

1 AN ACT relating to the Department of Public Advocacy.

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

3 ➔Section 1. KRS 18A.115 is amended to read as follows:

- 4 (1) The classified service to which KRS 18A.005 to 18A.200 shall apply shall comprise
5 all positions in the state service now existing or hereafter established, except the
6 following:
- 7 (a) The General Assembly and employees of the General Assembly, including the
8 employees of the Legislative Research Commission;
 - 9 (b) Officers elected by popular vote and persons appointed to fill vacancies in
10 elective offices;
 - 11 (c) Members of boards and commissions;
 - 12 (d) Officers and employees on the staff of the Governor, the Lieutenant
13 Governor, the Office of the Secretary of the Governor's Cabinet, and the
14 Office of Program Administration;
 - 15 (e) Cabinet secretaries, commissioners, office heads, and the administrative heads
16 of all boards and commissions, including the executive director of Kentucky
17 Educational Television;
 - 18 (f) Employees of Kentucky Educational Television who have been determined to
19 be exempt from classified service by the Kentucky Authority for Educational
20 Television, which shall have sole authority over such exempt employees for
21 employment, dismissal, and setting of compensation, up to the maximum
22 established for the executive director and his principal assistants;
 - 23 (g) One (1) principal assistant or deputy for each person exempted under
24 subsection (1)(e) of this section;
 - 25 (h) One (1) additional principal assistant or deputy as may be necessary for
26 making and carrying out policy for each person exempted under subsection
27 (1)(e) of this section in those instances in which the nature of the functions,

1 size, or complexity of the unit involved are such that the secretary approves
2 such an addition on petition of the relevant cabinet secretary or department
3 head and such other principal assistants, deputies, or other major assistants as
4 may be necessary for making and carrying out policy for each person
5 exempted under subsection (1)(e) of this section in those instances in which
6 the nature of the functions, size, or complexity of the unit involved are such
7 that the board may approve such an addition or additions on petition of the
8 department head approved by the secretary. Effective August 1, 2010:

- 9 1. All positions approved under this paragraph prior to August 1, 2010,
10 shall be abolished effective December 31, 2010, unless reapproved
11 under subparagraph 2. of this paragraph; and
- 12 2. A position approved under this paragraph on or after August 1, 2010,
13 shall be approved for a period of five (5) years, after which time the
14 position shall be abolished unless reapproved under this subparagraph
15 for an additional five (5) year period;
 - 16 (i) Division directors subject to the provisions of KRS 18A.170. Division
17 directors in the classified service as of January 1, 1980, shall remain in the
18 classified service;
 - 19 (j) Physicians employed as such;
 - 20 (k) One (1) private secretary for each person exempted under subsection (1)(e),
21 (g), and (h) of this section;
 - 22 (l) The judicial department, referees, receivers, jurors, and notaries public;
 - 23 (m) Officers and members of the staffs of state universities and colleges and
24 student employees of such institutions; officers and employees of the
25 Teachers' Retirement System; and officers, teachers, and employees of local
26 boards of education;
 - 27 (n) Patients or inmates employed in state institutions;

- 1 (o) Persons employed in a professional or scientific capacity to make or conduct a
2 temporary or special inquiry, investigation, or examination on behalf of the
3 General Assembly, or a committee thereof, or by authority of the Governor,
4 and persons employed by state agencies for a specified, limited period to
5 provide professional, technical, scientific, or artistic services under the
6 provisions of KRS 45A.690 to 45A.725;
- 7 (p) Interim employees;
- 8 (q) Officers and members of the state militia;
- 9 (r) Department of Kentucky State Police troopers;
- 10 (s) University or college engineering students or other students employed part-
11 time or part-year by the state through special personnel recruitment programs;
12 provided that while so employed such aides shall be under contract to work
13 full-time for the state after graduation for a period of time approved by the
14 commissioner or shall be participants in a cooperative education program
15 approved by the commissioner;
- 16 (t) Superintendents of state mental institutions, including heads of centers for
17 individuals with an intellectual disability, and penal and correctional
18 institutions as referred to in KRS 196.180(2);
- 19 (u) Staff members of the Kentucky Historical Society, if they are hired in
20 accordance with KRS 171.311;
- 21 (v) County and Commonwealth's attorneys and their respective appointees;
- 22 (w) Chief district engineers and the state highway engineer;
- 23 (x) Veterinarians employed as such by the Kentucky Horse Racing Commission;
- 24 (y) Employees of the Kentucky Peace Corps;
- 25 (z) Employees of the Council on Postsecondary Education;
- 26 (aa) Executive director of the Commonwealth Office of Technology;
- 27 (ab) Employees of Serve Kentucky;

