

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 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 ***eligible***[~~indigent~~] persons accused of crimes or ***facing legal***
9 ***jeopardy***[~~mental states~~] which may result in their incarceration or confinement[-;~~
10 ~~and~~

11 ~~(2) [The pursuit of legal, administrative, and other appropriate remedies to ensure the
12 protection of the rights of persons with disabilities, independent of any agency that
13 provides treatment, services, or rehabilitation to persons with disabilities. For the
14 purposes of this chapter, "persons with disabilities" shall refer to those persons
15 eligible for protection and advocacy services under Public Laws 99-319, 102-569,
16 103-218, 106-170, and 106-402 as amended and any other federal enabling statute
17 hereafter enacted that defines the eligible client base for protection and advocacy
18 services].~~

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

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

27 **(2) *For the purposes of this chapter, "persons with disabilities" means persons who***

1 are eligible for protection and advocacy services under Pub. L. Nos. 99-319, 102-
 2 569, 103-218, 106-170, and 106-402, as amended, and any other federal enabling
 3 statute hereafter enacted that defines the eligible client base for protection and
 4 advocacy services.

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

8 ➔Section 3. KRS 31.020 is amended to read as follows:

9 (1) The Department of Public Advocacy shall consist of the public advocate, deputy
 10 public advocate, general counsel, such assistant public advocates as the public
 11 advocate shall deem necessary, and such secretarial and other personnel as the
 12 public advocate shall deem necessary.

13 (2) (a) The public advocate shall:

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

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

18 3. ~~shall~~ Be exempted from the classified service;

19 4. ~~shall~~ Be the chief administrator of the Department of Public Advocacy
 20 and an appointing authority as that term is defined in KRS 18A.005, and
 21 shall:

22 a. Establish the salaries for all assistant public advocates and
 23 employees in leadership policy-making positions within the
 24 department;

25 b. Have the authority to hire and appoint assistant public advocates
 26 as needed to perform the requirements of this chapter; and

27 c. Not be subject to the limitations of:

- 1 *i. KRS 18A.110 (7)(a), (b), and (e);*
 2 *ii. KRS 18A.120; or*
 3 *iii. Administrative regulations promulgated under subpart i. or*
 4 *ii. of this subdivision relating to pay and classification of*
 5 *employees or competitive examinations;* and

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

8 (b) The incumbent public advocate shall serve until a successor is nominated by
 9 the commission and approved by the Governor. The compensation of the
 10 public advocate shall be set *annually at a rate no less than that of a full-time*
 11 *Commonwealth's attorney under KRS 15.755*~~[by the provisions of KRS~~
 12 ~~64.640].~~

13 (c) *The authority provided under paragraph (a)4. of this subsection shall not be*
 14 *subject to approval by the secretary of the Personnel Cabinet.*

15 (3) The deputy public advocate shall:

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

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

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

19 (4) The general counsel shall:

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

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

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

23 (d) ~~[The general counsel shall]~~ Represent the interests of the department as
 24 directed by the public advocate.

25 (5) *Employees in leadership policy-making positions shall:*

26 (a) *Be appointed by the public advocate; and*

27 (b) *Serve at the pleasure of the public advocate.*

1 **(6)** The assistant public advocates shall:

2 **(a)** Be attorneys;~~;~~

3 **(b)** ~~shall~~ Be appointed by the public advocate;~~;~~

4 **(c)** ~~shall~~ Be covered by the merit system;~~;~~ and

5 **(d)** ~~shall~~ Not be subject to the provisions of KRS 12.210.

6 ~~(7)(6)~~ Secretarial, clerical, and other personnel shall be appointed by the public
7 advocate and shall be covered by the merit system.

8 ➔Section 4. KRS 31.030 (Effective July 1, 2024) is amended to read as follows:

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

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

13 (2) Developing *policies*~~and promulgating standards and administrative regulations,~~
14 ~~rules,~~ and procedures for administration of the defense of indigent defendants in
15 criminal cases that the public advocate, statutes, or the courts determine are subject
16 to public assistance;

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

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

22 **(5)** Maintaining and exercising control over the department's information technology
23 system, and working with the Commonwealth Office of Technology to ensure that
24 the department's information technology is in conformity with the requirements of
25 state government;

26 ~~(6)(5)~~ Conducting research into, and developing and implementing methods of,
27 improving the operation of the criminal justice system with regard to indigent

