

1 AN ACT relating to legal representation for indigent persons.

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

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

- 4 (1) (a) The determination of whether a person covered by KRS 31.110 is a needy
5 person shall be deferred no later than his or her first appearance in court or in
6 a suit for payment or reimbursement under KRS 31.211, whichever occurs
7 earlier.
- 8 (b) The court of competent jurisdiction in which the case is pending shall then
9 determine, with respect to each step in the proceedings, whether he or she is a
10 needy person. However, **prior to this determination**, nothing shall prevent **a**
11 **defending attorney from providing representation to any person entitled to**
12 **department representation under KRS 31.110**~~[appointment of counsel]~~ at the
13 earliest necessary ~~stage~~~~[proceeding]~~ at which the person is entitled to counsel,
14 upon declaration by the person that he or she is needy under the terms of this
15 chapter. In that event, the person involved shall be required to make
16 reimbursement for the representation if he or she later is determined not a
17 needy person under the terms of this chapter.
- 18 (c) A person who, after conviction, is sentenced while being represented by a
19 public defender shall continue to be presumed a needy person, and the court,
20 at the time of sentencing, shall enter an Order In Forma Pauperis for purposes
21 of appeal without having to show further proof of continued indigency, unless
22 the court finds good cause after a hearing to determine that the defendant
23 should not continue to be considered an indigent person.
- 24 (2) In determining whether a person is a needy person and in determining the extent of
25 his or her and, in the case of an unemancipated minor under KRS 31.100(5)(c), his
26 or her custodial parents' or guardians' inability to pay, the court concerned shall
27 consider such factors as:

- 1 (a) Income;
- 2 (b) Source of income;
- 3 (c) Property owned;
- 4 (d) Number of motor vehicles owned and in working condition;
- 5 (e) Other assets;
- 6 (f) Outstanding obligations;
- 7 (g) The number and ages of his or her dependents;
- 8 (h) The poverty level income guidelines compiled and published by the United
9 States Department of Labor;
- 10 (i) Complexity of the case;
- 11 (j) Amount a private attorney charges for similar services;
- 12 (k) Amount of time an attorney would reasonably spend on the case; and
- 13 (l) Payment of money bail, other than a property bond of another, whether
14 deposited by the person or another, to secure the person's release from
15 confinement on the present charge of which he or she stands accused or
16 convicted; and
- 17 (m) Any other circumstances presented to the court relevant to financial status.
- 18 Release on bail, or any other method of release provided in KRS Chapter 431, shall
19 not necessarily prevent him or her from being a needy person. In each case, the
20 person and, if an unemancipated minor under KRS 31.100(5)(c) and (d), his or her
21 custodial parent or guardian, subject to the penalties for perjury, shall certify by
22 affidavit of indigency which shall be compiled by the pretrial release officer, as
23 provided under KRS Chapter 431 and Supreme Court Rules or orders promulgated
24 pursuant thereto, the material factors relating to his or her ability to pay in the form
25 the Supreme Court prescribes.
- 26 (3) The affidavit of indigency, to be subscribed and sworn to by the person and, in the
27 case of an unemancipated minor under KRS 31.100(5)(c), by his or her custodial

1 parent or guardian, shall be as set out herein and contain, at a minimum, the
2 following information:

3 "Commonwealth of Kentucky

4 County of.....

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

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

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

13 Welfare

14 Food stamps

15 Social Security

16 Workers' compensation

17 Unemployment

18 Retirement disability

19 Other.....

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

Description	Value
.....
.....
.....;

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

Name	Age	Relationship
.....

1
 2;

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

4 To whom owed	Amount owing
5
6
7
8

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

15 Signature of affiant

16 Subscribed and sworn to before me this , day of, 20.....
 17

18 Signature and title of officer
 19 administering the oath

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