

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. For the purposes of this chapter,**
10 **"persons with disabilities" shall refer to those persons eligible for protection and**
11 **advocacy services under Pub. L. No. 99-319, Pub. L. No. 102-569, Pub. L. No.**
12 **103-218, Pub. L. No. 106-170, and Pub. L. No. 106-402, as amended, and any**
13 **other federal enabling statute hereafter enacted that defines the eligible client**
14 **base for protection and advocacy services.**

15 **(2) 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 31.015 is amended to read as follows:

19 (1) (a) The Public Advocacy Commission shall consist of the following members,
20 none of whom shall be a prosecutor, law enforcement official, or judge, who
21 shall serve terms of four (4) years~~, except the initial terms shall be~~
22 ~~established as hereafter provided}:~~

- 23 1. Two (2) members appointed by the Governor;
- 24 2. One (1) member appointed by the Governor **who**~~[. This member]~~ shall
25 be a child advocate or a person with substantial experience in the
26 representation of children;
- 27 3. **One (1) member appointed by the Governor who has been**

- 1 *incarcerated for a crime committed in the Commonwealth;*
- 2 4. Two (2) members appointed by the Kentucky Supreme Court;
- 3 5.~~[4.]~~ Three (3) members, who are licensed to practice law in Kentucky and
- 4 have substantial experience in the representation of persons accused of
- 5 crime, appointed by the ~~{Governor from a list of three (3) persons~~
- 6 ~~submitted to him or her for each individual vacancy by the }~~board of
- 7 governors of the Kentucky Bar Association; and
- 8 6.~~[5.]~~ The dean, ex officio, of each of the law schools in Kentucky or his or
- 9 her designee~~;~~ and
- 10 ~~6.~~ ~~One (1) member appointed by the Governor from a list of three (3)~~
- 11 ~~persons submitted to him or her by the joint advisory boards of the~~
- 12 ~~Protection and Advocacy Division of the Department of Public~~
- 13 ~~Advocacy}.~~
- 14 (b) Any member of the commission serving prior to *the effective date of this*
- 15 Act~~[July 15, 2002]~~, shall serve until the expiration of his or her current term of
- 16 office. Subsequent appointments shall be for a term of four (4) years from the
- 17 date of expiration of the term for which his or her predecessor was appointed.
- 18 (2) ~~{At the first meeting of the commission, a drawing by lot shall be conducted to~~
- 19 ~~determine the length of each original member's term. Initially there shall be four (4)~~
- 20 ~~two (2) year terms, four (4) three (3) year terms, and four (4) four (4) year terms.~~
- 21 ~~}Vacancies in the membership of the commission shall be filled in the same manner~~
- 22 as original appointments. Appointments to fill vacancies occurring before the
- 23 expiration of a term shall be for the remainder of the unexpired term.
- 24 (3) The commission shall first meet ~~{at the call of the Governor and thereafter }~~as the
- 25 commission shall determine on a regular basis, but at least quarterly, and shall be
- 26 presided over by a chairperson elected by its members for a one (1) year term. A
- 27 majority of commission members shall constitute a quorum, and decisions shall

1 require the majority vote of those present; except that a **decision**
2 **regarding**~~recommendation to the Governor pertaining to the appointment, renewal~~
3 ~~of~~ the appointment, **renewal of appointment,** or removal of the public advocate
4 shall require a majority vote of the commission. Each member of the commission
5 shall have one (1) vote, and voting by proxy shall be prohibited.

6 (4) The public advocate shall, upon appointment or renewal, be an ex officio member
7 of the commission without the power to vote, shall serve as secretary of the
8 commission, and shall be entitled to attend and participate in all meetings of the
9 commission except discussions relating to renewal of his or her term or his or her
10 removal.

11 (5) Commission members shall be reimbursed for reasonable and necessary expenses
12 incurred while engaged in carrying out the duties of the commission and shall
13 receive one hundred dollars (\$100) per day for each meeting attended unless
14 prohibited by law from receiving such compensation.

