

1 AN ACT relating to legal representation.

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

3 ➔Section 1. KRS 31.010 is amended to read as follows:

4 There is hereby established as an independent agency of state government, attached for
5 administrative purposes to the Justice and Public Safety Cabinet, the Department of
6 Public Advocacy, in order to provide for the establishment, maintenance, and operation
7 of a state-sponsored and controlled system for:

8 (1) The representation of ~~indigent~~ persons accused of ***serious*** crimes, ***as authorized***
9 ***under this chapter*** ~~or mental states which may result in their incarceration or~~
10 ~~confinement~~; and

11 (2) ***(a)*** The pursuit of legal, administrative, and other appropriate remedies to ensure
12 the protection of the rights of persons with disabilities, independent of any
13 agency that provides treatment, services, or rehabilitation to persons with
14 disabilities.

15 ***(b) As used in*** ~~For the purposes of~~ this chapter, "persons with disabilities"
16 ***means*** ~~shall refer to those~~ persons eligible for protection and advocacy
17 services under ***Pub. L. Nos.*** ~~Public Laws~~ 99-319, 102-569, 103-218, 106-
18 170, and 106-402, as amended, and any other federal enabling statute
19 hereafter enacted that defines the eligible client base for protection and
20 advocacy services.

21 ➔Section 2. KRS 31.020 is amended to read as follows:

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

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

27 ***1.*** Be appointed by the Governor from a list of three (3) attorneys

- 1 submitted to him or her by the Public Advocacy Commission;
- 2 2. ~~{shall}~~ Be an attorney licensed to practice law in Kentucky with at least
- 3 five (5) years *of* experience in the practice of law;
- 4 3. ~~{shall}~~ Be excepted from the classified service;
- 5 4. ~~{shall}~~ Be the chief administrator of the Department of Public Advocacy
- 6 and an appointing authority as ~~{that term is}~~ defined in KRS 18A.005;
- 7 and
- 8 5. ~~{shall}~~ Serve a term of four (4) years, which is renewable, unless
- 9 removed by the Governor.

10 (b) The incumbent public advocate shall serve until a successor is nominated by

11 the commission and approved by the Governor. The compensation of the

12 public advocate shall be set by ~~{the provisions of}~~ KRS 64.640.

13 (3) The deputy public advocate shall:

14 (a) Be an attorney; ~~{and}~~

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

16 (c) ~~{shall}~~ Serve at the ~~{his or her}~~ pleasure ***of 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 (5) The assistant public advocates shall:

24 (a) Be attorneys; ~~{and}~~

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

26 (c) ~~{shall}~~ Be covered by the merit system; ~~{and}~~ and

27 (d) ~~{shall}~~ Not be subject to ~~{the provisions of}~~ KRS 12.210.

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

3 ➔Section 3. KRS 31.030 is amended to read as follows:

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

- 6 (1) Administering the statewide public advocacy system created by this chapter or by
7 any other appropriate legislation or court decision;
- 8 (2) Developing *policies*~~[and promulgating standards and administrative regulations,~~
9 ~~rules,]~~ and procedures for administration of the defense of indigent defendants in
10 criminal cases that the public advocate, statutes, or the courts determine are subject
11 to public assistance;
- 12 (3) Determining necessary personnel for the department and appointing staff attorneys,
13 who shall be ~~["]~~assistant public advocates,~~["]~~ and non-lawyer assistants within the
14 merit system, subject to available funding and employee allotments;
- 15 (4) Maintaining and exercising control over the department's information technology
16 system, and working with the Commonwealth Office of Technology to ensure that
17 the department's information technology is in conformity with the requirements of
18 state government;
- 19 (5) Conducting research into, and developing and implementing methods of, improving
20 the operation of the criminal justice system with regard to indigent defendants and
21 other defendants in criminal actions, including participation in groups,
22 organizations, and projects dedicated to improving representation of defendants in
23 criminal actions in particular, or the interests of indigent or impoverished persons in
24 general;
- 25 (6) Issuing rules, promulgating administrative regulations *in accordance with KRS*
26 *Chapter 13A*, and establishing standards as may be reasonably necessary to carry
27 out the provisions of this chapter, the decisions of the United States Supreme Court,

