

**199.473 Placement of children by private person -- Home study required -- Temporary custody -- Background check -- Removal.**

- (1) All persons other than a child-placing agency or institution, the department, or persons excepted by KRS 199.470(4) or (5) who wish to place or receive a child shall make written application to the secretary for permission to place or receive a child.
- (2) Prior to the approval of an application to place or receive a child, the fee required pursuant to subsection (13) of this section shall be paid and a home study shall be completed. The purpose of the home study shall be to review the background of the applicant and determine the suitability of the applicant to receive a child, taking into account at all times the best interest of the child for whom application to receive has been made.
- (3)
  - (a) The home study shall be made in accordance with administrative regulations promulgated by the cabinet in accordance with KRS Chapter 13A.
  - (b) The cabinet shall conduct the home study for an applicant whose total gross income is equal to or less than two hundred fifty percent (250%) of the federal poverty level guidelines issued each year by the federal government, unless the applicant submits a written request for the home study to be conducted by a licensed child-placing agency or institution. Upon request, the cabinet shall make information available to an applicant who does not meet the requirements of this paragraph to assist the applicant in obtaining a home study from a licensed child-placing agency approved to provide adoption services.
  - (c) A licensed child-placing agency approved to provide adoption services shall conduct the home study for an applicant whose gross total income is more than two hundred fifty percent (250%) of the federal poverty level guidelines issued each year by the federal government.
  - (d) Calculation of family size for this subsection shall include each child requested to be adopted.
  - (e) The portion of the home study pertaining to the home and family background shall be valid for one (1) year following the date of its completion by an adoption worker.
- (4) The adoption worker making the home study shall make a finding in writing recommending either that the application be granted or that the application be denied. The recommendation of the adoption worker shall then be reviewed by the secretary.
- (5) Based on the report and recommendation of the adoption worker making the home study, the secretary shall grant or refuse permission for the applicant to place or receive a child as early as practicable, but, in any case, the decision shall be made within sixty (60) days after the receipt of the application. In reaching a decision, the secretary shall be guided by the ability of the persons wishing to receive the child to give the child a suitable home, and shall at all times consider the best interest of the child from a financial, medical, psychological, and psychiatric standpoint.

- (6) If the application is refused, the secretary shall in general terms furnish in writing the reasons for his or her refusal.
- (7) Any person who seeks temporary custody of a child prior to the secretary's ruling on an application for adoption shall file a petition seeking temporary custody, with a notice of intent to adopt, with the Circuit Court that will have jurisdiction of the adoption proceedings. The clerk of the court shall send a notice of the filing of the petition to the cabinet. A hearing on the petition shall occur no later than seventy-two (72) hours after the filing of the petition, excluding weekends and holidays. Proceedings under this subsection shall be incorporated into the court's adoption file. If the adoption is not finalized within six (6) months of the filing of the petition and notice of intent, the court shall conduct a hearing on the status and custody of the child.
- (8) Upon a finding by the Circuit Court that the child should be placed prior to the secretary's ruling on the application, the Circuit Court may grant the applicant temporary custody of the child pending the decision of the secretary. Temporary custody shall not be granted to an applicant unless a background check, including but not limited to a criminal records check by the Justice and Public Safety Cabinet or the Administrative Office of the Courts and a background check of child abuse and neglect records maintained by the cabinet, has been submitted to and reviewed by the court. The background check required for temporary custody shall be part of the home study required under subsection (2) of this section. If the application is denied by the secretary, the temporary custody order shall be set aside and, upon motion of the cabinet or of the child's parent or parents, the Circuit Court may order the child returned to the biological parent or parents or the child's custody may be awarded to the cabinet, another licensed child-placing agency, or other individuals deemed appropriate by the court. This section shall not be deemed to permit the completion of any adoption proceeding without the approval of the secretary and compliance with KRS 615.030, if required.
- (9) In any case where the cabinet refuses to approve the placement of a child for adoption when requested by the parent or parents of the child, or refuses the request of any person or persons that a child be placed with that person or those persons for adoption, the decision of the secretary in so refusing shall be final unless within ten (10) days after notice of refusal, the biological or proposed adopting parent or parents shall appeal to the Circuit Court of the county in which the adoption is proposed. No placement shall be disapproved on the basis of the religious, ethnic, racial, or interfaith background of the adoptive applicant, if the placement is made with the consent of the parent.
- (10) The cabinet may refuse to approve the placement of a child for adoption if the child's custodial parent is unwilling for the child to be placed for adoption with the proposed adoptive family. The cabinet may approve or deny the placement, in spite of the fact that the custodial parent or parents are unwilling to be interviewed by the cabinet or other approving entity, or if, after diligent efforts have been made, the adoption worker is unable to locate or interview the custodial parent or parents. The cabinet shall be made a party defendant to the appeal. In the hearing of an appeal,