15 (6) The commission shall:

16 (a) **Appoint the public advocate as described in Section 5 of this Act**~~Receive~~
17 ~~applications, interview, and recommend to the Governor three (3) attorneys as~~
18 ~~nominees for appointment as the public advocate];~~

19 (b) Assist the public advocate in drawing up procedures for the selection of his or
20 her staff;

21 (c) Review the performance of the public advocacy system and provide general
22 supervision of the public advocate;

23 (d) Assist the Department of Public Advocacy in ensuring its independence
24 through public education regarding the purposes of the public advocacy
25 system; and

26 (e) Review and adopt an annual budget prepared by the public advocate for the
27 system and provide support for budgetary requests to the General Assembly.

1 (7) In no event shall the commission or its members interfere with the discretion,
2 judgment, or advocacy of employees of the Department of Public Advocacy in their
3 handling of individual cases.

4 ➔Section 5. KRS 31.020 is amended to read as follows:

5 (1) The Department of Public Advocacy shall consist of the public advocate, deputy
6 public advocate, general counsel, such assistant public advocates as the public
7 advocate shall deem necessary, and such secretarial and other personnel as the
8 public advocate shall deem necessary.

9 (2) (a) The public advocate shall be appointed by the ~~{Governor from a list of three~~
10 ~~(3) attorneys submitted to him or her by the }~~Public Advocacy Commission;
11 shall be an attorney licensed to practice law in Kentucky with at least ten
12 ~~(10){five (5)}~~ years experience in the practice of law with substantial
13 experience serving as a public defender; shall be excepted from the classified
14 service; shall be the chief administrator of the Department of Public
15 Advocacy and an appointing authority as that term is defined in KRS
16 18A.005; and shall serve a term of four (4) years~~[, which is renewable, unless~~
17 ~~removed by the Governor].~~

18 (b) The public advocate's term may be renewed upon a majority vote of the
19 commission, but the public advocate shall not be renewed for a third term
20 without an opportunity for other interested persons to apply and be
21 considered for the position.

22 (c) The incumbent public advocate shall serve until a successor is nominated and
23 approved by the commission~~[and approved by the Governor].~~

24 (d) Notwithstanding KRS 64.640, the compensation of the public advocate shall
25 be set annually at a rate no less than that of a full-time Commonwealth's
26 Attorney under KRS 15.755~~[by the provisions of KRS 64.640].~~

27 (3) The deputy public advocate shall be an attorney and shall be appointed by the

1 public advocate and shall serve at his or her pleasure, Notwithstanding KRS
 2 64.640, the compensation of the deputy public advocate shall be set by the public
 3 advocate.

4 (4) The general counsel shall be an attorney and shall be appointed by the public
 5 advocate and shall serve at his or her pleasure. The general counsel shall represent
 6 the interests of the department as directed by the public advocate, Notwithstanding
 7 KRS 64.640, the compensation of the general counsel shall be set by the public
 8 advocate.

9 (5) The assistant public advocates shall be attorneys, shall be appointed by the public
 10 advocate, ~~[shall be covered by the merit system,]~~ and shall not be subject to the
 11 provisions of KRS 12.210. Assistant public advocates appointed after the effective
 12 date of this Act shall be unclassified employees, but, notwithstanding any
 13 provision of law to the contrary, may only be terminated for cause. Assistant
 14 public advocates employed by the department on the effective date of this Act may
 15 elect to remain in the classified service. Notwithstanding KRS 64.640, the
 16 compensation of assistant public advocates shall be set by the public advocate.

