

CHAPTER 144**(HB 568)**

AN ACT relating to the public defender system.

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

➔Section 1. 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 indigent persons;~~
- ~~(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 administrative regulations, rules, and procedures for administration of the defense of indigent defendants in criminal cases that the public advocate, statutes, or the courts determine are subject to public assistance;
- ~~(3){(5)}~~ Determining necessary personnel for the department and appointing staff attorneys, who shall be "assistant public advocates," and non-lawyer assistants within the merit system, subject to available funding and employee allotments;
- ~~(4){(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 and approving local plans for providing counsel for indigent persons;}~~
- ~~(5){(8)}~~ 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, including participation in groups, organizations, and projects dedicated to improving representation of defendants in criminal actions in particular, or the interests of indigent or impoverished persons in general;
- ~~(6){(9)}~~ Issuing rules, promulgating administrative regulations, and establishing 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;
- ~~(7){(10)}~~ Being authorized to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of persons with disabilities;
- ~~(8){(11)}~~ 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;
- ~~(9){(12)}~~ Being authorized to seek and apply for and solicit funds for the operation of the defense of indigent persons 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;
- ~~(10){(13)}~~ Being authorized to assign an attorney, including a conflict attorney under a plan, for good cause, at any stage of representation, including trial, appeal, or other post-conviction or post-disposition proceeding, including discharge revocation hearings, preliminary parole revocation hearings, and conditional discharge revocation hearings, regardless of whether the hearings are conducted by constitutional judges or executive branch administrative law judges;
- ~~(11){(14)}~~ Filing with the Legislative Research Commission an annual report, by September 30 of each year, setting forth the total number of cases assigned to the department, the average number of cases per department attorney, all funding available to the department, the average amount of state funds expended per assigned case, and any other information requested by the Legislative Research Commission or that the public advocate

finds necessary to inform the General Assembly, the judicial or executive branches, or the public of the activities conducted by the department during the previous fiscal year; and

~~(12)(15)~~ Do other activities and institute other programs as necessary to carry out the provisions of this chapter, or those decisions or statutes which are the subject of this section.

➔Section 2. KRS 31.211 is amended to read as follows:

- (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 KRS 31.060 or 31.065(1) which has been approved by the public advocate pursuant to KRS 31.050. 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 KRS 31.065(2)]~~ shall be credited to the Department of Public Advocacy special trust and agency account to be used to support the state public advocacy system.
- ~~(4)(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.
- ~~(5)(6)~~ **Department of Public Advocacy attorneys** ~~[Any attorney participating in a public advocacy plan]~~ shall forward all information **that** ~~[which he or she may have which]~~ indicates that payment or reimbursement may be obtained pursuant to subsection ~~(4)(5)~~ of this section.
- ~~(6)(7)~~ The duty of recovery contemplated by subsection ~~(4)(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 KRS 31.100(5)(c) or (d).
- ~~(7)(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 3. KRS 31.215 is amended to read as follows:

- (1) Except for attorneys appointed pursuant to KRS 620.100, 625.041, 625.080, and 31.120, no attorney **employed by the Department of Public Advocacy** ~~[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 **or her** 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 **employed by the Department of Public Advocacy** ~~[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 4. KRS 31.219 is amended to read as follows:

- (1) It shall be the duty of the attorney **employed by the Department of Public Advocacy** representing a client at trial ~~[under any public advocacy plan]~~ to file a notice of appeal if his or her client requests an appeal.
- (2) After the **trial** attorney **employed by the Department of Public Advocacy** has filed a notice of appeal as required by the Rules of Criminal Procedure, he or she shall forward to the **Appeals Branch of 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) Any ~~public advocacy~~ attorney *employed by the Department of Public Advocacy* who is representing a client on appeal *and* 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 or she chooses to raise.

➔Section 5. KRS 31.235 is amended 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 6. The following KRS sections are repealed:

- 31.050 Public advocacy plans -- Review and approval or denial by public advocate -- Funding by department and governmental unit -- Recordkeeping -- Annual report.
- 31.060 Local office in jurisdiction with ten or more Circuit Judges required -- Funding by governmental unit required in amount set by department.
- 31.065 Local office in county with less than ten Circuit Judges discretionary -- Methods of delivering services -- Requirements if county elects -- Department's responsibility if county does not elect.
- 31.071 Requirement if county elects local office -- Failure to provide attorney -- Responsibility for payment.
- 31.085 Plans must comply with department's rules and regulations.

➔Section 7. All employees, except for managers, of the Louisville Metro Public Defender's Office shall not be terminated without cause until the office has completed its merger with the Department of Public Advocacy.

➔Section 8. This Act takes effect July 1, 2024.

Veto Overridden March 30, 2023.