

**31.120 Determination of whether person needy -- Factors for determination --
Affidavit of indigency.**

- (1)
 - (a) The determination of whether a person covered by KRS 31.110 is a needy person shall be deferred no later than his or her first appearance in court or in a suit for payment or reimbursement under KRS 31.211, whichever occurs earlier.
 - (b) The court of competent jurisdiction in which the case is pending shall then determine, with respect to each step in the proceedings, whether he or she is a needy person. However, nothing shall prevent appointment of counsel at the earliest necessary proceeding at which the person is entitled to counsel, upon declaration by the person that he or she is needy under the terms of this chapter. In that event, the person involved shall be required to make reimbursement for the representation if he or she later is determined not a needy person under the terms of this chapter.
 - (c) A person who, after conviction, is sentenced while being represented by a public defender shall continue to be presumed a needy person, and the court, at the time of sentencing, shall enter an Order In Forma Pauperis for purposes of appeal without having to show further proof of continued indigency, unless the court finds good cause after a hearing to determine that the defendant should not continue to be considered an indigent person.
- (2) In determining whether a person is a needy person and in determining the extent of his or her and, in the case of an unemancipated minor under KRS 31.100(5)(c), his or her custodial parents' or guardians' inability to pay, the court concerned shall consider such factors as:
 - (a) Income;
 - (b) Source of income;
 - (c) Property owned;
 - (d) Number of motor vehicles owned and in working condition;
 - (e) Other assets;
 - (f) Outstanding obligations;
 - (g) The number and ages of his or her dependents;
 - (h) The poverty level income guidelines compiled and published by the United States Department of Labor;
 - (i) Complexity of the case;
 - (j) Amount a private attorney charges for similar services;
 - (k) Amount of time an attorney would reasonably spend on the case; and
 - (l) Payment of money bail, other than a property bond of another, whether deposited by the person or another, to secure the person's release from confinement on the present charge of which he or she stands accused or convicted; and
 - (m) Any other circumstances presented to the court relevant to financial status.

Release on bail, or any other method of release provided in KRS Chapter 431, shall not necessarily prevent him or her from being a needy person. In each case, the person and, if an unemancipated minor under KRS 31.100(5)(c) and (d), his or her custodial parent or guardian, subject to the penalties for perjury, shall certify by affidavit of indigency which shall be compiled by the pretrial release officer, as provided under KRS Chapter 431 and Supreme Court Rules or orders promulgated pursuant thereto, the material factors relating to his or her ability to pay in the form the Supreme Court prescribes.

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

"Commonwealth of Kentucky

County of.....

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

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

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

Welfare

Food stamps

Social Security

Workers' compensation

Unemployment

Retirement disability

Other.....

Affiant states that he or she owns the following property:

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

Affiant states that he or she has the following dependents:

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

Affiant states that he or she has the following obligations:

To whom owed	Amount owing
.....
.....
.....

.....

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

Signature of affiant

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

.....

Signature and title of officer
administering the oath

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

Effective: July 15, 2014

History: Amended 2014 Ky. Acts ch. 87, sec. 4, effective July 15, 2014. -- Amended 2002 Ky. Acts ch. 283, sec. 12, effective July 15, 2002. -- Amended 1998 Ky. Acts ch. 491, sec. 3, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 395, sec. 2, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 241, sec. 2, effective July 14, 1992. -- Amended 1986 Ky. Acts ch. 104, sec. 2, effective July 15, 1986. -- Amended 1980 Ky. Acts ch. 188, sec. 11, effective July 15, 1980; and ch. 334, sec. 1, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 155, sec. 29, effective June 17, 1978. -- Amended 1976 (1st Extra. Sess.) Ky. Acts ch. 24, sec. 3. -- Amended 1976 Ky. Acts ch. 258, sec. 1. -- Created 1972 Ky. Acts ch. 353, sec. 12.