- 1 (ac) Persons employed in certified teaching positions at the Kentucky School for
2 the Blind and the Kentucky School for the Deaf;
- 3 (ad) Federally funded time-limited employees as defined in KRS 18A.005;~~and~~
- 4 (ae) Employees of the Department of Agriculture who are employed to support the
5 Agricultural Development Board and the Kentucky Agricultural Finance
6 Corporation; and
- 7 (af) Attorneys in the Department of Public Advocacy.
- 8 (2) Nothing in KRS 18A.005 to 18A.200 is intended, or shall be construed, to alter or
9 amend the provisions of KRS 150.022 and 150.061.
- 10 (3) Nothing in KRS 18A.005 to 18A.200 is intended or shall be construed to affect any
11 nonmanagement, nonpolicy-making position which must be included in the
12 classified service as a prerequisite to the grant of federal funds to a state agency.
- 13 (4) Career employees within the classified service promoted to positions exempted
14 from classified service shall, upon termination of their employment in the exempted
15 service, revert to a position in that class in the agency from which they were
16 terminated if a vacancy in that class exists. If no such vacancy exists, they shall be
17 considered for employment in any vacant position for which they were qualified
18 pursuant to KRS 18A.130 and 18A.135.
- 19 (5) Nothing in KRS 18A.005 to 18A.200 shall be construed as precluding appointing
20 officers from filling unclassified positions in the manner in which positions in the
21 classified service are filled except as otherwise provided in KRS 18A.005 to
22 18A.200.
- 23 (6) The positions of employees who are transferred, effective July 1, 1998, from the
24 Cabinet for Workforce Development to the Kentucky Community and Technical
25 College System shall be abolished and the employees' names removed from the
26 roster of state employees. Employees that are transferred, effective July 1, 1998, to
27 the Kentucky Community and Technical College System under KRS Chapter 164

1 shall have the same benefits and rights as they had under KRS Chapter 18A and
2 have under KRS 164.5805; however, they shall have no guaranteed reemployment
3 rights in the KRS Chapter 151B or KRS Chapter 18A personnel systems. An
4 employee who seeks reemployment in a state position under KRS Chapter 151B or
5 KRS Chapter 18A shall have years of service in the Kentucky Community and
6 Technical College System counted towards years of experience for calculating
7 benefits and compensation.

8 (7) On August 15, 2000, all certified and equivalent personnel, all unclassified
9 personnel, and all certified and equivalent and unclassified vacant positions in the
10 Department for Adult Education and Literacy shall be transferred from the
11 personnel system under KRS Chapter 151B to the personnel system under KRS
12 Chapter 18A. The positions shall be deleted from the KRS Chapter 151B personnel
13 system. All records shall be transferred including accumulated annual leave, sick
14 leave, compensatory time, and service credit for each affected employee. The
15 personnel officers who administer the personnel systems under KRS Chapter 151B
16 and KRS Chapter 18A shall exercise the necessary administrative procedures to
17 effect the change in personnel authority. No certified or equivalent employee in the
18 Department for Adult Education and Literacy shall suffer any penalty in the
19 transfer.