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

19 ➔Section 6. KRS 31.030 is amended to read as follows:

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

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

24 (2) Establishing and maintaining offices in each judicial circuit, ensuring adequate
 25 attorney, investigative, alternative sentencing, and administrative resources to
 26 provide competent representation for all indigent persons in each circuit;

27 (3) Providing assistance and education to attorneys representing indigent persons

- 1 under this chapter technical aid to local counsel representing indigent persons];
- 2 ~~[(3) Assisting local counsel on appeals or taking appeals for local counsel, in the same~~
- 3 ~~manner as such appeals for the Commonwealth are presently handled by the~~
- 4 ~~Attorney General;~~
- 5 ~~(4) Developing and promulgating standards and administrative regulations, rules, and~~
- 6 ~~procedures for administration of the defense of indigent defendants in criminal~~
- 7 ~~cases that the public advocate, statutes, or the courts determine are subject to public~~
- 8 ~~assistance;]~~
- 9 ~~(4)~~⁽⁵⁾ Determining necessary personnel for the department and appointing staff
- 10 attorneys, who shall be "assistant public advocates," and non-lawyer assistants
- 11 within the merit system, subject to available funding ~~and employee allotments];~~
- 12 ~~(5)~~⁽⁶⁾ Maintaining and exercising control over the department's information
- 13 technology system, and working with the Commonwealth Office of Technology to
- 14 ensure that the department's information technology is in conformity with the
- 15 requirements of state government;
- 16 ~~[(7) Reviewing and approving local plans for providing counsel for indigent persons;]~~
- 17 ~~(6)~~⁽⁸⁾ Conducting research into, and developing and implementing methods of,
- 18 improving the operation of the criminal justice system with regard to indigent
- 19 defendants and other defendants in criminal actions, including participation in
- 20 groups, organizations, and projects dedicated to improving representation of
- 21 defendants in criminal actions in particular, or the interests of indigent or
- 22 impoverished persons in general;
- 23 ~~(7)~~⁽⁹⁾ Issuing rules, promulgating administrative regulations, and establishing
- 24 standards as may be reasonably necessary to carry out the provisions of this chapter,
- 25 the decisions of the United States Supreme Court, the decisions of the Kentucky
- 26 Supreme Court, Court of Appeals, and other applicable court decisions or statutes;
- 27 ~~[(10) Being authorized to pursue legal, administrative, and other appropriate remedies to~~

1 ~~ensure the protection of the rights of persons with disabilities;~~

2 (8)~~(11)~~ Being authorized to purchase liability insurance for the protection of all full-
3 time public advocates, deputy public advocates, and assistant public advocates to
4 protect them from liability for malpractice arising in the course or scope of
5 employment and for the protection of attorneys with whom the Department of
6 Public Advocacy contracts to protect them from liability for malpractice arising in
7 the course or scope of the contract;

8 (9)~~(12)~~ Being authorized to seek and apply for and solicit funds for the operation of
9 the defense of indigent persons ~~for protection of the persons with disabilities~~
10 ~~programs~~ from any source, public or private, and to receive donations, grants,
11 awards, and similar funds from any legal source. Those funds shall be placed in a
12 special account for the Department of Public Advocacy and those funds shall not
13 lapse;

14 (10)~~(13)~~ Being authorized to assign an attorney, including a conflict attorney under a
15 plan, for good cause, at any stage of representation, including trial, appeal, or other
16 post-conviction or post-disposition proceeding, including discharge revocation
17 hearings, preliminary parole revocation hearings, and conditional discharge
18 revocation hearings, regardless of whether the hearings are conducted by
19 constitutional judges or executive branch administrative law judges;

20 (11)~~(14)~~ Filing with the Legislative Research Commission an annual report~~, by~~
21 ~~September 30 of each year,~~ setting forth the total number of cases assigned to the
22 department~~, the average number of cases per department attorney, all funding~~
23 ~~available to the department, the average amount of state funds expended per~~
24 ~~assigned case,~~ and any other information requested by the Legislative Research
25 Commission or that the public advocate finds necessary to inform the General
26 Assembly, the judicial or executive branches, or the public of the activities
27 conducted by the department during the previous fiscal year; and

1 ~~(12)~~~~(15)~~ Do other activities and institute other programs as necessary to carry out the
2 provisions of this chapter, or those decisions or statutes which are the subject of this
3 section.

4 ➔Section 7. KRS 31.120 is amended to read as follows:

5 (1) (a) The determination of whether a person covered by KRS 31.110 is a needy
6 person shall be deferred no later than his or her first appearance in court or in
7 a suit for payment or reimbursement under KRS 31.211, whichever occurs
8 earlier.

