

CHAPTER 283

(HB 487)

AN ACT relating to the Department of Public Advocacy.

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

Section 1. KRS 31.010 is amended to read as follows:

There is hereby established as an independent agency of state government, attached for administrative purposes to the Public Protection and Regulation Cabinet, the Department of Public Advocacy, in order to provide for the establishment, maintenance and operation of a state sponsored and controlled system for:

- (1) The representation of indigent persons accused of crimes or mental states which may result in their incarceration or confinement; and
- (2) The pursuit of legal, administrative, and other appropriate remedies to insure the protection of the rights of **persons with disabilities**~~[the developmentally disabled]~~. For the purposes of this chapter, "**persons with disabilities**~~[developmentally disabled]~~" shall *refer to those persons eligible for protection and advocacy services under Public Laws 99-319, 102-569, 103-218, 106-170, and 106-402~~[be defined as provided in Public Law 94-103, or]~~ as amended **and any other federal enabling statute hereafter enacted that defines the eligible client base for protection and advocacy services.***

Section 2. KRS 31.015 is amended to read as follows:

- (1) (a) The Public Advocacy Commission shall consist of the following members, none of whom shall be a prosecutor,~~[or]~~ law enforcement official, **or judge**, who shall serve terms of four (4) years, except the initial terms shall be established as hereafter provided:
 - 1.~~[(a)]~~ Two (2) members appointed by the Governor;
 - 2.~~[(b)]~~ One (1) member appointed by the **Governor. This member shall be a child advocate or a person with substantial experience in the representation of children**~~[Speaker of the House of Representatives]~~;
 - 3.~~[(c)]~~ One (1) member **who is the executive director of the Criminal Justice Council of the Justice Cabinet**~~[appointed by the President Pro Tem of the Senate]~~;
 - 4.~~[(d)]~~ Two (2) members appointed by the Kentucky Supreme Court;
 - 5.~~[(e)]~~ Two (2) members, who are licensed to practice law in Kentucky and have substantial experience in the representation of persons accused of crime, appointed by the Governor from a list of **three (3)**~~[five (5)]~~ persons submitted to him **for each individual vacancy** by the board of governors of the Kentucky Bar Association;
 - 6.~~[(f)]~~ The dean, ex officio, of each of the law schools in Kentucky or his designee; and
 - 7.~~[(g)]~~ One (1) member appointed by the Governor from a list of three (3) persons submitted to him **or her** by the **joint advisory boards of the Protection and**

Advocacy Division of the Department of Public Advocacy [~~Kentucky Protection and Advocacy Advisory Board~~].

- (b) *Any member of the commission serving prior to the effective date of this Act shall serve until the expiration of his or her current term of office. Subsequent appointments shall be for a term of four (4) years from the date of expiration of the term for which his or her predecessor was appointed.*
- (2) At the first meeting of the commission, a drawing by lot shall be conducted to determine the length of each original member's term. Initially there shall be four (4) two (2) year terms, four (4) three (3) year terms, and four (4) four (4) year terms. Vacancies in the membership of the commission shall be filled in the same manner as original appointments. Appointments to fill vacancies occurring before the expiration of a term shall be for the remainder of the unexpired term.
- (3) The commission shall first meet at the call of the Governor and thereafter as the commission shall determine on a regular basis, but at least quarterly, and shall be presided over by a chairperson elected by its members for a one (1) year term. A majority of commission members shall constitute a quorum, and decisions shall require the majority vote of those present; except that a recommendation to the Governor pertaining to the appointment, renewal of the appointment, or removal of the public advocate shall require a majority vote of the commission. Each member of the commission shall have one (1) vote, and voting by proxy shall be prohibited.
- (4) The public advocate shall, upon appointment or renewal, be an ex officio member of the commission without vote, shall serve as secretary of the commission, and shall be entitled to attend and participate in all meetings of the commission except discussions relating to renewal of his term or his removal.
- (5) Commission members [~~shall serve without compensation but~~] shall be reimbursed for reasonable and necessary expenses incurred while engaged in carrying out the duties of the commission ***and shall receive one hundred dollars (\$100) per day for each meeting attended unless prohibited by law from receiving such compensation.***
- (6) The commission shall:
- (a) Receive applications, interview, and recommend to the Governor three (3) attorneys as nominees for appointment as the public advocate;
 - (b) Assist the public advocate in drawing up procedures for the selection of his staff;
 - (c) Review the performance of the public advocacy system and provide general supervision of the public advocate;
 - (d) Assist the Department of Public Advocacy in ensuring its independence through public education regarding the purposes of the public advocacy system; and
 - (e) Review and adopt an annual budget prepared by the public advocate for the system and provide support for budgetary requests to the General Assembly.
- (7) In no event shall the commission or its members interfere with the discretion, judgment or advocacy of employees of the Department of Public Advocacy in their handling of individual cases.