20 (8) On August 15, 2000, secretaries and assistants attached to policymaking positions
21 in the Department for Technical Education and the Department for Adult Education
22 and Literacy shall be transferred from the personnel system under KRS Chapter
23 151B to the personnel system under KRS Chapter 18A. The positions shall be
24 deleted from the KRS Chapter 151B system. All records shall be transferred
25 including accumulated annual leave, sick leave, compensatory time, and service
26 credit for each affected employee. No employee shall suffer any penalty in the
27 transfer.

1 (9) On May 1, 2017, all contract employees of Eastern Kentucky University who are
 2 engaged in providing instructional and support services to the Department of
 3 Criminal Justice Training shall be transferred to the personnel system under KRS
 4 Chapter 18A. All records shall be transferred, including accumulated annual leave,
 5 sick leave, compensatory time, and service credit for each affected employee. The
 6 personnel officers who administer the personnel systems for Eastern Kentucky
 7 University and under KRS Chapter 18A shall exercise the necessary administrative
 8 procedures to effect the change in personnel authority. No employee shall suffer
 9 any penalty in the transfer.

10 ➔Section 2. KRS 31.010 is amended to read as follows:

11 **(1)** There is hereby established as an independent agency of state government~~;~~
 12 ~~attached for administrative purposes to the Justice and Public Safety Cabinet,;~~ the
 13 Department of Public Advocacy, in order to provide for the establishment,
 14 maintenance, and operation of a state-sponsored and controlled system for ~~;~~

15 ~~(1)~~ the representation of **eligible**~~[indigent]~~ persons accused of crimes or **facing legal**
 16 **jeopardy**~~[mental states]~~ which may result in their incarceration, ~~;~~~~or~~ confinement,
 17 **or deprivation of liberty.**~~;~~ and

18 (2) **The Department of Public Advocacy shall be administratively attached to the**
 19 **Justice and Public Safety Cabinet only for those limited functions and purposes**
 20 **expressly requested by the department to be performed by the Justice and Public**
 21 **Safety Cabinet.**~~The pursuit of legal, administrative, and other appropriate remedies~~
 22 ~~to ensure the protection of the rights of persons with disabilities, independent of any~~
 23 ~~agency that provides treatment, services, or rehabilitation to persons with~~
 24 ~~disabilities. For the purposes of this chapter, "persons with disabilities" shall refer~~
 25 ~~to those persons eligible for protection and advocacy services under Public Laws~~
 26 ~~99-319, 102-569, 103-218, 106-170, and 106-402 as amended and any other federal~~
 27 ~~enabling statute hereafter enacted that defines the eligible client base for protection~~

1 ~~and advocacy services}.~~

2 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 31 IS CREATED TO
3 READ AS FOLLOWS:

4 **(1) There is hereby established as an independent division within the Department of**
5 **Public Advocacy, the Division of Protection and Advocacy, in order to provide for**
6 **the establishment, maintenance, and operation of a state-sponsored and**
7 **controlled system to ensure the protection of the rights of persons with**
8 **disabilities, independent of any agency that provides treatment, services, or**
9 **rehabilitation to persons with disabilities.**

10 **(2) For the purposes of this chapter, "persons with disabilities" means persons who**
11 **are eligible for protection and advocacy services under Pub. L. Nos. 99-319, 102-**
12 **569, 103-218, 106-170, and 106-402, as amended, and any other federal enabling**
13 **statute hereafter enacted that defines the eligible client base for protection and**
14 **advocacy services.**

15 **(3) The Division of Protection and Advocacy shall have the authority to pursue legal,**
16 **administrative, and other appropriate remedies to ensure the protection of the**
17 **rights of persons with disabilities.**

18 ➔Section 4. KRS 31.020 is amended to read as follows:

19 (1) The Department of Public Advocacy shall consist of the public advocate, deputy
20 public advocate, general counsel, such assistant public advocates as the public
21 advocate shall deem necessary, and such secretarial and other personnel as the
22 public advocate shall deem necessary.