9 (b) The court of competent jurisdiction in which the case is pending shall then
10 determine, with respect to each step in the proceedings, whether he or she is a
11 needy person. However, nothing shall prevent appointment of counsel at the
12 earliest necessary proceeding at which the person is entitled to counsel, upon
13 declaration by the person that he or she is needy under the terms of this
14 chapter. In that event, the person involved shall be required to make
15 reimbursement for the representation if he or she later is determined not a
16 needy person under the terms of this chapter.

17 (c) A person who, after conviction, is sentenced while being represented by a
18 public defender shall continue to be presumed a needy person, and the court,
19 at the time of sentencing, shall enter an Order In Forma Pauperis for purposes
20 of appeal without having to show further proof of continued indigency, unless
21 the court finds good cause after a hearing to determine that the defendant
22 should not continue to be considered an indigent person.

23 (2) In determining whether a person is a needy person and in determining the extent of
24 his or her and, in the case of an unemancipated minor under KRS 31.100(5)(c), his
25 or her custodial parents' or guardians' inability to pay, the court concerned shall
26 consider such factors as:

27 (a) Income;

- 1 (b) Source of income;
- 2 (c) Property owned;
- 3 (d) Number of motor vehicles owned and in working condition;
- 4 (e) Other assets;
- 5 (f) Outstanding obligations;
- 6 (g) The number and ages of his or her dependents;
- 7 (h) The poverty level income guidelines compiled and published by the United
- 8 States Department of Labor;
- 9 (i) Complexity of the case;
- 10 (j) Amount a private attorney charges for similar services;
- 11 (k) Amount of time an attorney would reasonably spend on the case; and
- 12 (l) Payment of money bail, other than a property bond of another, whether
- 13 deposited by the person or another, to secure the person's release from
- 14 confinement on the present charge of which he or she stands accused or
- 15 convicted; and
- 16 (m) Any other circumstances presented to the court relevant to financial status.

17 Release on bail, or any other method of release provided in KRS Chapter 431, shall
 18 not necessarily prevent him or her from being a needy person.

19 **(3)** In each case, the person and, if an unemancipated minor under KRS 31.100(5)(c)
 20 and (d), his or her custodial parent or guardian, subject to the penalties for perjury,
 21 shall certify by affidavit of indigency which shall be compiled by the pretrial
 22 release officer, as provided under KRS Chapter 431 and Supreme Court Rules or
 23 orders promulgated pursuant thereto, the material factors relating to his or her
 24 ability to pay in the form the Supreme Court prescribes.

25 ~~[(3) The affidavit of indigency, to be subscribed and sworn to by the person and, in the~~
 26 ~~case of an unemancipated minor under KRS 31.100(5)(c), by his or her custodial~~
 27 ~~parent or guardian, shall be as set out herein and contain, at a minimum, the~~

1 following information:

2 "Commonwealth of Kentucky

3 County of.....

4 Affiant....., being first duly sworn says that he or she is not now represented
5 by private counsel and that he or she does not have the money or assets out of which to
6 employ one; that he or she is indigent and requests the court to appoint counsel.

7 Affiant states that he or she is presently (fill in the blank with one (1) of the following:
8 unemployed, employed full time, employed part time, or employed on a seasonal
9 basis).....

10 Affiant states that his or her weekly income is; and that he or she receives
11 (circle any of the following which apply and fill in the blank if necessary)

12 Welfare

13 Food stamps

14 Social Security

15 Workers' compensation

16 Unemployment

17 Retirement disability

18 Other.....

19 Affiant states that he or she owns the following property:

Description	Value
.....
.....
.....
.....

24 Affiant states that he or she has the following dependents:

Name	Age	Relationship
.....
.....