- 1 the decisions of the Kentucky Supreme Court, Court of Appeals, and other
2 applicable court decisions or statutes;
- 3 (7) Being authorized to pursue legal, administrative, and other appropriate remedies to
4 ensure the protection of the rights of persons with disabilities;
- 5 (8) Being authorized to purchase liability insurance for the protection of all full-time
6 public advocates, deputy public advocates, and assistant public advocates to protect
7 them from liability for malpractice arising in the course or scope of employment
8 and for the protection of attorneys with whom the Department of Public Advocacy
9 contracts to protect them from liability for malpractice arising in the course or
10 scope of the contract;
- 11 (9) Being authorized to seek, ~~and~~ apply for, and solicit funds for the operation of the
12 defense of indigent persons or protection of the persons with disabilities programs
13 from any source, public or private, and to receive donations, grants, awards, and
14 similar funds from any legal source. Those funds shall be placed in a special
15 account for the Department of Public Advocacy and, **notwithstanding KRS 45.229,**
16 those funds shall not lapse;
- 17 (10) Being authorized to assign an attorney, including a conflict attorney under a plan,
18 for good cause, at any stage of representation, including trial, appeal, or other post-
19 conviction or post-disposition proceeding, including discharge revocation hearings,
20 preliminary parole revocation hearings, and conditional discharge revocation
21 hearings, regardless of whether the hearings are conducted by constitutional judges
22 or executive branch administrative law judges;
- 23 (11) Filing **an annual report** with the Legislative Research Commission ~~an annual~~
24 ~~report,~~ by September 30 of each year, **for referral to the Interim Joint Committee**
25 **on Judiciary, informing the public of the work of all divisions of the department**
26 **and** setting forth the total number **and types** of cases assigned to the department **by**
27 **county**, the average number of cases per department attorney, all funding available

1 to the department, the average amount of state funds expended per assigned case,
 2 and any other information requested by the Legislative Research Commission or
 3 that the public advocate finds necessary to inform the General Assembly, the
 4 judicial or executive branches, or the public of the activities conducted by the
 5 department during the previous fiscal year; ~~and~~

6 (12) **Performing**~~Do~~ other activities and **instituting**~~institute~~ other programs as
 7 necessary to carry out the provisions of this chapter, or those decisions or statutes
 8 which are the subject of this section; ~~and~~

9 (13) (a) Within sixty (60) days of the end of each fiscal year, **filing with**~~the~~
 10 ~~department shall submit to~~ the Cabinet **for Health and Family Services** and
 11 the Legislative Research Commission for referral to the Interim Joint
 12 Committees on Judiciary and Families and Children a report detailing:

- 13 1. The number of alternative sentencing plans submitted to courts that
 14 recommended treatment by providers that were nonqualified treatment
 15 programs;
- 16 2. A breakdown of the number of ~~such~~ plans **described in subparagraph**
 17 **1. of this paragraph** that were approved, denied, or amended by the
 18 courts; and
- 19 3. A listing of all treatment programs recommended that did not meet the
 20 requirements of a qualified treatment program.

21 (b) As counsel appointed to provide legal representation to an individual under
 22 KRS Chapter 31, the department or defense counsel serves at the direction or
 23 request of the represented individual and may make recommendations for
 24 substance abuse treatment services from a treatment provider that is not a
 25 qualified treatment program but shall adhere to the reporting requirements in
 26 KRS 222.427(3); **and** ~~and~~

27 (14) **Requiring** alternative sentencing workers as defined in KRS 31.252 ~~shall be~~

1 ~~required to~~:

- 2 (a) Obtain a minimum of twelve (12) hours of continuing education pertaining to
3 substance use disorder; and
4 (b) Comply with KRS 222.429.