the court shall review the findings of the secretary and shall determine if the secretary has acted arbitrarily, unlawfully, or in a manner that constitutes an abuse of discretion.

- (11) If a child who does not fall within the exception provided for in KRS 199.470(4) or (5) is placed or received in a home without the court's review of the background check required under this section or the permission of the secretary for health and family services, or if permission to receive a child has been denied, a representative of the cabinet shall notify in writing or may petition the juvenile session of District Court of the county in which the child is found setting out the facts concerning the child. When the petition has been filed, the court shall take jurisdiction of the child and shall provide for it as it would provide for a dependent, neglected, or abused child under KRS Chapter 620, except that the child may not be placed in the home of the applicants who are to receive the child unless permission to do so is granted by the secretary or the action is ordered by a Kentucky court of competent jurisdiction.
- (12) When either the custodial parent or parents of the child to be placed or the persons wishing to receive the child reside out-of-state, the requirement of KRS 615.030, Interstate Compact on the Placement of Children, shall be met before the cabinet gives approval for the child's placement.
- (13) The secretary of the Cabinet for Health and Family Services shall be paid a nonrefundable fee of two hundred dollars (\$200) upon the filing of the written application for permission to place or receive a child. Payment shall be made by certified or cashier's check only. All funds collected under this section shall be deposited in a restricted account, which is hereby created, for the purpose of subsidizing an adoptive parent for suitable care of a special-needs child as authorized in KRS 199.555.
- (14) Nothing in this statute shall be construed to limit the authority of the cabinet or a child-placing institution or agency to determine the proper disposition of a child committed to it by the juvenile session of District Court or the Circuit Court, prior to the filing of an application to place or receive.

**Effective:** June 26, 2007

**History:** Amended 2007 Ky. Acts ch. 85, sec. 240, effective June 26, 2007. -- Amended 2005 Ky. Acts ch. 99, sec. 178, effective June 20, 2005; and ch. 175, sec. 2, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 140, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 242, sec. 3, effective July 15, 1994. -- Amended 1990 Ky. Acts ch. 247, sec. 1, effective July 13, 1990. -- Amended 1986 Ky. Acts ch. 423, sec. 187, effective July 1, 1987. -- Amended 1980 Ky. Acts ch. 188, sec. 154, effective July 15, 1980 -- Amended 1978 Ky. Acts ch. 137, sec. 6, effective June 17, 1978. -- Amended 1976 Ky. Acts ch. 62, sec. 98. -- Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 107(1), (14) and (21). -- Amended 1972 Ky. Acts ch. 231, sec. 1. -- Amended 1964 Ky. Acts ch. 182, sec. 1 (6) to (9). -- Created 1962 Ky. Acts ch. 211, sec. 3.

**Legislative Research Commission Note** (6/26/2007). This section was amended by 1980 Ky. Acts ch. 280, sec. 144, which was to have become effective July 1, 1982. Thereafter, 1982 Ky. Acts ch. 284 changed the effective date of that act to July 15,

1984. Then, 1984 Ky. Acts ch. 184 repealed both 1980 Ky. Acts ch. 280, and 1982 Ky. Acts ch. 284.