Section 3. KRS 31.030 is amended to read as follows:

The **authority and** duties of the Department of Public Advocacy shall include, but are not limited to:

- (1) Administering the statewide public advocacy system created by this chapter or by any other appropriate legislation or court decision;
- (2) Providing technical aid to local counsel representing indigents;
- (3) Assisting local counsel on appeals or taking appeals for local counsel, in the same manner as such appeals for the Commonwealth are presently handled by the Attorney General;
- (4) Developing and promulgating standards and regulations, rules, and procedures for administration of the defense of indigent defendants in criminal cases which the public advocate, statutes, or the courts determine are subject to public assistance;
- (5) Appointing *assistant*~~district~~ public advocates;
- (6) Reviewing local plans for providing counsel for indigents;
- (7) Conducting research into, **and developing and implementing** methods of, improving the operation of the criminal justice system with regard to indigent defendants and other defendants in criminal actions;
- (8) Issuing such rules, regulations, and standards as may be reasonably necessary to carry out the provisions of this chapter, the decisions of the United States Supreme Court, the decisions of the Kentucky Supreme Court, Court of Appeals, and other applicable court decisions or statutes;
- (9) Being authorized to pursue legal, administrative, and other appropriate remedies to insure the protection of the rights of *persons with disabilities*~~the developmentally disabled~~; ~~and~~
- (10) ***Being authorized to purchase liability insurance for the protection of all full-time public advocates, deputy public advocates, and assistant public advocates to protect them from liability for malpractice arising in the course or scope of employment and for the protection of attorneys with whom the Department of Public Advocacy contracts to protect them from liability for malpractice arising in the course or scope of the contract;***
- (11) ***Being authorized to seek and apply for and solicit funds for the operation of the defense of the indigent, or protection of the persons with disabilities programs from any source, public or private, and to receive donations, grants, awards, and similar funds from any legal source. Those funds shall be placed in a special account for the Department of Public Advocacy and those funds shall not lapse;***
- (12) ***Being authorized to assign a substitute attorney, for good cause, at any stage of representation, including appeal or other post-conviction proceeding. The substitute attorney shall have the same functions with respect to the needy person as the attorney for whom he or she is substituted; and***
- (13) Do such other things and institute such other programs as are reasonably necessary to carry out the provisions of this chapter, or those decisions or statutes which are the subject of subsection (8) of this section.

Section 4. KRS 31.035 is amended to read as follows:

- (1) There shall be ~~an~~ advisory *boards*~~Board~~ for the Protection and Advocacy Division of the Department of Public Advocacy ***as set forth in Public Laws 99-319 and 106-402 and their implementing regulations. Each shall be*** comprised of not more than seventeen (17) citizen

members appointed for *terms of not less than*~~[a term of]~~ two (2) years by the *Protection and Advocacy Division Director*~~[public advocate. The board members shall be either developmentally disabled themselves or parents or representatives of persons who are developmentally disabled].~~

- (2) The advisory *boards*~~[board]~~ shall meet at least quarterly and on other occasions as may be necessary upon the call of the *Protection and Advocacy Division Director*~~[public advocate].~~
- (3) The members of the advisory *boards*~~[board]~~ shall receive no compensation for their services, but shall be reimbursed for all expenses incurred through the performance of their duties as members of *their respective*~~[the]~~ advisory board. No member of *any*~~[the]~~ board shall be held to be a public officer by reason of his *or her* membership on the board.

Section 5. KRS 31.050 is amended to read as follows:

- (1) The public advocate shall review and approve or deny or suggest modifications to all plans which are submitted to the Department of Public Advocacy for defense of indigent persons.
- (2) If the plan for defense of indigent persons is approved, the public advocate may allot a sufficient sum, subject to the approval of the secretary of the Finance and Administration Cabinet to the county or counties in the judicial circuit involved for the purpose of assisting the said plan.~~[The moneys shall be divided among the counties in the circuit as provided by the plan which is submitted.]~~
- (3) At the end of each funding period, any moneys not expended shall revert to the state Department of Public Advocacy.
- (4) Counties, *urban-counties, charter counties, consolidated local governments*, and other units submitting applications under this chapter shall be obligated to pay and shall pay all costs incurred in their own defense of indigent programs which are in excess of the maximum amount allotted or other maximum amount of grant as specified in this chapter.
- (5) *The fiscal court; legislative body of the urban-county, charter county, or consolidated local government; or nonprofit corporation is authorized to seek and apply for and solicit funds for the operation of the defense of the indigent from any source, public or private, and to receive donations, grants, awards, and similar funds from any legal source.*
- (6) *A defending attorney shall keep appropriate records respecting each needy person whom he or she represents under this chapter.*
- (7) *The public advocate, nonprofit organization, or person administering a public advocacy plan shall submit an annual report to the Department of Public Advocacy showing the number of persons represented under this chapter, the crimes involved, the outcome of each case, and the expenditures, totalled by kind, made in carrying out the responsibilities imposed by this chapter.*

Section 6. KRS 31.060 is amended to read as follows:

- (1) Each county, *urban-county, charter county, and consolidated local government* with a judicial district containing ten (10) or more circuit judges shall establish and maintain an office ~~of~~~~[for district]~~ public advocacy and submit a plan for the operation thereof to the Department of Public Advocacy. If the plan submitted is approved by the Department of Public Advocacy, the public advocate shall grant to the county, *urban-county, charter county, or consolidated local government* the amount to which it would be entitled under KRS 31.050(2) which shall be used as the Commonwealth's share in defraying the expenses

of the program in that *county, urban-county, charter county, or consolidated local government*~~[district. The county and other units contributing to the costs of the program shall be obligated to pay and shall pay all costs incurred in the operation of the defense of the indigents program which are in excess of the state contribution. Any excess of moneys remaining at the end of the funding period shall be returned to the Department of Public Advocacy].~~

- (2) *A county, urban-county, charter county, or consolidated local government identified in subsection (1) of this section shall contribute to the funding of the plan selected and approved in such amounts as the Department of Public Advocacy shall deem reasonable and necessary.*

Section 7. KRS 31.065 is amended to read as follows:

- (1) (a) *The fiscal court of each county; or legislative body of an urban-county, charter county, or consolidated local government; except a county, urban-county, charter county, or consolidated local government wherein the judicial district is required to maintain a public advocate under this chapter, may provide for the representation of needy persons by:*
1. *Contracting with one (1) or more attorneys, professional service corporations, nonprofit organizations, or an association of attorneys to provide the legal services required in this chapter, provided there are suitable attorneys available willing to provide these services for reasonable compensation;*
 2. *Establishing and maintaining an office for public advocacy; or*
 3. *Adopting any combination of the options provided for in subparagraphs 1. and 2. of this paragraph.*
- (b) *The fiscal court of a county; or the legislative body of an urban-county, charter county, or consolidated local government; may join with one (1) or more other counties, urban-counties, charter counties, or consolidated local governments in its judicial district or elsewhere or with any cities located within the county, urban-county, charter county, or consolidated local government or counties, urban-counties, charter counties, or consolidated local governments in providing this representation. These agreements shall be made pursuant to the provisions of KRS Chapter 65.*
- (c) *If it elects to establish and maintain an office of public advocacy, and if the appropriate legislative authorities and fiscal courts concerned respectively agree on qualifications, term of office, compensation, support, and appointment under subsection (1) of Section 8 of this Act, the fiscal court of a county; or the legislative body of an urban-county, charter county, or consolidated local government; may join with cities within the county, urban-county, charter county, or consolidated local government and with the legislative body of one (1) or more other counties, urban-counties, charter counties, or consolidated local governments to establish and maintain a joint office of public advocacy. In that case, the participating counties, urban-counties, charter counties, or consolidated local governments shall be treated for the purposes of this chapter as if they were one (1) county, urban-county, charter county, or consolidated local government. The agreements shall be made pursuant to the provisions of KRS Chapter 65.*

- (2) If a county, *urban-county, charter county, or consolidated local government*~~[or district]~~ chooses *not to submit a plan under subsection (1) of this section*,~~[none of the alternatives provided by KRS 31.160]~~ or if a plan submitted to the public advocate is denied as provided by KRS 31.050, then the public advocate may establish for a county containing less than ten (10) Circuit Judges or a group of counties a local public advocacy system by:
- (a)~~[(1)]~~ Contracting with one (1) or more attorneys, professional service corporations, nonprofit organizations, or an association of attorneys to provide the legal services required in this chapter; provided there are suitable attorneys available who are willing to provide those services for reasonable compensation; or
- (b)~~[(2)]~~ Providing an office *of*~~[for district]~~ public advocacy, which shall be staffed by *an assistant*~~[a district]~~ public advocate *who directs the office and* who shall be an attorney, and any number of assistant~~[district]~~ public advocates and other personnel necessary to perform adequately the functions of said office.