5 ➔Section 4. KRS 31.110 is amended to read as follows:

6 (1) A needy person who is being detained by a law enforcement officer, on suspicion of
7 having committed, or who is under formal charge of having committed, or is being
8 detained under a conviction of, a serious crime, or who is accused of having
9 committed a public or status offense or who has been committed to the Department
10 of Juvenile Justice or Cabinet for Health and Family Services for having committed
11 a public or status offense as those are defined by KRS 610.010(1), 610.010(2)(a),
12 (b), (c), or 630.020(2) is entitled:

- 13 (a) To be represented by an attorney to the same extent as a person having his or
14 her own counsel is so entitled; and
15 (b) Except as provided in subsection (2)(c) of this section, to be provided with the
16 necessary services and facilities of representation, including investigation and
17 other preparation. The courts in which the defendant is tried shall waive all
18 costs.

19 (2) A needy person who is entitled to be represented by an attorney under subsection
20 (1) of this section is entitled ***to be***:

- 21 (a) ~~[To be]~~ Counselor and defended at all stages of the matter beginning with the
22 earliest time when a person providing his or her own counsel would be
23 entitled to be represented by an attorney, ~~[and]~~ including revocation of
24 probation or parole;
25 (b) ~~[To be]~~ Represented in any appeal; and
26 (c) ~~[To be]~~ Represented in any other post-conviction, or, if a minor under the age
27 of eighteen (18), post-disposition proceeding, including any appeal from a

1 post-conviction or post-disposition action. However, if the department and the
2 court of competent jurisdiction determines that it is not a proceeding that a
3 reasonable person with adequate means would be willing to bring at his or her
4 own expense, there shall be no further right to be represented by counsel
5 under ~~the provisions of~~ this chapter. In cases involving a minor under the
6 age of eighteen (18), prior to making a determination on whether or not a
7 post-disposition action is a proceeding that a reasonable person with adequate
8 means would be willing to bring at his or her own expense, an attorney with
9 the department shall be granted access to the court file of the minor:

- 10 1. Without the requirement of a formal court order in which the attorney
11 has provided a release signed by the minor or the minor's legal guardian
12 authorizing the use of the records; and
 - 13 2. Notwithstanding any other statute prohibiting the disclosure of a
14 juvenile court file.
- 15 (3) A needy person's right to a benefit under subsection (1) or (2) of this section is not
16 affected by his or her having provided a similar benefit at his or her own expense,
17 or by he or she having waived it, at an earlier stage.
- 18 (4) A person, whether a needy person or not, who is a minor under the age of eighteen
19 (18) and who is in the custody of the Department of Juvenile Justice and is residing
20 in a residential treatment center or detention center is entitled to be represented on a
21 legal claim related to his or her confinement involving violations of federal or state
22 statutory rights or constitutional rights. Prior to representation, an attorney with the
23 department shall be granted access to the court file of the minor and residential
24 treatment center or detention center records pertaining to the juvenile:
- 25 (a) Without entering an appearance as an attorney of record; and
 - 26 (b) Notwithstanding any other statute prohibiting the disclosure of a juvenile's
27 record, including KRS 15A.0651, 610.320, 610.340, or 610.345.

1 (5) A person, whether a needy person or not, who is subject to a proceeding under KRS
 2 Chapter 202C and is unrepresented at any time shall be entitled to the same rights
 3 of representation as a needy person under subsection (1) of this section.

4 **(6) The department shall provide representation under this section to a person who is**
 5 **accused of being in contempt of court for noncompliance with a court-ordered**
 6 **obligation only when the obligation arises out of:**

7 **(a) A criminal prosecution or conviction; or**

8 **(b) An action or adjudication for a public or status offense.**

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

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

13 ➔Section 6. KRS 31.211 is amended to read as follows:

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

21 (2) If the partial fee, or any portion thereof, is not paid by the due date, the court's order
 22 **shall be considered**~~is~~ a civil judgment subject to collection under Civil Rule 69.03
 23 and KRS Chapter 426.