23 (2) **(a)** The public advocate shall:

24 **1.** Be appointed by the Governor from a list of three (3) attorneys
25 submitted to him or her by the Public Advocacy Commission;

26 **2.** ~~shall~~ Be an attorney licensed to practice law in Kentucky with at least
27 five (5) years experience in the practice of law;

1 3. ~~{shall}~~ Be excepted from the classified service;

2 4. ~~{shall}~~ Be the chief administrator of the Department of Public Advocacy
3 and an appointing authority as that term is defined in KRS 18A.005; and

4 5. ~~{shall}~~ Serve a term of four (4) years, which is renewable, unless
5 removed by the Governor.

6 **(b)** The incumbent public advocate shall serve until a successor is nominated by
7 the commission and approved by the Governor. **Notwithstanding KRS**
8 **64.640**, the compensation of the public advocate shall be set **annually at a**
9 **rate no less than that of a full-time Commonwealth's attorney under KRS**
10 **15.755**~~[by the provisions of KRS 64.640].~~

11 (3) The deputy public advocate shall:

12 **(a)** Be an attorney;~~{and}~~

13 **(b)** ~~{shall}~~ Be appointed by the public advocate; and

14 **(c)** ~~{shall}~~ Serve at ~~the~~~~[his or her]~~ pleasure **of the public advocate.**

15 **Notwithstanding KRS 64.640, the compensation of the deputy public advocate**
16 **shall be set by the public advocate.**

17 (4) The general counsel shall:

18 **(a)** Be an attorney;~~{and}~~

19 **(b)** ~~{shall}~~ Be appointed by the public advocate;~~{and}~~

20 **(c)** ~~{shall}~~ Serve at ~~the~~~~[his or her]~~ pleasure **of the public advocate; and**~~{and}~~

21 **(d)** ~~{The general counsel shall}~~ Represent the interests of the department as
22 directed by the public advocate.

23 **Notwithstanding KRS 64.640, the compensation of the general counsel shall be**
24 **set by the public advocate.**

25 (5) **(a)** The assistant public advocates shall be attorneys, shall be appointed by the
26 public advocate, ~~{shall be covered by the merit system,}~~ and shall not be
27 subject to the provisions of KRS 12.210.

1 **(b) Except as provided in paragraph (c) of this subsection, assistant public**
 2 **advocates appointed after the effective date of this Act shall be unclassified**
 3 **employees and, notwithstanding any provision of law to the contrary, may**
 4 **only be terminated for cause.**

5 **(c) Notwithstanding Section 1 of this Act, assistant public advocates employed**
 6 **by the department on the effective date of this Act may elect to remain in the**
 7 **classified service.**

8 **(d) Notwithstanding KRS 64.640, the compensation of assistant public**
 9 **advocates shall be set by the public advocate.**

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

12 ➔Section 5. KRS 31.030 (Effective July 1, 2024) is amended to read as follows:

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

15 (1) Administering the statewide public advocacy system created by this chapter or by
 16 any other appropriate legislation or court decision;

17 (2) Developing and promulgating standards and administrative regulations ***in***
 18 ***accordance with KRS Chapter 13A***, rules, and procedures for administration of the
 19 defense of indigent defendants in criminal cases that the public advocate, statutes,
 20 or the courts determine are subject to public assistance;

21 (3) Determining necessary personnel for the department and appointing staff attorneys,
 22 who shall be "assistant public advocates," and non-lawyer assistants within the
 23 merit system, subject to available funding and employee allotments;

24 (4) **Providing assistance and education to attorneys representing indigent persons**
 25 **under this chapter;**

26 **(5)** Maintaining and exercising control over the department's information technology
 27 system, and working with the Commonwealth Office of Technology to ensure that

1 the department's information technology is in conformity with the requirements of
2 state government;

