

AN ACT relating to legal representation of indigent criminal defendants.

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

➔Section 1. KRS 31.120 is amended to read as follows:

- (1) (a) The determination of whether a person covered by KRS 31.110 is a needy person shall be deferred no later than his or her first appearance in court or in a suit for payment or reimbursement under KRS 31.211, whichever occurs earlier.
 - (b) The court of competent jurisdiction in which the case is pending shall then determine, with respect to each step in the proceedings, whether he or she is a needy person. However, nothing 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 or she is needy under the terms of this chapter. In that event, the person involved shall be required to make reimbursement for the representation if he or she later is determined not a needy person under the terms of this chapter.
 - (c) A person who, after conviction, is sentenced while being represented by a public defender shall continue to be presumed a needy person, and the court, at the time of sentencing, shall enter an Order In Forma Pauperis for purposes of appeal without having to show further proof of continued indigency, unless the court finds good cause after a hearing to determine that the defendant should not continue to be considered an indigent person.
- (2) In determining whether a person is a needy person and in determining the extent of his or her and, in the case of an unemancipated minor under KRS 31.100(5)(c), his or her custodial parents' or guardians' 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;
- (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 or her from being a needy person. In each case, the person and, if an unemancipated minor under KRS 31.100(5)(c) and (d), his or her 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 or her ability to pay in the form the Supreme Court prescribes.

(3) To assist in its review under subsection (2) of this section, the court may request the person's and, in the case of an unemancipated minor under KRS 31.100(5)(c), his or her custodial parents' or guardians' Kentucky income tax records from the Department of Revenue pursuant to Section 2 of this Act.

~~(4)~~(3) 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(5)(c), by his or her 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 or she 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 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.....

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

Perjury Warning: Affiant understands that any person knowingly 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 2. KRS 131.190 is amended to read as follows:

- (1) (a) No present or former commissioner or employee of the Department of Revenue, present or former member of a county board of assessment appeals, present or former property valuation administrator or employee, present or former secretary or employee of the Finance and Administration Cabinet, former secretary or employee of the Revenue Cabinet, or any other person, shall intentionally and without authorization inspect or divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the department or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business.
- (b) The prohibition established by paragraph (a) of this subsection does not extend to:
1. Information required in prosecutions for making false reports or returns of property for taxation, or any other infraction of the tax laws;
 2. Any matter properly entered upon any assessment record, or in any way made a matter of public record;
 3. Furnishing any taxpayer or his properly authorized agent with information respecting his own return;
 4. Testimony provided by the commissioner or any employee of the Department of Revenue in any court, or the introduction as evidence of returns or reports filed with the department, in an action for violation of state or federal tax laws or in any action challenging state or federal tax laws;
 5. Providing an owner of unmined coal, oil or gas reserves, and other mineral or energy resources assessed under KRS 132.820(1), or owners of surface land under which the unmined minerals lie, factual

information about the owner's property derived from third-party returns filed for that owner's property, under the provisions of KRS 132.820(2), that is used to determine the owner's assessment. This information shall be provided to the owner on a confidential basis, and the owner shall be subject to the penalties provided in KRS 131.990(2). The third-party filer shall be given prior notice of any disclosure of information to the owner that was provided by the third-party filer;

6. Providing to a third-party purchaser pursuant to an order entered in a foreclosure action filed in a court of competent jurisdiction, factual information related to the owner or lessee of coal, oil, gas reserves, or any other mineral resources assessed under KRS 132.820(1). The department may promulgate an administrative regulation establishing a fee schedule for the provision of the information described in this subparagraph. Any fee imposed shall not exceed the greater of the actual cost of providing the information or ten dollars (\$10); ~~or~~
7. Providing information to a licensing agency, the Transportation Cabinet, or the Kentucky Supreme Court under KRS 131.1817; or
- 8. Providing information to a court making a determination of indigency pursuant to Section 1 of this Act.**

- (2) The commissioner shall make available any information for official use only and on a confidential basis to the proper officer, agency, board or commission of this state, any Kentucky county, any Kentucky city, any other state, or the federal government, under reciprocal agreements whereby the department shall receive similar or useful information in return.
- (3) Statistics of tax-paid gasoline gallonage reported monthly to the Department of Revenue under the gasoline excise tax law may be made public by the department.
- (4) Access to and inspection of information received from the Internal Revenue Service

is for Department of Revenue use only, and is restricted to tax administration purposes. Notwithstanding the provisions of this section to the contrary, information received from the Internal Revenue Service shall not be made available to any other agency of state government, or any county, city, or other state, and shall not be inspected intentionally and without authorization by any present secretary or employee of the Finance and Administration Cabinet, commissioner or employee of the Department of Revenue, or any other person.

- (5) Statistics of crude oil as reported to the Department of Revenue under the crude oil excise tax requirements of KRS Chapter 137 and statistics of natural gas production as reported to the Department of Revenue under the natural resources severance tax requirements of KRS Chapter 143A may be made public by the department by release to the Energy and Environment Cabinet, Department for Natural Resources.
- (6) Notwithstanding any provision of law to the contrary, beginning with mine-map submissions for the 1989 tax year, the department may make public or divulge only those portions of mine maps submitted by taxpayers to the department pursuant to KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-out parcel areas. These electronic maps shall not be relied upon to determine actual boundaries of mined-out parcel areas. Property boundaries contained in mine maps required under KRS Chapters 350 and 352 shall not be construed to constitute land surveying or boundary surveys as defined by KRS 322.010 and any administrative regulations promulgated thereto.
- (7) Notwithstanding any other provision of the Kentucky Revised Statutes, the department may divulge to the applicable school districts on a confidential basis any utility gross receipts license tax return information that is necessary to administer the provisions of KRS 160.613 to 160.617.

➔Section 3. 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.
- (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. **Collection may be by civil action or by an administrative process satisfying the requirements of KRS 131.565.** Suit **or**

administrative action 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 KRS 31.100(5)(c) or (d).
- (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.