

## CHAPTER 136

( HB 762 )

AN ACT relating to the criminal justice system.

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 Justice and Public Safety 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 *serious* crimes, *as authorized under this chapter* ~~or mental states which may result in their incarceration or confinement~~; and
- (2) (a) The pursuit of legal, administrative, and other appropriate remedies to ensure the protection of the rights of persons with disabilities, independent of any agency that provides treatment, services, or rehabilitation to persons with disabilities.
- (b) *As used in* ~~For the purposes of~~ this chapter, "persons with disabilities" *means* ~~shall refer to those~~ persons eligible for protection and advocacy services under *Pub. L. Nos.* ~~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 2. 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) (a) The public advocate shall:
  1. Be appointed by the Governor from a list of three (3) attorneys submitted to him or her by the Public Advocacy Commission;
  2. ~~shall~~ Be an attorney licensed to practice law in Kentucky with at least five (5) years *of* experience in the practice of law;
  3. ~~shall~~ Be excepted from the classified service;
  4. ~~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
  5. ~~shall~~ Serve a term of four (4) years, which is renewable, unless removed by the Governor.
- (b) 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:
  - (a) Be an attorney; ~~and~~
  - (b) ~~shall~~ Be appointed by the public advocate; and
  - (c) ~~shall~~ Serve at *the* ~~his or her~~ pleasure *of the public advocate*.
- (4) The general counsel shall:
  - (a) Be an attorney; ~~and~~
  - (b) ~~shall~~ Be appointed by the public advocate; ~~and~~
  - (c) ~~shall~~ Serve at *the* ~~his or her~~ pleasure *of the public advocate; and*
  - (d) ~~The general counsel shall~~ Represent the interests of the department as directed by the public advocate.

- (5) The assistant public advocates shall:
- (a) Be attorneys;~~;~~
  - (b) ~~shall~~ Be appointed by the public advocate;~~;~~
  - (c) ~~shall~~ Be covered by the merit system;~~;~~ and
  - (d) ~~shall~~ Not be subject to ~~the provisions of~~ KRS 12.210.

- (6) Secretarial, clerical, and other personnel shall be appointed by the public advocate and shall be covered by the merit system.

➔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) Developing *policies*~~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) 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) 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;
- (5) 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) Issuing rules, promulgating administrative regulations *in accordance with KRS Chapter 13A*, 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) Being authorized to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of persons with disabilities;
- (8) 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) 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, *notwithstanding KRS 45.229*, those funds shall not lapse;
- (10) 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) Filing *an annual report* with the Legislative Research Commission ~~an annual report,~~ by September 30 of each year, *for referral to the Interim Joint Committee on Judiciary, informing the public of the work of all divisions of the department and* setting forth the total number *and types* of cases assigned to the department *by county*, 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) **Performing**~~Do~~ other activities and **instituting**~~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;~~and~~
- (13) (a) Within sixty (60) days of the end of each fiscal year, **filing with**~~the department shall submit to~~ the Cabinet **for Health and Family Services** and the Legislative Research Commission for referral to the Interim Joint Committees on Judiciary and Families and Children a report detailing:
1. The number of alternative sentencing plans submitted to courts that recommended treatment by providers that were nonqualified treatment programs;
  2. A breakdown of the number of ~~such~~ plans **described in subparagraph 1. of this paragraph** that were approved, denied, or amended by the courts; and
  3. A listing of all treatment programs recommended that did not meet the requirements of a qualified treatment program.
- (b) As counsel appointed to provide legal representation to an individual under KRS Chapter 31, the department or defense counsel serves at the direction or request of the represented individual and may make recommendations for substance abuse treatment services from a treatment provider that is not a qualified treatment program but shall adhere to the reporting requirements in KRS 222.427(3); ~~and~~
- (14) **Requiring** alternative sentencing workers as defined in KRS 31.252 ~~shall be required~~ to:
- (a) Obtain a minimum of twelve (12) hours of continuing education pertaining to substance use disorder; and
  - (b) Comply with KRS 222.429.