3 ~~(6)~~~~(5)~~ Conducting research into, and developing and implementing methods of,
4 improving the operation of the criminal justice system with regard to indigent
5 defendants and other defendants in criminal actions, including participation in
6 groups, organizations, and projects dedicated to improving representation of
7 defendants in criminal actions in particular, or the interests of indigent or
8 impoverished persons in general;

9 ~~(7)~~~~(6)~~ Issuing rules, promulgating administrative regulations *in accordance with*
10 *KRS Chapter 13A*, and establishing standards as may be reasonably necessary to
11 carry out the provisions of this chapter, the decisions of the United States Supreme
12 Court, the decisions of the Kentucky Supreme Court, Court of Appeals, and other
13 applicable court decisions or statutes;

14 ~~(8)~~~~(7)~~ Being authorized to pursue legal, administrative, and other appropriate
15 remedies to ensure the protection of the rights of persons with disabilities;

16 ~~(9)~~~~(8)~~ Being authorized to purchase liability insurance for the protection of all full-
17 time public advocates, deputy public advocates, and assistant public advocates to
18 protect them from liability for malpractice arising in the course or scope of
19 employment and for the protection of attorneys with whom the Department of
20 Public Advocacy contracts to protect them from liability for malpractice arising in
21 the course or scope of the contract;

22 ~~(10)~~~~(9)~~ Being authorized to seek, ~~and~~ apply for, and solicit funds for the operation
23 of the defense of indigent persons or protection of the persons with disabilities
24 programs from any source, public or private, and to receive donations, grants,
25 awards, and similar funds from any legal source. Those Funds shall be placed in a
26 special account for the Department of Public Advocacy and those funds shall not
27 lapse;

1 ~~(11)~~⁽¹⁰⁾ Being authorized to assign an attorney, including a conflict attorney under a
2 plan, for good cause, at any stage of representation, including trial, appeal, or other
3 post-conviction or post-disposition proceeding, including discharge revocation
4 hearings, preliminary parole revocation hearings, and conditional discharge
5 revocation hearings, regardless of whether the hearings are conducted by
6 constitutional judges or executive branch administrative law judges;

7 ~~(12)~~⁽¹¹⁾ Filing with the Legislative Research Commission an annual report, by
8 September 30 of each year, setting forth the total number of cases assigned to the
9 department, the average number of cases per department attorney, ~~all funding~~
10 ~~available to the department, the average amount of state funds expended per~~
11 ~~assigned case,~~ and any other information requested by the Legislative Research
12 Commission or that the public advocate finds necessary to inform the General
13 Assembly, the judicial or executive branches, or the public of the activities
14 conducted by the department during the previous fiscal year; and

15 ~~(13)~~⁽¹²⁾ ~~Performing~~^{Do} other activities and ~~instituting~~^{institute} other programs as
16 necessary to carry out the provisions of this chapter, or those decisions or statutes
17 which are the subject of this section.

18 ➔Section 6. KRS 31.211 (Effective July 1, 2024) is amended to read as follows:

19 (1) At arraignment, the court shall conduct a nonadversarial hearing to determine
20 whether a person who has requested a public defender is able to pay a partial fee for
21 legal representation, the other necessary services and facilities of representation,
22 and court costs. The court shall order payment in an amount determined by the
23 court and may order that the payment be made in a lump sum or by installment
24 payments to recover money for representation provided under this chapter. This
25 partial fee determination shall be made at each stage of the proceedings.

26 (2) If the partial fee, or any portion thereof, is not paid by the due date, the court's order
27 ~~shall be considered~~^{is} a civil judgment subject to collection under Civil Rule 69.03

1 and KRS Chapter 426.

2 (3) All moneys collected by the public advocate from indigent defendants pursuant to
3 subsection (1) of this section shall be credited to the Department of Public
4 Advocacy special trust and agency account to be used to support the state public
5 advocacy system.