Section 8. KRS 31.170 is repealed, reenacted as a new section of KRS Chapter 31 to be numbered as KRS 31.071, and amended to read as follows:

- (1) If the fiscal court of a county; *or legislative body of an urban-county, charter county, or consolidated local government*; elects to establish and maintain an office for public advocacy, it shall:
- (a) Appoint the~~[district]~~ public advocate and any number of assistant~~[district]~~ public advocates necessary to adequately perform the functions of said office.
- (b) Prescribe the qualifications of the~~[district]~~ public advocate, his term of office which may not be more than four (4) years and fix the rate of annual compensation for him and his assistants. In order to be qualified for appointment as~~[district]~~ public advocate a person must have been admitted to the practice of law and licensed to practice in the Commonwealth of Kentucky and be competent to counsel and defend a person charged with a crime.
- (c) Provide for the establishment, maintenance and support of *the*~~[his]~~ office.
- (2) If the fiscal court of a county; *or the legislative body of an urban-county, charter county, or consolidated local government*; elects to arrange with a nonprofit organization to provide attorneys, the county, *urban-county, charter county, or consolidated local government* and any cities involved *shall provide for the establishment, maintenance, and support of that organization or shall*~~[may]~~ reimburse the organization for such expenses~~[as the fiscal courts respectively concerned have determined to be necessary in the representation of needy persons under this chapter, or may provide facilities described in KRS 31.180(2)(a) in addition to or in lieu of said reimbursement]~~.
- (3) If, in a county where the fiscal court; *or in an urban-county, charter county, or consolidated local government where the legislative body*; has elected to provide representation under subsection (1) or (2) of this section, after finding that the fiscal court, *or legislative body*, fails to provide an attorney to a person eligible for representation under KRS Chapter 31, a court assigns, under the court's inherent authority, an attorney to represent a needy person it shall prescribe a reasonable rate of compensation for his services and shall determine the direct expenses necessary to representation for which he would be reimbursed. The county, *urban-county, charter county, or consolidated local government*

shall pay the attorney the amounts so prescribed from the funds made available by the Department of Public Advocacy.

- (4) An attorney under subsection (3) shall be compensated for his services with regard to the complexity of the issues, the time involved, and other relevant considerations. However, no fee shall be paid in excess of the prevailing maximum fee per attorney paid by the Department of Public Advocacy for the type of representation provided, and no hourly rate shall be paid in excess of the prevailing hourly rate paid by the Department of Public Advocacy for the type of representation provided.

Section 9. KRS 31.165 is repealed, reenacted as a new section of KRS Chapter 31 to be numbered as KRS 31.085, and amended to read as follows:

All plans authorized by *this chapter* ~~[KRS 31.160]~~ shall conform to all rules and regulations promulgated by the Department of Public Advocacy.

Section 10. KRS 31.100 is amended to read as follows:

~~[With regard to the district public advocate and approved local programs of providing counsel for indigents]~~ The following terms and standards shall apply, subject to further definition and regulation by the Department of Public Advocacy.

- (1) "Detain" means to have in custody or otherwise deprive of freedom of action;
- (2) "Expenses," when used with reference to representation under this chapter, includes the expenses of investigation, other preparation, and trial, together with the expenses of any appeal;
- (3) "Needy person" or "indigent person" means:
 - (a) A person, eighteen (18) years of age or older, or emancipated minor under the age of eighteen (18), who at the time his need is determined is unable to provide for the payment of an attorney and all other necessary expenses of representation;
 - (b) A minor, under the age of eighteen (18), who is party defendant in an action *of being an habitual runaway from his or her parent or person exercising control or supervision of the child brought under KRS 630.020(1) or of being beyond the control of parents* brought under KRS 630.020(2), and at the time his need is determined is unable to provide for the payment of an attorney and all other necessary expenses of representation;
 - (c) An unemancipated minor, under the age of eighteen (18), *who allegedly has* ~~[alleged to have]~~ committed an offense as described in KRS 610.010(1)(a), *or who allegedly is beyond the control of the school as described in KRS 610.010(1)(b), or who allegedly is an habitual truant from school as described in KRS 610.010(1)(c), or who allegedly is an habitual runaway as described in KRS 610.010(1)(d)*, whose custodial parent or guardian at the time the need of the minor is determined is unable to provide for the payment of an attorney and all other necessary expenses of representation, and who cannot personally so provide; or
 - (d) An unemancipated minor, under the age of eighteen (18), alleged to have committed an offense as described in KRS 610.010(1)(a), (b), (c), or (d), whose custodial parent or guardian at the time the need of the minor is determined *has interests adverse to the child relevant to the charged offenses and who* is able to provide for the payment

of an attorney and all other necessary expenses of representation, when such representation is not provided or is not consented to by the unemancipated minor;

