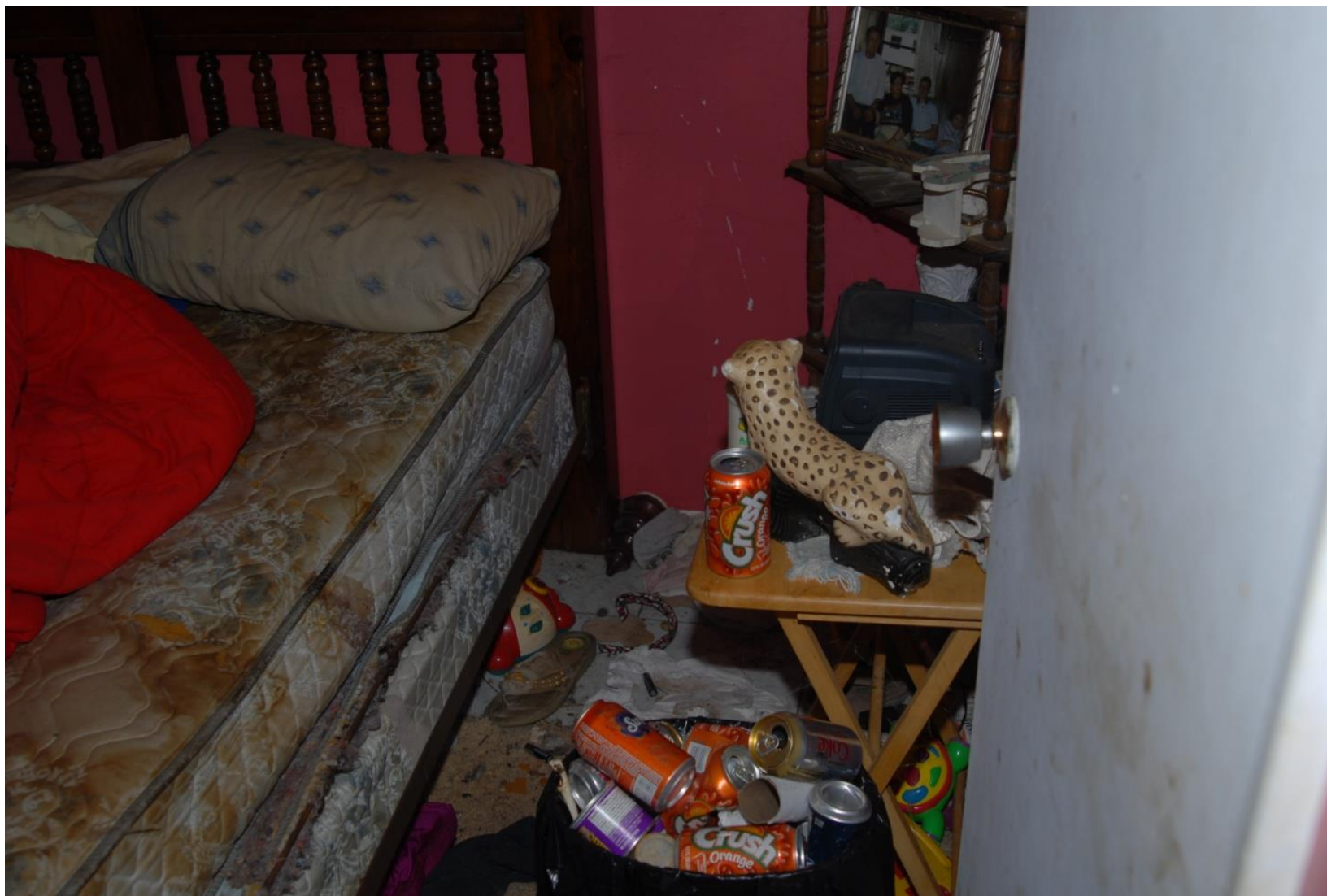














Emergency Custody Orders

KRS 620.060

The Court for the county where the child is present may issue an ex parte emergency custody order (a/k/a ECO) when any of the following circumstances exist:

- Death, serious physical injury, sex. abuse;
- Parent has repeatedly inflicted or allowed physical or emotional injury (not including reasonable discipline); or
- Child in danger from parent's neglect.