1 defendants and other defendants in criminal actions, including participation in
2 groups, organizations, and projects dedicated to improving representation of
3 defendants in criminal actions in particular, or the interests of indigent or
4 impoverished persons in general;

5 ~~(7)~~~~(6)~~ Issuing rules, promulgating administrative regulations *in accordance with*
6 *KRS Chapter 13A*, and establishing standards as may be reasonably necessary to
7 carry out the provisions of this chapter, the decisions of the United States Supreme
8 Court, the decisions of the Kentucky Supreme Court, Court of Appeals, and other
9 applicable court decisions or statutes;

10 ~~(8)~~~~(7)~~ Being authorized to pursue legal, administrative, and other appropriate
11 remedies to ensure the protection of the rights of persons with disabilities;

12 ~~(9)~~~~(8)~~ Being authorized to purchase liability insurance for the protection of all full-
13 time public advocates, deputy public advocates, and assistant public advocates to
14 protect them from liability for malpractice arising in the course or scope of
15 employment and for the protection of attorneys with whom the Department of
16 Public Advocacy contracts to protect them from liability for malpractice arising in
17 the course or scope of the contract;

18 ~~(10)~~~~(9)~~ Being authorized to seek, ~~and~~ apply for, and solicit funds for the operation
19 of the defense of indigent persons or protection of the persons with disabilities
20 programs from any source, public or private, and to receive donations, grants,
21 awards, and similar funds from any legal source. Those Funds shall be placed in a
22 special account for the Department of Public Advocacy and those funds shall not
23 lapse;

24 ~~(11)~~~~(10)~~ Being authorized to assign an attorney, including a conflict attorney under a
25 plan, for good cause, at any stage of representation, including trial, appeal, or other
26 post-conviction or post-disposition proceeding, including discharge revocation
27 hearings, preliminary parole revocation hearings, and conditional discharge

1 revocation hearings, regardless of whether the hearings are conducted by
2 constitutional judges or executive branch administrative law judges;

3 ~~(12)~~~~(11)~~ Filing with the Legislative Research Commission an annual report~~, by~~
4 ~~September 30 of each year,~~ setting forth the total number of cases assigned to the
5 department, the average number of cases per department attorney, ~~all funding~~
6 ~~available to the department, the average amount of state funds expended per~~
7 ~~assigned case,~~ and any other information requested by the Legislative Research
8 Commission or that the public advocate finds necessary to inform the General
9 Assembly, the judicial or executive branches, or the public of the activities
10 conducted by the department during the previous fiscal year; and

11 ~~(13)~~~~(12)~~ **Performing**~~Do~~ other activities and **instituting**~~institute~~ other programs as
12 necessary to carry out the provisions of this chapter, or those decisions or statutes
13 which are the subject of this section.

14 ➔Section 5. KRS 31.211 (Effective July 1, 2024) is amended to read as follows:

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

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

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

1 advocacy system.

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

10 (5) ~~Department of Public Advocacy~~ Attorneys ***providing representation under this***
11 ***chapter*** shall forward all information that indicates that payment or reimbursement
12 may be obtained pursuant to subsection (4) of this section ***to the public advocate.***

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

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

19 ➔Section 6. KRS 31.215 (Effective July 1, 2024) is amended to read as follows:

20 (1) Except for attorneys appointed pursuant to KRS 620.100, 625.041, 625.080, and
21 31.120, ~~an~~***no*** attorney ***providing representation under this chapter***~~employed by~~
22 ~~the Department of Public Advocacy~~ shall ***not*** accept any fees ***from any source***
23 ***other than the Department of Public Advocacy*** for the representation of any needy
24 person ***in any case or matter assigned to the attorney, or in any matter directly***
25 ***related to a case or matter assigned to the attorney***~~as defined in this chapter from~~
26 ~~that person or anyone for his or her benefit~~ and the ***compensation***~~[fees]~~ for
27 representation of that person shall be limited to ***that which is***~~[the fees]~~ provided ***by***

1 the department. Nothing in this subsection shall prohibit an attorney not
 2 employed by the department from accepting fees for the representation of any
 3 person in any case or matter unrelated to any case or matter that he or she has
 4 been assigned under~~in~~ this chapter. As used in this section, "fees" shall include
 5 cash, property, or other pecuniary benefits of any kind.