6 (4) If a person receives legal assistance or other benefit under this chapter to which he
7 or she is not entitled or if a person receives legal assistance under this chapter and is
8 financially able to pay for representation on the date the suit is brought, the public
9 advocate, on behalf of the Commonwealth, shall recover, where practical, payment
10 or reimbursement, as the case may be, from the person who received the legal
11 assistance or from his or her estate. Any suit seeking recovery under this
12 subsection shall be brought within five (5) years after the date on which the aid was
13 received.

14 (5) ~~{Department of Public Advocacy}~~ Attorneys providing representation under this
15 chapter shall forward all information that indicates that payment or reimbursement
16 may be obtained pursuant to subsection (4) of this section to the public advocate.

17 (6) The duty of recovery contemplated by subsection (4) of this section shall extend
18 against persons who were the custodial parents or guardians of unemancipated
19 minors at the time these minors were deemed needy as defined in KRS 31.100(5)(c)
20 or (d).

21 (7) All moneys collected under this section shall be placed in a special trust and agency
22 account for the Department of Public Advocacy, and the funds shall not lapse.

23 ➔Section 7. KRS 31.215 (Effective July 1, 2024) is amended to read as follows:

24 (1) Except for attorneys appointed pursuant to KRS 620.100, 625.041, 625.080, and
25 31.120, ~~an~~~~[no]~~ attorney providing representation under this chapter~~[employed by~~
26 ~~the Department of Public Advocacy]~~ shall not accept any fees from any source
27 other than the Department of Public Advocacy for the representation of any needy

1 person in any case or matter assigned to an attorney, or in any matter directly
 2 related to a case or matter assigned~~[as defined in this chapter from that person or~~
 3 ~~anyone for his or her benefit]~~ and the compensation~~[fees]~~ for representation of that
 4 person shall be limited to that which is~~[the fees]~~ provided by the department.
 5 Nothing in this subsection shall prohibit an attorney not employed by the
 6 department from accepting fees for the representation of any person in any case
 7 or matter unrelated to any case or matter that he or she has been assigned
 8 under~~[in]~~ this chapter. As used in this section, "fees" shall include cash, property,
 9 or other pecuniary benefits of any kind.

10 (2) This section shall not apply to unsolicited gifts of de minimis value that are given
 11 by or on behalf of a needy person to any attorney after the conclusion of a case or
 12 matter as a token of appreciation for the work of the attorney.

13 (3) Any attorney who violates this section~~[employed by the Department of Public~~
 14 ~~Advocacy who receives or attempts to collect a fee from a needy person as~~
 15 ~~prohibited by subsection (1) above]~~ shall be guilty of a Class A misdemeanor~~[Class~~
 16 ~~D felony].~~

17 ➔Section 8. KRS 31.219 (Effective July 1, 2024) is amended to read as follows:

18 (1) It shall be the duty of the attorney providing representation under this
 19 chapter~~[employed by the Department of Public Advocacy representing a client at~~
 20 ~~trial]~~ to file a notice of appeal after a trial if his or her client requests an appeal.

21 (2) After the trial attorney~~[employed by the Department of Public Advocacy]~~ has filed
 22 a notice of appeal as required by the Rules of Criminal Procedure, he or she shall
 23 forward to the Appeals Branch of the Department of Public Advocacy a copy of the
 24 final judgment, the notice of appeal, a statement of any errors committed in the trial
 25 of the case which should be raised on appeal, and a designation of that part of the
 26 record that is essential to the appeal.

27 (3) Any attorney providing representation under this chapter~~[employed by the~~

1 ~~Department of Public Advocacy who is representing a client~~ on an appeal and
2 who, after a conscientious examination of said appeal believes the appeal to be
3 wholly frivolous after careful examinations of the record, may request the court to
4 which the appeal has been taken for permission to withdraw from the case. The
5 attorney shall~~must~~ file with that request a brief which sets forth any arguments
6 which might possibly be raised on appeal. A copy of the request for permission to
7 withdraw and the brief shall~~must~~ be served upon the client in sufficient time so
8 that the client may raise any argument he or she chooses to raise.