- (4) "Serious crime" includes:
- (a) A felony;
 - (b) A misdemeanor or offense any penalty for which includes the possibility of confinement~~[or a fine of five hundred dollars (\$500) or more];~~
 - (c) Any legal action which could result in the detainment of a defendant; and
 - (d) An act that, but for the age of the person involved, would otherwise be a serious crime.

Section 11. KRS 31.110 is amended to read as follows:

- (1) A needy person who is being detained by a law enforcement officer, on suspicion of having committed, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime, ***or who is accused of having committed a public or status offense or who has been committed to the Department of Juvenile Justice or Cabinet for Families and Children for having committed a public or status offense as those are defined by KRS 630.020(2) or KRS 610.010(1)(a), (b), (c), or (d)*** is entitled:
- (a) To be represented by an attorney to the same extent as a person having his own counsel is so entitled; and
 - (b) To be provided with the necessary services and facilities of representation including investigation and other preparation. The courts in which the defendant is tried shall waive all costs.
- (2) A needy person who is entitled to be represented by an attorney under subsection (1) is entitled:
- (a) To be counseled and defended at all stages of the matter beginning with the earliest time when a person providing his own counsel would be entitled to be represented by an attorney and including revocation of probation or parole;
 - (b) To be represented in any appeal; and
 - (c) To be represented in any other post-conviction, ***or, if a minor under the age of eighteen (18), post-disposition*** proceeding that the attorney and the needy person considers appropriate. However, if the counsel appointed in such post-conviction, ***or, if a minor under the age of eighteen (18), post-disposition*** remedy, with the court involved, determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense, there shall be no further right to be represented by counsel under the provisions of this chapter.
- (3) A needy person's right to a benefit under subsection (1) or (2) is not affected by his having provided a similar benefit at his own expense, or by his having waived it, at an earlier stage.
- (4) ***A person, whether a needy person or not, who is a minor under the age of eighteen (18) and who is in the custody of the Department of Juvenile Justice and is residing in a residential treatment center or detention center is entitled to be represented on a legal claim related to his or her confinement involving violations of federal or state statutory rights or constitutional rights.***

Section 12. KRS 31.120 is amended to read as follows:

- (1) The determination of whether a person covered by KRS 31.110 is a needy person shall be deferred no later than his first appearance in court or in a suit for payment or reimbursement under ***Section 14 of this Act*** ~~[KRS 31.150]~~, whichever occurs earlier. Thereafter, the court concerned shall determine, with respect to each step in the proceedings, whether he is a needy person. However, nothing herein shall prevent appointment of counsel at the earliest necessary proceeding at which the person is entitled to counsel, upon declaration by the person that he is needy under the terms of this chapter. In that event, the person involved shall be required to make reimbursement for the representation involved if he later is determined not a needy person under the terms of this chapter. ~~[At arraignment, the court shall conduct a nonadversarial hearing to determine whether a person who has requested a public defender is able to pay a partial fee.]~~
- (2) In determining whether a person is a needy person and in determining the extent of his, and, in the case of an unemancipated minor under KRS 31.100(3)(c), his custodial parent's or guardian's inability to pay, the court concerned shall consider such factors as:
- (a) Income; ~~[;]~~
 - (b) ***Source of income;***
 - (c) Property owned; ~~[;]~~
 - (d) ***Number of motor vehicles owned and in working condition;***
 - (e) ***Other assets;***
 - (f) Outstanding obligations; ~~[; and]~~
 - (g) The number and ages of his *or her* dependents;
 - (h) ***The poverty level income guidelines compiled and published by the United States Department of Labor;***
 - (i) ***Complexity of the case;***
 - (j) ***Amount a private attorney charges for similar services;***
 - (k) ***Amount of time an attorney would reasonably spend on the case; and***
 - (l) ***Payment of money bail, other than a property bond of another, whether deposited by the person or another, to secure the person's release from confinement on the present charge of which he or she stands accused or convicted; and***
 - (m) ***Any other circumstances presented to the court relevant to financial status.***

Release on bail, or any other method of release provided in KRS Chapter 431, shall not necessarily prevent him from being a needy person. In each case, the person, and, if an unemancipated minor under KRS 31.100(3)(c) and (d), his custodial parent or guardian, subject to the penalties for perjury, shall certify by affidavit of indigency which shall be compiled by the pretrial release officer, as provided under KRS Chapter 431 and Supreme Court Rules or orders promulgated pursuant thereto, the material factors relating to his ability to pay in the form the Supreme Court prescribes.