1 _____;

2 Affiant states that he or she has the following obligations:

3 ~~_____ To whom owed _____ Amount owing~~

4 ~~_____~~

5 ~~_____~~

6 ~~_____~~

7 ~~_____~~

8 ~~Affiant understands and has been advised that he or she may be held responsible for the~~
9 ~~payment of part of the cost of legal representation. Affiant also understands that the cost~~
10 ~~of payment for legal representation will be determined by the judge after considering~~
11 ~~affiant's financial condition, what private attorneys charge for similar services, how~~
12 ~~complicated the affiant's case is, and the amount of time affiant's attorney spends on~~
13 ~~affiant's case.~~

14 _____ Signature of affiant

15 ~~Subscribed and sworn to before me this _____, day of _____, 20_____~~

16 _____

17 _____ Signature and title of officer

18 _____ administering the oath

19 ~~Perjury Warning: Affiant understands that any person knowingly making false statements~~
20 ~~in the above affidavit shall be subject to the penalties for perjury under KRS Chapter 523,~~
21 ~~the maximum penalty for which is five (5) years' imprisonment. Affiant declares under~~
22 ~~penalty of perjury that he or she has read the above affidavit and that it is true and~~
23 ~~complete to the best of his or her knowledge."}]~~

24 ➔Section 8. KRS 31.211 is amended to read as follows:

- 25 (1) At arraignment, the court shall conduct a nonadversarial hearing to determine
- 26 whether a person who has requested a public defender is able to pay a partial fee for
- 27 legal representation, the other necessary services and facilities of representation,

1 and court costs. The court shall order payment in an amount determined by the
2 court and may order that the payment be made in a lump sum or by installment
3 payments to recover money for representation provided under this chapter. This
4 partial fee determination shall be made at each stage of the proceedings.

5 (2) If the partial fee, or any portion thereof, is not paid by the due date, the court's order
6 is a civil judgment subject to collection under Civil Rule 69.03 and KRS Chapter
7 426.

8 (3) ~~{All moneys received by the public advocate from indigent defendants pursuant to~~
9 ~~subsection (1) of this section shall be credited to the public advocate fund of the~~
10 ~~county in which the trial is held if the county has a plan pursuant to KRS 31.060 or~~
11 ~~31.065(1) which has been approved by the public advocate pursuant to KRS~~
12 ~~31.050. Moneys credited to a county public advocate fund may be used only to~~
13 ~~support the public advocate program of that county.~~

14 ~~(4) All moneys collected by the public advocate from indigent defendants pursuant to~~
15 ~~subsection (1) of this section in counties with a local public advocacy system~~
16 ~~established by the public advocate pursuant to KRS 31.065(2) shall be credited to~~
17 ~~the Department of Public Advocacy special trust and agency account to be used to~~
18 ~~support the state public advocacy system.~~

19 ~~(5) If a person receives legal assistance or other benefit under this chapter to which he~~
20 ~~or she is not entitled or if a person receives legal assistance under this chapter and is~~
21 ~~financially able to pay for representation on the date the suit is brought, the public~~
22 ~~advocate, on behalf of the Commonwealth, shall recover, where practical, payment~~
23 ~~or reimbursement, as the case may be, from the person who received the legal~~
24 ~~assistance or his or her estate. Suit shall be brought within five (5) years after the~~
25 ~~date on which the aid was received.~~

26 ~~(4)~~~~(6)~~ Any attorney participating in a public advocacy plan shall forward all
27 information which he or she may have which indicates that payment or

1 reimbursement may be obtained pursuant to subsection ~~(3)~~~~(5)~~ of this section.

2 ~~(5)~~~~(7)~~ The duty of recovery contemplated by subsection ~~(3)~~~~(5)~~ of this section shall
 3 extend against persons who were the custodial parents or guardians of
 4 unemancipated minors at the time these minors were deemed needy as defined in
 5 KRS 31.100(5)(c) or (d).

6 ~~(6)~~~~(8)~~ All moneys collected under this section shall be placed in a special trust and
 7 agency account for the Department of Public Advocacy, and the funds shall not
 8 lapse.

