

CHAPTER 151**(HB 378)**

AN ACT relating to the Department of Public Advocacy.

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

→Section 1. KRS 15A.020 is amended to read as follows:

- (1) The Justice and Public Safety Cabinet shall have the following departments:
 - (a) Department of Corrections;
 - (b) Department of Criminal Justice Training, which shall have the following divisions:
 1. Training Operations Division;
 2. Administrative Division; and
 3. Training Support Division;
 - (c) Department of Juvenile Justice, which shall have the following divisions:
 1. Division of Medical Services;
 2. Division of Western Region;
 3. Division of Central Region;
 4. Division of Eastern Region;
 5. Division of Southeastern Region;
 6. Division of Administrative Services;
 7. Division of Program Services;
 8. Division of Placement Services;
 9. Division of Professional Development; and
 10. Division of Community and Mental Health Services;
 - (d) Department of Kentucky State Police, which shall have the following divisions:
 1. Administrative Division;
 2. Operations Division;
 3. Technical Services Division; and
 4. Commercial Vehicle Enforcement Division; and
 - (e) Department for Public Advocacy, which shall have the following divisions:
 1. Protection and Advocacy Division;
 2. Division of Law Operations;
 3. Division of Trial Services;~~{and}~~
 4. Division of Post-Trial Services; *and*
 5. *Division of Conflict Services.*
- (2) Each department, except for the Department for Public Advocacy, shall be headed by a commissioner who shall be appointed by the secretary of justice and public safety with the approval of the Governor as required by KRS 12.040. Each commissioner shall be directly responsible to the secretary and shall have such functions, powers, and duties as provided by law and as the secretary may prescribe. The Department for Public Advocacy shall be headed by the public advocate, appointed as required by KRS 31.020, who shall be directly responsible to the Public Advocacy Commission. The Department for Public Advocacy is an independent state agency which shall be attached to the Justice and Public Safety Cabinet for administrative

purposes only. The Justice and Public Safety Cabinet shall not have control over the Department for Public Advocacy's information technology equipment and use unless granted access by court order.

- (3) The Justice and Public Safety Cabinet shall have the following offices:
- (a) Office of the Secretary, which shall be headed by a deputy secretary appointed pursuant to KRS 12.050 and responsible for the direct administrative support for the secretary and other duties as assigned by the secretary, and which, with the approval of the secretary, may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;
 - (b) Office of Management and Administrative Services, which shall be headed by an executive director appointed pursuant to KRS 12.050 who shall be responsible to and report to the secretary and be responsible for all matters relating to human resources, state and federal grants management, including but not limited to the administration of KRS 15A.060, fiscal functions, management and daily operations of the information processing activities for the cabinet, and management and daily administrative services for the cabinet; and who, with the approval of the secretary, may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;
 - (c) Office of Legal Services, which shall be headed by an executive director appointed pursuant to KRS 12.050 and 12.210 to provide legal representation and services for the cabinet. The executive director shall be directly responsible to and report to the secretary and, with the approval of the secretary, may employ such attorneys appointed pursuant to KRS 12.210 and other staff as necessary to perform the duties, functions, and responsibilities of the office;
 - (d) Office of Legislative and Intergovernmental Services, which shall be headed by an executive director appointed pursuant to KRS 12.050 who shall be responsible for all matters relating to the provision of support to the Criminal Justice Council, legislative liaison services, and functions and duties vested in the Criminal Justice Council as described in KRS 15A.030. The executive director shall be directly responsible to and report to the secretary and may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;
 - (e) Office of the Kentucky State Medical Examiner, which shall be headed by a chief medical examiner appointed pursuant to KRS 72.240 who shall be responsible for all matters relating to forensic pathology and forensic toxicology and other duties as assigned by the secretary. The executive director appointed pursuant to KRS 12.050 shall be responsible for all matters related to the administrative support of the Office of the State Medical Examiner. The executive director shall report directly to the secretary and with the approval of the secretary may employ such administrative support staff as necessary to perform the administrative duties, functions, and responsibilities of the office. The chief medical examiner shall be directly responsible to and report to the secretary and may employ such staff as necessary to perform the forensic duties, functions, and responsibilities of the office;
 - (f) Office of Drug Control Policy, which shall be headed by an executive director appointed pursuant to KRS 12.050 who shall be responsible for all matters relating to the research, coordination, and execution of drug control policy and for the management of state and federal grants, including but not limited to the prevention and treatment related to substance abuse. By December 31 of each year, the Office of Drug Control Policy shall review, approve, and coordinate all current projects of any substance abuse program which is conducted by or receives funding through agencies of the executive branch. This oversight shall extend to all substance abuse programs which are principally related to the prevention or treatment, or otherwise targeted at the reduction, of substance abuse in the Commonwealth. The Office of Drug Control Policy shall promulgate administrative regulations consistent with enforcing this oversight authority. The executive director shall be directly responsible to and report to the secretary and may employ such staff as necessary to perform the duties, functions, and responsibilities of the office; and
 - (g) Office of Investigations, which shall be headed by an executive director appointed pursuant to KRS 12.050 who shall be responsible for investigating all complaints regarding the facilities, staff, treatment of juveniles, and other matters relating to the operation of the Justice and Public Safety Cabinet. If it appears that there is a violation of statutes, administrative regulations, policies, court decisions, the rights of juveniles who are subject to the orders of the department, or any other matter relating to the Justice and Public Safety Cabinet, the office shall report to the secretary of the Justice and Public Safety Cabinet who shall, if required, refer the matter to a law enforcement agency, Commonwealth's attorney, county attorney, the Attorney General, or federal agencies, as appropriate. The executive director shall be directly responsible to and report to the secretary and, with the approval of the secretary, may