- (3) ~~[It shall be prima facie evidence that a person is not indigent or needy within the meaning of this chapter if he and, in the case of an unemancipated minor under KRS 31.100(3)(c) and (d), if his custodial parent or guardian:~~
- (a) ~~[Owns real property in the Commonwealth or without the Commonwealth;~~

- ~~(b) Is not receiving, or if not receiving is not eligible to receive, public assistance payments at the time the affidavit of indigency is executed;~~
- ~~(c) Has paid money bail (other than a property bond of another), whether deposited by himself or another, to secure his release from confinement on the present charge of which he stands accused or convicted; or~~
- ~~(d) Owns more than one (1) motor vehicle.~~

~~(4) To the extent that a person covered by KRS 31.110, and, in the case of an unemancipated minor under KRS 31.100(3)(c) and (d), his custodial parent or guardian, is able to provide for an attorney, the other necessary services and facilities of representation, and court costs, the court shall order payment in an amount determined by the court and may order that the payment be made in a lump sum or by installment payments. The determination shall be made at each stage of the proceedings.~~

~~(5) The court shall order all moneys collected pursuant to subsection (4) of this section be paid to the clerk of that court pursuant to the schedule of payment. The clerk shall forward to the Department of Public Advocacy on a monthly basis a copy of all the orders or an electronic report compiled by the Administrative Office of the Courts listing those orders. Additionally, the clerk shall forward to the Department of Public Advocacy on a monthly basis an accounting of and the moneys collected in each case.~~

~~(6) The affidavit of indigency, to be subscribed and sworn to by the person, and, in the case of an unemancipated minor under KRS 31.100(3)(c), by his custodial parent or guardian, shall be as set out herein **and contain, at a minimum, the following information:**~~

"Commonwealth of Kentucky

County of.....

Affiant....., being first duly sworn says that he *or she* is not now represented by private counsel and that he does not have the money or assets out of which to employ one; that he *or she* is indigent and requests the court to appoint counsel.

Affiant states that he or she is presently (fill in the blank with one (1) of the following: unemployed, employed full-time, employed part-time, or employed on a seasonal basis).....

Affiant states that his *or her* weekly income is; *and* that he *or she* receives (circle any of the following which apply and fill in the blank if necessary)

Welfare

Food stamps

Social Security

Workers' compensation

Unemployment

Retirement disability

Other.....

Affiant states that he or she owns the following property:

| Description | Value |
|-------------|-------|
| | |

.....
.....;

Affiant states that he *or she* has the following dependents:

| Name | Age | Relationship |
|-------|-------|--------------|
| | | |
| | | |
| | |; |

Affiant states~~[and]~~ that he *or she* has the following obligations:

| To whom owed | Amount owing |
|--------------|--------------|
| | |
| | |
| | |

Affiant understands and has been advised that he or she may be held responsible for the payment of part of the cost of legal representation. Affiant also understands that the cost of payment for legal representation will be determined by the judge after considering affiant's financial condition, what private attorneys charge for similar services, how complicated the affiant's case is, and the amount of time affiant's attorney spends on affiant's case.

Signature of affiant

Subscribed and sworn to before me this , day of, 20~~[19]~~.....

.....
Signature and title of officer
administering the oath

Perjury Warning: Affiant understands that any person knowingly~~[persons]~~ making false statements in the above affidavit shall be subject to the penalties for perjury under KRS Chapter 523, the maximum penalty for which is five (5) years imprisonment. "***Affiant declares under penalty of perjury that he or she has read the above affidavit and that it is true and complete to the best of his or her knowledge.***"

Section 13. KRS 31.185 is amended to read as follows:

- (1) Any defending attorney operating under the provisions of this chapter is entitled to use the same state facilities for the evaluation of evidence as are available to the attorney representing the Commonwealth. If he *or she* considers their use impractical, the court concerned may authorize the use of private facilities to be paid for on court order ***from the special account of the Finance and Administration Cabinet***~~[by the county]~~.
- (2) ***The defending attorney may request to be heard ex parte and on the record with regard to using private facilities under subsection (1) of this section. If the defending attorney so requests, the court shall conduct the hearing ex parte and on the record.***