➔Section 4. 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 Health and Family Services for having committed a public or status offense as those are defined by KRS 610.010(1), 610.010(2)(a), (b), (c), or 630.020(2) is entitled:
- (a) To be represented by an attorney to the same extent as a person having his or her own counsel is so entitled; and
  - (b) Except as provided in subsection (2)(c) of this section, 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) of this section is entitled **to be:**
- (a) ~~To be~~ Counselored and defended at all stages of the matter beginning with the earliest time when a person providing his or her 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, including any appeal from a post-conviction or post-disposition action. However, if the department and the court of competent jurisdiction determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his or her own expense, there shall be no further right to be represented by counsel under ~~the provisions of~~ this chapter. In cases involving a minor under the age of eighteen (18), prior to making a determination on whether or not a post-disposition action is a proceeding that a reasonable person with adequate means would be willing to bring at his or her own expense, an attorney with the department shall be granted access to the court file of the minor:
    1. Without the requirement of a formal court order in which the attorney has provided a release signed by the minor or the minor's legal guardian authorizing the use of the records; and

2. Notwithstanding any other statute prohibiting the disclosure of a juvenile court file.
- (3) A needy person's right to a benefit under subsection (1) or (2) of this section is not affected by his or her having provided a similar benefit at his or her own expense, or by he or she 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. Prior to representation, an attorney with the department shall be granted access to the court file of the minor and residential treatment center or detention center records pertaining to the juvenile:
- (a) Without entering an appearance as an attorney of record; and
- (b) Notwithstanding any other statute prohibiting the disclosure of a juvenile's record, including KRS 15A.0651, 610.320, 610.340, or 610.345.
- (5) A person, whether a needy person or not, who is subject to a proceeding under KRS Chapter 202C and is unrepresented at any time shall be entitled to the same rights of representation as a needy person under subsection (1) of this section.
- (6) ***The department shall provide representation under this section to a person who is accused of being in contempt of court for noncompliance with a court-ordered obligation only when the obligation arises out of:***
- (a) ***A criminal prosecution or conviction; or***
- (b) ***An action or adjudication for a public or status offense.***

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 31 IS CREATED TO READ AS FOLLOWS:

***The Department of Public Advocacy shall not provide or be compelled to provide legal representation except as authorized in Section 4 of this Act.***

➔Section 6. 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 ***shall be considered***~~is~~ a civil judgment subject to collection under Civil Rule 69.03 and KRS Chapter 426.
- (3) All moneys collected by the public advocate from indigent defendants pursuant to subsection (1) of this section 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) 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 ***from*** his or her estate. ***Any*** suit ***seeking recovery under this subsection*** shall be brought within five (5) years after the date on which the aid was received.
- (5) ~~Department of Public Advocacy~~Attorneys ***providing representation under this chapter*** shall forward all information that indicates that payment or reimbursement may be obtained pursuant to subsection (4) of this section ***to the public advocate.***
- (6) The duty of recovery contemplated by subsection (4) 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) All moneys collected under this section shall be placed in a special trust and agency account for the Department of Public Advocacy, and, ***notwithstanding KRS 45.229,*** the funds shall not lapse.

➔Section 7. KRS 31.215 is amended to read as follows:

- (1) (a) Except for attorneys appointed pursuant to KRS 620.100, 625.041, 625.080, and 31.120, ~~an~~ ~~no~~ attorney ***providing representation under this chapter*~~employed by the Department of Public Advocacy~~ shall ***not*** accept any fees ***from any source other than the Department of Public Advocacy*** for the representation of any needy person ***in any case or matter assigned to the attorney, or in any matter directly related to a case or matter assigned to the attorney.***~~[as defined in this chapter from that person or anyone for his or her benefit and]~~
  - (b) The ***compensation***~~[fees]~~ for representation of ***a needy***~~[that]~~ person ***under this chapter*** shall be limited to ***that which is***~~[the fees]~~ provided by ***the department.***
  - (c) ***This subsection shall not prohibit an attorney who is not employed by the department from accepting fees for the representation of any person in any case or matter unrelated to any case or matter that he or she has been assigned under***~~[in]~~ this chapter.
  - (d) ***As used in this subsection, "fees" shall include cash, property, or other pecuniary benefits of any kind.*****
- (2) ***This section shall not apply to unsolicited gifts of de minimis value that are given by or on behalf of a needy person to any attorney after the conclusion of a case or matter as a token of appreciation for the work of the attorney.***
- (3) Any attorney ***who violates this section***~~employed by the Department of Public Advocacy 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 8. KRS 31.219 is amended to read as follows:

- (1) It shall be the duty of the attorney ***providing representation under this chapter***~~employed by the Department of Public Advocacy representing a client at trial~~ to file a notice of appeal ***after a proceeding from which an appeal is authorized*** if his or her client requests an appeal.
- (2) After the trial attorney ***providing representation under this chapter***~~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 attorney ***providing representation under this chapter***~~employed by the Department of Public Advocacy who is representing a client~~ on ***an*** appeal and who, after a conscientious examination of ***the***~~[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 ***shall***~~[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 ***shall***~~[must]~~ be served upon the client in sufficient time so that the client may raise any argument he or she chooses to raise.