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

- 1 (4) If a person receives legal assistance or other benefit under this chapter to which he
 2 or she is not entitled or if a person receives legal assistance under this chapter and is
 3 financially able to pay for representation on the date the suit is brought, the public
 4 advocate, on behalf of the Commonwealth, shall recover, where practical, payment
 5 or reimbursement, as the case may be, from the person who received the legal
 6 assistance or **from** his or her estate. **Any** suit **seeking recovery under this**
 7 **subsection** shall be brought within five (5) years after the date on which the aid was
 8 received.
- 9 (5) ~~{Department of Public Advocacy }~~Attorneys **providing representation under this**
 10 **chapter** shall forward all information that indicates that payment or reimbursement
 11 may be obtained pursuant to subsection (4) of this section **to the public advocate.**
- 12 (6) The duty of recovery contemplated by subsection (4) of this section shall extend
 13 against persons who were the custodial parents or guardians of unemancipated
 14 minors at the time these minors were deemed needy as defined in KRS 31.100(5)(c)
 15 or (d).
- 16 (7) All moneys collected under this section shall be placed in a special trust and agency
 17 account for the Department of Public Advocacy, and, **notwithstanding KRS 45.229,**
 18 the funds shall not lapse.
- 19 ➔Section 7. KRS 31.215 is amended to read as follows:
- 20 (1) **(a)** Except for attorneys appointed pursuant to KRS 620.100, 625.041, 625.080,
 21 and 31.120, ~~an~~**no** attorney **providing representation under this**
 22 **chapter**~~{employed by the Department of Public Advocacy}~~ shall **not** accept
 23 any fees **from any source other than the Department of Public Advocacy** for
 24 the representation of any needy person **in any case or matter assigned to the**
 25 **attorney, or in any matter directly related to a case or matter assigned to the**
 26 **attorney.**~~{as defined in this chapter from that person or anyone for his or her~~
 27 ~~benefit and}~~

1 **(b)** The compensation~~[fees]~~ for representation of a needy~~[that]~~ person under this
 2 chapter shall be limited to that which is~~[the fees]~~ provided by the
 3 department.

4 **(c)** This subsection shall not prohibit an attorney who is not employed by the
 5 department from accepting fees for the representation of any person in any
 6 case or matter unrelated to any case or matter that he or she has been
 7 assigned under~~[in]~~ this chapter.

8 **(d)** As used in this subsection, "fees" shall include cash, property, or other
 9 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 D felony.

16 ➔Section 8. KRS 31.219 is amended to read as follows:

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

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

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

10 (1) Upon the appearance of the person detained pursuant to KRS 202A.041 or upon the
 11 filing of a petition pursuant to KRS 202A.051 or 202A.0811, the court shall appoint
 12 an attorney to represent the respondent. *The attorney shall be paid a fee fixed by*
 13 *the court not to exceed five hundred dollars (\$500), which shall be paid by the*
 14 *Finance and Administration Cabinet.*

15 (2) ~~The~~~~[with such]~~ appointment and representation *under subsection (1) of this section*
 16 *shall*~~[to]~~ continue unless the respondent retains private counsel.

17 (3) The appointed attorney shall be *immediately*~~[forthwith]~~ notified by the clerk of the
 18 allegations in the petition and the date and purpose of the preliminary hearing.

19 (4) Notwithstanding KRS 202A.091, an attorney appointed by the court or retained by
 20 the respondent shall be given access to the court records relating to the petition.

21 ➔Section 10. The secretary of the Personnel Cabinet is directed to work with the
 22 Department of Public Advocacy to develop and implement a new classification series for
 23 Department of Public Advocacy Attorneys that will have a minimum entry level starting
 24 salary of at least \$67,500 annually, effective no later than September 16, 2026. When the
 25 new classification series is implemented, the secretary of the Personnel Cabinet and the
 26 Department of Public Advocacy shall grant existing attorneys, currently classified as
 27 Staff Attorney I, II, III, Staff Attorney Supervisor, or Staff Attorney Manager/Asst

- 1 General Counsel a 10% increase in annual compensation or an annual salary of \$67,500,
- 2 whichever is greater, as they are reallocated to the new classification series.