- (3) *Any direct expense, including the cost of a transcript or bystander's bill of exceptions or other substitute for a transcript that is necessarily incurred in representing a needy person under this chapter, is a charge against the county, urban-county, charter county, or consolidated local government on behalf of which the service is performed and shall be paid from the special account established in subsection (4) of this section and in accordance with procedures provided in subsection (5) of this section. However, such a charge shall not exceed the established rate charged by the Commonwealth and its agencies.*
- (4) The fiscal court of each county or legislative body of an urban-county government shall annually appropriate twelve and a half cents (\$0.125) per capita of the population of the county, as determined by the Council of Local Governments' most recent population statistics, to a special account to be administered by the Finance and Administration Cabinet to pay court orders entered against counties pursuant to subsection (1) *or* (3) of this section. The funds in this account shall not lapse and shall remain in the special account.
- (5)~~(3)~~ The Finance and Administration Cabinet shall pay all court orders entered pursuant to subsection (1) *or* (3) of this section from the special account until the funds in the account are depleted. If in any given year the special account including any funds from prior years is depleted and court orders entered against counties pursuant to subsection (1) *or* (3) of this section for that year or any prior year remain unpaid, the Finance and Administration Cabinet shall pay those orders from the Treasury in the same manner in which judgments against the Commonwealth and its agencies are paid.
- (6) *Expenses incurred in the representation of needy persons confined in a state correctional institution shall be paid from the special account established in subsection (4) of this section and in accordance with the procedures provided in subsection (5) of this section.*
- (7)~~(4)~~ Only court orders entered after July 15, 1994, shall be payable from the special account administered by the Finance and Administration Cabinet or from the Treasury as provided in subsections (4) *and* (5)~~(2) and (3)~~ of this section.

SECTION 14. A NEW SECTION OF KRS CHAPTER 31 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 31.211:

- (1) *At arraignment, the court shall conduct a nonadversarial hearing to determine whether a person who has requested a public defender is able to pay a partial fee for legal representation, the other necessary services and facilities of representation, and court costs. The court shall order payment in an amount determined by the court and may order that the payment be made in a lump sum or by installment payments to recover money for representation provided under this chapter. This partial fee determination shall be made at each stage of the proceedings.*
- (2) *If the partial fee, or any portion thereof, is not paid by the due date, the court's order is a civil judgment subject to collection under Civil Rule 69.03 and KRS Chapter 426.*
- (3) *All moneys received by the public advocate from indigent defendants pursuant to subsection (1) of this section shall be credited to the public advocate fund of the county in which the trial is held if the county has a plan pursuant to Section 6 of this Act or subsection (1) of Section 7 of this Act which has been approved by the public advocate pursuant to Section 5 of this Act. Moneys credited to a county public advocate fund may be used only to support the public advocate program of that county.*

- (4) All moneys collected by the public advocate from indigent defendants pursuant to subsection (1) of this section in counties with a local public advocacy system established by the public advocate pursuant to subsection (2) of Section 7 of this Act shall be credited to the Department of Public Advocacy special trust and agency account to be used to support the state public advocacy system.*
- (5) If a person receives legal assistance or other benefit under this chapter to which he or she is not entitled or if a person receives legal assistance under this chapter and is financially able to pay for representation on the date the suit is brought, the public advocate, on behalf of the Commonwealth, shall recover, where practical, payment or reimbursement, as the case may be, from the person who received the legal assistance or his or her estate. Suit shall be brought within five (5) years after the date on which the aid was received.*
- (6) Any attorney participating in a public advocacy plan shall forward all information which he or she may have which indicates that payment or reimbursement may be obtained pursuant to subsection (5) of this section.*
- (7) The duty of recovery contemplated by subsection (5) of this section shall extend against persons who were the custodial parents or guardians of unemancipated minors at the time these minors were deemed needy as defined in subsection (3)(c) or (3)(d) of Section 10 of this Act.*
- (8) All moneys collected under this section shall be placed in a special trust and agency account for the Department of Public Advocacy, and the funds shall not lapse.*

Section 15. KRS 31.250 is repealed and reenacted as a new section of KRS Chapter 31, to be numbered as KRS 31.215, to read as follows:

- (1) Except for attorneys appointed pursuant to KRS 620.100, 625.041, 625.080, and 31.120, no attorney participating in a public advocacy plan shall accept any fees for the representation of any needy person as defined in this chapter from that person or anyone for his benefit and the fees for representation of that person shall be limited to the fees provided in this chapter. "Fees" shall include cash, property, or other pecuniary benefits of any kind.
- (2) Any attorney participating in a public advocacy plan who receives or attempts to collect a fee from a needy person as prohibited by subsection (1) above shall be guilty of a Class D felony.