EMERGENCY CUSTODY ORDER KRS 620.060

72 HOURS

TEMPORARY REMOVAL HEARING KRS 620.080

**TEMPORARY CUSTODY
ORDER KRS 620.090**

PRE-TRIAL CONFERENCE

ADJUDICATION HEARING KRS 610.070 KRS 620.100

DISPOSITIONAL HEARING KRS 620.140

PERMANENCY REVIEW KRS 610.125

KRS 620.090

45 DAY RULE



Temporary Removal Hearing

KRS 620.080

Unless waived by parent, a temporary removal hearing shall be held:

- Within 72 hours of an ECO being granted;
- Within 10 days of the filing of a non-removal (non-emergency) petition;
- Court must determine if there are reasonable grounds to believe that child would be D/N/A if returned to parents;
- Hearsay is admissible for “good cause.”

Adjudication Hearings

KRS 610.070

- All cases involving children in juvenile court shall be dealt with by the Court, without a jury;
- The general public shall be excluded and only “immediate families or guardians of the parties before the court” are admitted;
- Burden of proof is “preponderance of the evidence.”
- Court can order parent present at any hearing.
- **Fayette County selected as a pilot site for open Family Courts.*

Hearings

KRS 620.100

- Court shall appoint counsel for child;
- Court shall appoint separate counsel for parent who exercises custodial control;
- Court may appoint separate counsel for non-parent exercising custodial control;
- Court may appoint CASA;
- AH shall determine truth of Petition;
- KY Rules of Civil Procedure apply.

Temporary Custody Orders

KRS 620.090

- If Court finds at TRH that it's not safe to return child back to parents, then Court converts the ECO to a TCO;
- Cabinet shall use least restrictive *appropriate* placement;
- TCO is not to exceed 45 days;
- AH and DH must both be made within 45 days of the Temp. Custody Order.

Evidence to be Considered

KRS 620.023

Evidence of the following **SHALL** be considered by the Court:

- Mental illness of the parent;
- Other/prior acts of abuse or neglect toward any child;
- Alcohol or drug abuse of the parent;
- Finding of Domestic Violence, whether or not child present.

Dispositional Alternatives

KRS 620.140

Court must rule on custody of child:

- Return/keep child to/with parent;
- Temp./Perm. custody to appropriate person;
- Commit child to Cabinet.

Court may also:

- Issue protective orders (no LYNK system);
- Order CHFS supervise in-home w/ services.

Court-Ordered Participation in Treatment

KRS 610.160

- 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.

Permanency Reviews

KRS 610.125

- If a child has been committed to CHFS, Court shall conduct a permanency review hearing **AT LEAST** every 12 months.
- Court shall address Permanency Goal:
 1. Should child be returned home?
 2. Should child be placed for adoption?
 3. Should child remain in care for time? or
 4. Special circumstances require commit?

Domestic Violence

“DV”

Civil Protective Order Statutes

- KRS 403.715-403.785: EPOs/DVOs – Civil protection orders between family members or members of an “unmarried couple”
- KRS 456: TIPO/IPO civil orders regarding victims of dating violence, stalking, sexual assault, or filed by an adult on behalf of a minor victim.

KRS 403.715 and 456.020

Legislative Intent

- Allow victims to obtain effective short term protection that their lives may be as secure and uninterrupted as possible
- Expand law enforcement ability to respond to and prevent future incidents and assist victims
- Provide for immediate apprehension and charging for any violation of said order and provide courts authority to conduct contempt proceedings
- Collection of data.

Who Can File

- **Family member:** spouse, former spouse, grandparent, parent, child, stepchild or any other person living in the same home as child victim
- **Member of unmarried couple:** currently or formerly living together, child in common, any child of an “unmarried couple.”
- **Dating Relationship** – individuals who have or have had a romantic or “intimate” relationship
- **Victim of Stalking** – as defined by KRS 508.140 or 508.150, no charge or conviction required
- **Victim of Sexual Assault** – as defined by KRS 510 or KRS 530.020

Who Should NOT File

- Mere roommates - Ireland v. Davis, 957 S.W.2d 312 (Ky. App. 1997); Wright v. Com., 391 S.W.3d 743 (Ky. 2012)
- Casual acquaintances or ordinary fraternization in a business context – KRS 456.030
- What about the new girlfriend/wife, the next-door neighbor, the daughter-in-law?