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

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

13 ➔Section 7. KRS 31.219 (Effective July 1, 2024) is amended to read as follows:

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

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

24 (3) Any attorney providing representation under this chapter~~employed by the~~
 25 ~~Department of Public Advocacy who is representing a client~~ on an appeal and
 26 who, after a conscientious examination of said appeal believes the appeal to be
 27 wholly frivolous after careful examinations of the record, may request the court to

1 which the appeal has been taken for permission to withdraw from the case. The
2 attorney ~~shall~~~~must~~ file with that request a brief which sets forth any arguments
3 which might possibly be raised on appeal. A copy of the request for permission to
4 withdraw and the brief ~~shall~~~~must~~ be served upon the client in sufficient time so
5 that the client may raise any argument he or she chooses to raise.

6 ➔Section 8. KRS 64.640 is amended to read as follows:

- 7 (1) Except as otherwise provided in subsection (2) of this section, and excepting
8 officers elected by popular vote, employees of the General Assembly, including
9 employees of the Legislative Research Commission, members of boards and
10 commissions, those officers and employees of Kentucky Educational Television
11 exempt from classified service as provided in KRS 18A.115, presidents and
12 employees of the state universities and the state colleges, officers employed by the
13 Department of Kentucky State Police under KRS Chapter 16, assistant public
14 advocates employed by the Department of Public Advocacy, and persons employed
15 by the commissioner of parks on a temporary basis under KRS 148.026, the
16 Personnel Cabinet shall prepare schedules of compensation, payable out of the State
17 Treasury, with a minimum salary rate, and other salary rates as are deemed
18 necessary or advisable, for the office or position of employment of every state
19 officer and employee, including specifically the offices and positions of
20 employment in every constitutional administrative department, statutory
21 administrative department, independent agency, board, commission, or other unit of
22 state government. The language of any statute empowering a board, commission,
23 authority, or other administrative body for which the Personnel Cabinet provides
24 personnel and payroll services, except for any board governing any of the Kentucky
25 Retirement Systems, the County Employees Retirement System, the Kentucky
26 Public Pensions Authority, the Kentucky Higher Education Assistance Authority,
27 the Kentucky Authority for Educational Television, or the Council on

1 Postsecondary Education, to establish, set, or approve the salaries of its
2 administrative head and other employees to the contrary notwithstanding, the
3 establishment or setting of salaries for administrative heads or other employees
4 shall be subject to the approval of the secretary of the Personnel Cabinet. The
5 schedules and rates shall be based upon studies of the duties and responsibilities of
6 the offices and positions and upon a comparison with rates being paid for similar or
7 comparable services elsewhere, and in the preparation of such schedules, the
8 Personnel Cabinet shall ascertain and record the duties, responsibilities, and
9 authority pertaining to the various offices and positions in the state service, and
10 classify such positions in the manner provided in KRS 18A.030, 18A.035, 18A.110,
11 18A.130, 18A.135, and 18A.150 to 18A.160. No such schedule shall become
12 effective until it has been approved by the Governor by executive order.

13 (2) The Governor shall set the compensation payable out of the State Treasury to each
14 officer or position in the state service, which officer or position heads a statutory
15 administrative department, independent agency, or other unit of state government,
16 except for those excluded under subsection (1) of this section. Such compensation
17 shall be based upon studies of the duties and responsibilities and classification of
18 the positions by the Governor and upon a comparison with compensation being paid
19 for similar or comparable services elsewhere, provided, however, such
20 compensation shall not exceed the total taxable compensation of the Governor
21 derived from state sources, the provisions of KRS 64.660 to the contrary
22 notwithstanding. For the purposes of this section, the total taxable compensation of
23 the Governor from state sources shall include the amount provided for
24 compensation to the Governor under KRS 64.480 and any benefits or discretionary
25 spending accounts that are imputed as taxable income for federal tax purposes.

26 (3) The compensation payable out of the State Treasury to officers and employees
27 subordinate to any office or position covered by subsection (2) of this section shall

1 not exceed the maximum rate established pursuant to subsection (2) of this section
2 for such office or position, except with respect to physicians as provided in KRS
3 64.655 and employees of the Public Service Commission of Kentucky whose
4 compensation shall be fixed, within constitutional limits, by the Personnel Cabinet
5 with the approval of the Governor as provided in subsection (1) of this section.

6 (4) Nothing in this section shall preclude the allowance of maintenance to officers and
7 employees of the state.