Section 16. KRS 31.115 is repealed and reenacted as a new section of KRS Chapter 31, to be numbered as KRS 31.219, to read as follows:

- (1) It shall be the duty of the attorney representing a client under any public advocacy plan to perfect an appeal if his client requests an appeal.
- (2) After the attorney has filed a notice of appeal as required by the Rules of Criminal Procedure, he shall forward to the Department of Public Advocacy a copy of the final judgment, the notice of appeal, a statement of any errors committed in the trial of the case which should be raised on appeal, and a designation of that part of the record that is essential to the appeal.
- (3) No attorney participating in any public advocacy plan shall be compensated for his services until he has perfected an appeal for a client who requests an appeal and has filed the information required in subsection (2) of this section.

- (4) Any public advocacy attorney who is representing a client on appeal who after a conscientious examination of said appeal believes the appeal to be wholly frivolous after careful examinations of the record may request the court to which the appeal has been taken for permission to withdraw from the case. The attorney must file with that request a brief which sets forth any arguments which might possibly be raised on appeal. A copy of the request for permission to withdraw and the brief must be served upon the client in sufficient time so that the client may raise any argument he chooses to raise.

Section 17. KRS 31.220 is amended to read as follows:

This chapter applies only to representation in the courts of this state, except that it does not prohibit a defending attorney from representing a needy person in a federal court of the United States, if:

- (1) The matter arises out of or is related to an action pending or recently pending in a court of criminal jurisdiction of the state; or
- (2) Representation is under a plan of the United States District Court as required by the Criminal Justice Act of 1964 (18 U.S.C. 3006A)~~[-and is approved by the fiscal court].~~

Section 18. KRS 31.070 is repealed and reenacted as a new section of KRS Chapter 31, to be numbered as KRS 31.235, to read as follows:

If a court, after finding that the Department of Public Advocacy fails to provide an attorney to a person eligible for representation under KRS Chapter 31, appoints, under the court's inherent authority, an attorney to provide representation to the needy person, the public advocate is hereby authorized to pay reasonable and necessary fees and expenses subject to the following limitations:

- (1) No fee shall be paid in excess of the prevailing maximum fee per attorney paid by the Department of Public Advocacy for the type of representation provided, and no hourly rate shall be paid in excess of the prevailing hourly rate paid by the Department of Public Advocacy for the type of representation provided; and
- (2) Each fee plus expenses incurred in the defense shall be presented by the defense attorney to the Circuit Judge who shall review the fee and expenses request and shall approve, deny, or modify the amount of compensation and fee listed therein. After final approval of the fee and expenses the Circuit Judge shall, if state compensation is desired, certify the amount and transmit the document to the public advocate who shall review the fee and expense request and shall approve, deny, or modify the request. The request as approved or modified shall then be paid. Requests for payment of assigned counsel by the state shall be denied if the district has exceeded the amount of funds which may be allotted to it, if the district plan has not been approved, or if the public advocate finds that compensation is otherwise not warranted. The decision of the public advocate in all matters of fee and expense compensation shall be final.

Section 19. KRS 31.230 is repealed and reenacted as a new section of KRS Chapter 31, to be numbered as KRS 31.241, to read as follows:

The protections provided by this chapter do not exclude any protection or sanction that the law otherwise provides.

Section 20. The following KRS sections are repealed:

31.025 Liability insurance for full-time public advocates.

- 31.051 Moneys from indigent defendants credited to fund of county where trial held -- Use -- Administrative fee assessed on persons for whom counsel is provided.
- 31.080 Public advocate -- Solicitation of funds for programs.
- 31.090 Funding deficiencies.
- 31.130 Assignment of substitute attorney.
- 31.150 Recovery of money wrongfully received.
- 31.160 Provisions for joint representation by counties, cities and districts.
- 31.190 Appropriation of money by fiscal court and cities.
- 31.180 Facilities and services available to public advocates.
- 31.200 Expenses chargeable to county and to public advocate.
- 31.210 Annual reports -- Records.
- 31.240 Compensation by counties of public advocates -- State contributions.

Approved April 9, 2002