Dating Relationship Factors

KRS 456.010

- Declarations of romantic interest
- Characterized by the expectation of affection
- Attendance at social outings together as a couple
- Frequency and type of interactions – over time and continuous?
- Length of relationship
- Indications of a substantial connection that would lead a reasonable person to understand that a dating relationship existed

Stalking?????

You know it when you see it...

- KRS 508.130: “Stalking” Means to engage in an intentional course of conduct;
 - Directed at a specific person(s)
 - Which alarms, annoys, intimidates or harasses the person(s)
 - Which serves no legitimate purpose
- *New girlfriend/Wife? Neighbor? Daughter-in-Law?????*

Where to File

- In Fayette it is Circuit Family Court (for now?)
- Must live in state or be in state having fled to this state from another to escape DV
- County of usual residence unless have fled that county to escape violence, then may file in county of current residence
- NOT where the wrongful conduct occurred
- See Spencer v. Spencer, 191 S.W.3d 14 (Ky. App. 2006); Hunter v. Mena, 302 S.W.3d 93 (Ky. App. 2010)

Access to Filing

- Courts must provide 24 Hour access to file EPOs and TIPOs
- Officers must provide reasonable assistance to victim to obtain
- ALL petitions requested SHALL be filed with the court
- No costs or fees
- Language access
- Check all relief requested

EPO/TIPO: Standard of Review

- Based on allegations indicate that domestic violence exists, court shall issue summons
- If court further determines that allegations indicate the presence of **an immediate and present danger** of DV may issue *ex parte* EPO/TIPO

Domestic/Dating Violence Defined

KRS 403.720 and 456.010

- Physical injury, serious physical injury, stalking, sexual abuse, assault
- OR the **infliction of fear of imminent** physical injury, serious physical injury, sexual abuse or assault between the previously prescribed parties.

Issuance of EPO/TIPO

- If granted, personal service is required
- Evidentiary Hearing within 14 Days
- Hearing may be continued due to non-service and EPO/TIPO remain in place but only 14 days at a time and new summons must be issued
- EPO/TIPO only valid for 6 months, if no service must re-file.
- May be continued as circumstances reasonable required within the sound discretion of the Court. Daugherty v. Telek, 366 S.W.3d 463 (Ky. 2012); Guenther v. Guenther, 379 S.W.3d 796(Ky. App. 2012)

Entry of DVO/IPO

- Hearing Generally:
 - Rules of civil procedure apply
 - Parties must be granted full evidentiary hearing with Due Process – Baird v. Baird, 234 S.W.3d 385 (Ky. App. 2007); Rankin v. Criswell, 277 S.W.3d 621 (Ky. App. 2008)
 - To be held in accordance with legislative intent See Hohman v. Dery and Wolfe v. Wolfe, 393 S.W.3d 42 (Ky. App. 2013)

Standard of Proof

KRS 403.740 and 456.040

Court must find, by a *preponderance of the evidence* that:

1. An act(s) of DV have occurred; AND
2. May occur again

Available Relief

- DVO-IPO for up to 3 years
 - May be extended at expiration for additional 3 years each
- May restrain from
 - Any contact
 - Further acts or threats of violence
 - Disposing or damaging property
 - Approaching within 500 feet of person, residence, employment etc. <CONT>

Relief cont.

- Enter any other orders the court believes would assist in eliminating future acts of violence (except GPS at initial order)
- Vacate residence
- Counseling services
- Temporary Custody
- Temporary Child Support
- Order relinquish any firearms and not possess any while order in place.
- No mutual orders unless cross-petitions filed.

Post Hearing Issues

- Either party may file motions to amend, terminate etc. based on a change in circumstances
- Violations may be handled criminally or filed as contempt
 - *GPS may be ordered for substantial violation (see KRS 403.720(4), 456.010, 403.761 and 456.100)*
- Petitioner may file motions to extend – violations not required for extension
- Appeals to the Court of Appeals
- Expungement – only if petition did not result in an order of protection.

Questions?