employ such staff as necessary to perform the duties, functions, and responsibilities of the office. The Office of Investigations may be used to investigate matters in which there is a suspicion of violation of written policy, administrative regulation, or statutory law within the Department for Public Advocacy only when such investigation will have no prejudicial impact upon a person who has an existing attorney-client relationship with the Department for Public Advocacy. Notwithstanding the provisions of this paragraph, investigation and discipline of KRS Chapter 16 personnel shall continue to be conducted by the Department of Kentucky State Police pursuant to KRS Chapter 16. The Office of Investigations shall conduct no other investigations.

➔Section 2. 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 Justice and Public Safety Cabinet, the Department for 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, ***independent of any agency that provides treatment, services, or rehabilitation to persons with disabilities***. For the purposes of this chapter, "persons with disabilities" 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 as amended and any other federal enabling statute hereafter enacted that defines the eligible client base for protection and advocacy services.

➔Section 3. KRS 31.020 is amended to read as follows:

- (1) The Department of Public Advocacy shall consist of the public advocate, deputy public advocate, ***general counsel***, such assistant public advocates as the public advocate shall deem necessary, and such secretarial and other personnel as the public advocate shall deem necessary.
- (2) The public advocate shall be appointed by the Governor from a list of three (3) attorneys submitted to him ***or her*** by the Public Advocacy Commission; shall be an attorney licensed to practice law in Kentucky with at least five (5) years experience in the practice of law; shall be excepted from the classified service; shall be the chief administrator of the Department of Public Advocacy ***and an appointing authority as that term is defined in KRS 18A.005***; and shall serve a term of four (4) years, which is renewable, unless removed by the Governor. The incumbent public advocate shall serve until a successor is nominated by the commission and approved by the Governor. The compensation of the public advocate shall be set by the provisions of KRS 64.640.
- (3) The deputy public advocate shall be an attorney and shall be appointed by the public advocate and shall serve at his ***or her*** pleasure.
- (4) ***The general counsel shall be an attorney and shall be appointed by the public advocate and shall serve at his or her pleasure. The general counsel shall represent the interests of the department as directed by the public advocate.***
- (5) The assistant public advocates shall be attorneys, shall be appointed by the public advocate, shall be covered by the merit system and shall not be subject to the provisions of KRS 12.210.
- (6)~~(5)~~ Secretarial, clerical, and other personnel shall be appointed by the public advocate, and shall be covered by the merit system.

➔Section 4. 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) ***Determining necessary personnel for the department and*** appointing assistant public advocates ***and secretarial, clerical, and other personnel within the merit system subject to available funding and employee allotments;***
- (6) ***Maintaining and exercising control over the department's information technology system, and working with the Commonwealth Office of Technology to ensure that the department's information technology is in conformity with the requirements of state government;***
- (7) Reviewing local plans for providing counsel for indigents;
- ~~(8)(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;
- ~~(9)(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;
- ~~(10)(9)~~ Being authorized to pursue legal, administrative, and other appropriate remedies to insure the protection of the rights of persons with disabilities;
- ~~(11)(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;
- ~~(12)(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;
- ~~(13)(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
- ~~(14)(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 ~~(9)(8)~~ of this section.