9 ➔Section 9. KRS 31.215 is amended to read as follows:

10 (1) ~~Except for attorneys appointed pursuant to KRS 620.100, 625.041, 625.080, and~~
 11 ~~31.120,~~ No attorney participating in a public advocacy plan shall accept any fees,
 12 **property, or other pecuniary benefits of any kind from any source other than the**
 13 **Department of Public Advocacy** for the representation of any needy person **in any**
 14 **case or matter assigned to an attorney, or in any matter directly related to a case**
 15 **or matter assigned,** ~~as defined in this chapter from that person or anyone for his~~
 16 ~~benefit~~ and the **compensation**~~[fees]~~ for representation of that person shall be
 17 limited to the fees provided **within the public advocacy plan. Nothing in this**
 18 **subsection shall prevent an attorney participating in a public advocacy plan from**
 19 **accepting fees, property, or other pecuniary benefits for the representation of any**
 20 **person in any case or matter unrelated to any case or matter to which he or she**
 21 **has been assigned under a public advocacy plan**~~in this chapter. "Fees" shall~~
 22 ~~include cash, property, or other pecuniary benefits of any kind].~~

23 (2) **No attorney employed by the Department of Public Advocacy as a full-time**
 24 **assistant public advocate under this chapter shall accept fees, property, or other**
 25 **pecuniary benefits from a needy person or anyone on his or her behalf for**
 26 **representation provided under this chapter.**

27 (3) **This section shall not apply to unsolicited gifts of de minimis value which are**

1 given by or on behalf of a needy person to any attorney after the conclusion of a
2 case or matter as a show of appreciation for the work of the attorney.

3 (4) Any attorney ~~[participating in a public advocacy plan]~~ who violates~~[receives or~~
4 ~~attempts to collect a fee from a needy person as prohibited by]~~ subsection (1) or (2)
5 of this section ~~[above]~~ shall be guilty of a Class A misdemeanor~~[D felony]~~.

6 ➔Section 10. KRS 31.235 is amended to read as follows:

7 If a court, after finding that the Department of Public Advocacy fails to provide an
8 attorney to a person eligible for representation under KRS Chapter 31, appoints, under
9 the court's inherent authority, an attorney to provide representation to the needy person,
10 the public advocate is hereby authorized to pay reasonable and necessary fees and
11 expenses subject to the following limitations:

12 (1) No fee shall be paid in excess of the prevailing maximum fee per attorney paid by
13 the Department of Public Advocacy for the type of representation provided, and no
14 hourly rate shall be paid in excess of the prevailing hourly rate paid by the
15 Department of Public Advocacy for the type of representation provided; and

16 (2) Each fee plus expenses incurred in the defense shall be presented by the defense
17 attorney to the Circuit Judge who shall review the fee and expenses request and
18 shall approve, deny, or modify the amount of compensation and fee listed therein.
19 After final approval of the fee and expenses the Circuit Judge shall, if state
20 compensation is desired, certify the amount and transmit the document to the public
21 advocate who shall review the fee and expense request and shall approve, deny, or
22 modify the request. The request as approved or modified shall then be paid.
23 ~~[Requests for payment of assigned counsel by the state shall be denied if the district~~
24 ~~has exceeded the amount of funds which may be allotted to it, if the district plan has~~
25 ~~not been approved, or if the public advocate finds that compensation is otherwise~~
26 ~~not warranted.]~~The decision of the public advocate in all matters of fee and
27 expense compensation shall be final.

1 ➔Section 11. The following KRS sections are repealed:

2 31.050 Public advocacy plans -- Review and approval or denial by public advocate --

3 Funding by department and governmental unit -- Recordkeeping -- Annual report.

4 31.065 Local office in county with less than ten Circuit Judges discretionary -- Methods

5 of delivering services -- Requirements if county elects -- Department's

6 responsibility if county does not elect.

7 31.071 Requirement if county elects local office -- Failure to provide attorney --

8 Responsibility for payment.

9 31.085 Plans must comply with department's rules and regulations.

10 ➔Section 12. The following KRS section is repealed:

11 31.060 Local office in jurisdiction with ten or more Circuit Judges required -- Funding

12 by governmental unit required in amount set by department.

13 ➔Section 13. Section 6 of this Act takes effect July 1, 2024.

14 ➔Section 14. Section 12 of this Act takes effect July 1, 2026.