➔Section 9. KRS 202A.121 is amended to read as follows:

- (1) Upon the appearance of the person detained pursuant to KRS 202A.041 or upon the filing of a petition pursuant to KRS 202A.051 ***or 202A.0811***, the court shall appoint an attorney to represent the respondent. ***The attorney shall be paid a fee fixed by the court not to exceed five hundred dollars (\$500), which shall be paid by the Finance and Administration Cabinet.***
- (2) ***The***~~[with such]~~ appointment and representation ***under subsection (1) of this section shall***~~[to]~~ continue unless the respondent retains private counsel.
- (3) The appointed attorney shall be ***immediately***~~[forthwith]~~ notified by the clerk of the allegations in the petition and the date and purpose of the preliminary hearing.
- (4) Notwithstanding KRS 202A.091, an attorney appointed by the court or retained by the respondent shall be given access to the court records relating to the petition.

➔Section 10. KRS 533.020 is amended to read as follows:

- (1) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court shall place him ***or her*** on probation if he ***or she*** is in need of the

supervision, guidance, assistance, or direction that the probation service can provide. Conditions of probation shall be imposed as provided in KRS 533.030, but the court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of probation. When setting conditions under this subsection, the court shall not order any defendant to pay incarceration costs or any other cost permitted to be ordered under KRS 533.010 or other statute, except restitution and any costs owed to the Department of Corrections, through the circuit clerk.

- (2) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court may sentence him *or her* to probation with an alternative sentence if it is of the opinion that the defendant should conduct himself *or herself* according to conditions determined by the court and that probationary supervision alone is insufficient. The court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the alternative sentence.
- (3) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court may sentence him *or her* to conditional discharge if it is of the opinion that the defendant should conduct himself *or herself* according to conditions determined by the court but that probationary supervision is inappropriate. Conditions of conditional discharge shall be imposed as provided in KRS 533.030, but the court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of conditional discharge.
- (4)
  - (a) The period of probation, probation with an alternative sentence, or conditional discharge shall be fixed by the court and at any time may be extended or shortened by *a* duly entered court order or as modified by the Department of Corrections through the application of probation program credits under KRS 439.268.
  - (b)
    1. ~~Any~~<sup>Such</sup> period *of supervision imposed under paragraph (a) of this subsection*, with extensions thereof, shall not exceed five (5) years, or the time necessary to complete restitution, whichever is longer, upon conviction of a felony, nor two (2) years, or the time necessary to complete restitution, whichever is longer, upon conviction of a misdemeanor.
    2. *If a violation of any condition imposed by the court during a period of supervision imposed under paragraph (a) of this subsection is alleged to have occurred within the last sixty (60) days of the period of supervision, the court shall have sixty (60) days after the expiration of the period of supervision imposed under paragraph (a) of this subsection to determine if a violation occurred and the appropriate action for the violation.*
  - (c)
    1. *If a defendant who is subject to a period of supervision under paragraph (a) of this subsection is alleged to have committed a violation of the conditions imposed by the court, and a warrant has been issued by the court based on an allegation of that violation, the time between the issuance of the warrant and the defendant's first appearance before the court after service of that warrant shall be tolled and not count towards any period of supervision imposed under paragraph (a) of this subsection, unless the court finds that the defendant did not violate any condition imposed by the court.*
    2. *The court shall have sixty (60) days after the defendant's first appearance to schedule and complete any proceedings related to an alleged violation described in subparagraph 1. of this paragraph.*
  - (d) Upon completion of the probationary period, probation with an alternative sentence, or the period of conditional discharge, the defendant shall be deemed finally discharged, provided no warrant issued by the court is pending against him *or her*, and probation, probation with an alternative sentence, or conditional discharge has not been revoked.
- (5) Notwithstanding the fact that a sentence to probation, probation with an alternative sentence, or conditional discharge can subsequently be modified or revoked, a judgment ~~that~~<sup>which</sup> includes such a sentence shall constitute a final judgment for purposes of appeal.

➔Section 11. The secretary of the Personnel Cabinet is directed to work with the Department of Public Advocacy to develop and implement a new classification series for Department of Public Advocacy Attorneys that will have a minimum entry level starting salary of at least \$67,500 annually, effective no later than September 16, 2026. When the new classification series is implemented, the secretary of the Personnel Cabinet and the Department

of Public Advocacy shall grant existing attorneys, currently classified as Staff Attorney I, II, III, Staff Attorney Supervisor, or Staff Attorney Manager/Asst General Counsel a 10% increase in annual compensation or an annual salary of \$67,500, whichever is greater, as they are reallocated to the new classification series.

**Signed by Governor April 13, 2026.**