➔Section 5. KRS 31.060 is amended to read as follows:

- (1) Each county, urban-county, charter county, and consolidated local government with a judicial ~~circuit-district~~ containing ten (10) or more Circuit Judges, ***excluding judges of family court divisions as designated by the Supreme Court***, shall establish and maintain an office of 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.
- (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 6. KRS 45A.690 is amended to read as follows:

- (1) As used in KRS 45A.690 to 45A.725:
 - (a) "Committee" means the Government Contract Review Committee of the Legislative Research Commission;
 - (b) "Contracting body" means each state board, bureau, commission, department, division, authority, university, college, officer, or other entity, except the Legislature, authorized by law to contract for

personal services. "Contracting body" includes the Tourism Development Finance Authority with regard to tax incentive agreements;

- (c) "Governmental emergency" means an unforeseen event or set of circumstances that creates an emergency condition as determined by the committee by promulgation of an administrative regulation;
- (d) "Memorandum of agreement" means any memorandum of agreement, memorandum of understanding, program administration contract, interlocal agreement to which the Commonwealth is a party, privatization contract, or similar device relating to services between a state agency and any other governmental body or political subdivision of the Commonwealth or entity qualified as nonprofit under 26 U.S.C. sec. 501(c)(3) not authorized under KRS Chapter 65 that involves an exchange of resources or responsibilities to carry out a governmental function. It includes agreements by regional cooperative organizations formed by local boards of education or other public educational institutions for the purpose of providing professional educational services to the participating organizations and agreements with Kentucky Distinguished Educators pursuant to KRS 158.782. This definition does not apply to:
 - 1. Agreements between the Transportation Cabinet and any political subdivision of the Commonwealth for road and road-related projects;
 - 2. Agreements between the Auditor of Public Accounts and any other governmental agency or political subdivision of the Commonwealth for auditing services;
 - 3. Agreements between state agencies as required by federal or state law;
 - 4. Agreements between state agencies and state universities or colleges only when the subject of the agreement does not result in the use of an employee or employees of a state university or college by a state agency to fill a position or perform a duty that an employee or employees of state government could perform if hired, and agreements between state universities or colleges and employers of students in the Commonwealth work-study program sponsored by the Kentucky Higher Education Assistance Authority;
 - 5. Agreements involving child support collections and enforcement;
 - 6. Agreements with public utilities, providers of direct Medicaid health care to individuals except for any health maintenance organization or other entity primarily responsible for administration of any program or system of Medicaid managed health care services established by law or by agreement with the Cabinet for Health and Family Services, and transit authorities;
 - 7. Nonfinancial agreements;
 - 8. Any obligation or payment for reimbursement of the cost of corrective action made pursuant to KRS 224.60-140;
 - 9. Exchanges of confidential personal information between agencies;
 - 10. Agreements between state agencies and rural concentrated employment programs; or
 - 11. Any other agreement that the committee deems inappropriate for consideration;
- (e) "Motion picture or entertainment production" means the same as defined in KRS 148.542;
- (f) "Multicontract" means a group of personal service contracts between a contracting body and individual vendors providing the same or substantially similar services to the contracting body that, for purposes of the committee, are treated as one (1) contract;
- (g) "Personal service contract" means an agreement whereby an individual, firm, partnership, or corporation is to perform certain services requiring professional skill or professional judgment for a specified period of time at a price agreed upon. It includes all price contracts for personal services between a governmental body or political subdivision of the Commonwealth and any other entity in any amount. This definition does not apply to:
 - 1. Agreements between the Department of Parks and a performing artist or artists for less than five thousand dollars (\$5,000) per fiscal year per artist or artists;
 - 2. Agreements with public utilities, foster care parents, providers of direct Medicaid health care to individuals except for any health maintenance organization or other entity primarily responsible for administration of any program or system of Medicaid managed health care services

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- established by law or by agreement with the Cabinet for Health and Family Services, individuals performing homemaker services, and transit authorities;
3. Agreements between state universities or colleges and employers of students in the Commonwealth work study program sponsored by the Kentucky Higher Education Assistance Authority;
 4. Agreements between a state agency and rural concentrated employment programs;
 5. Agreements between the State Fair Board and judges, officials, and entertainers contracted for events promoted by the State Fair Board;~~{-o-}~~
 6. *Agreements between the Department of Public Advocacy and attorneys for the representation of indigent clients who are entitled to representation under KRS Chapter 31 and who, by reason of conflict or otherwise, cannot be represented by the department, subject to quarterly reports of all such agreements to the committee;*
 7. Any other contract that the committee deems inappropriate for consideration;
- (h) "Tax incentive agreement" means an agreement executed under KRS 148.546; and
- (i) "Tourism Development Finance Authority" means the authority established by KRS 148.850.
- (2) Compliance with the provisions of KRS 45A.690 to 45A.725 does not dispense with the requirements of any other law necessary to make the personal service contract or memorandum of agreement valid.

Signed by Governor April 19, 2012.