

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson Dave Kerr at 11:00 a.m. on February 12, 1996 in Room 123-S of the Capitol.

All members were present except: Senator Vancrum, who was excused

Committee staff present: Kathy Porter, Legislative Research Department
Eric Milstead, Legislative Research Department
Norman Furse, Revisor of Statutes
Michael Corrigan, Revisor of Statutes
Judy Bromich, Administrative Assistant
Ronda Miller, Committee Secretary

Conferees appearing before the committee:

Dr. Edward Flentje, Hugo Wall School of Urban and Public Affairs, Wichita State University
Brent Anderson, General Counsel for the Governor's Office
Sheila Frahm, Secretary of Administration and Lieutenant Governor
Paul Shelby, Office of Judicial Administration
Scott Rothe, Director of Operations, Board of Indigents' Defense Services

Others attending: See attached list

SB 557: Abolishing state board of indigents' defense services and transferring to department of administration

The Chairman advised that **SB 557** is based on a study done by the Hugo Wall School of Urban and Public Affairs headed by Dr. Edward Flentje. The Chairman stated that the revisors devised a balloon (**Attachment 1**) based upon Dr. Flentje's subsequent review of the bill (**Attachment 2**) and that the Committee would use the balloon as a basis for consideration.

Dr. Flentje appeared before the Committee and reviewed "Indigent Defense in Kansas: A Report on State Policy and Management" (which is on permanent file at the Hugo Wall School of Urban & Public Affairs). He stated that this agency has been in limbo since being "pushed out" of Judiciary years ago and has never "fit" in the executive branch comfortably. He reminded members that the Legislature had asked for the development of a management study and strategic plan last year and the study group laid out the following strategic options:

- staying the course
- realigning the Board of Indigents' Defense Services
- making more efficient and economical use of the Board
- reinventing the agency

Dr. Flentje stated that the study focused on the realignment of the Board because judges pay little attention to the determination of "indigency" and because the Board has no by laws or definition of assignments. He stated that realigning the agency would be easier than making it more efficient and economical because "everyone is against them" and because anything that might be done in this area could be met with a court challenge. He said that he has concluded, however, that the economies and efficiencies can be improved in two areas:

- a better determination of "indigency" for persons entering the system (according to the Post Audit study, 10% did not meet the guidelines)
- a better recovery of costs once the defendant is able to pay (average recovery is 7%-8% of costs, though some jurisdictions recover 50% and some recover .5%)

In speaking to the determination of "indigency," Dr. Flentje stated that it would be his suggestion that the

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS, Room 123-S Statehouse, at 11:00 a.m. on February 12, 1996.

defendant's social security number be obtained as well as the authorization to check financial records. He stated that, in his opinion, when a judge informs the defendant of his right to counsel, he should also inform the defendant that he will be responsible for repayment of costs associated with his defense. In regard to the recovery of costs, he added that there ought to be a uniform schedule for recovery of costs and reimbursement of assigned counsel, and that the director of the agency should be assigned the responsibility for that recovery using the existing debt collection statutes.

In response to Senator Morris, Dr. Flentje stated that he had recommended language in new Section 10 requiring that the judicial administrator compile in the annual report information regarding court-ordered expenditures and expenditures for legal defense, the number and amount of extraordinary claims, and recovery costs for indigents' defense. It was his opinion that judges would take notice of other judges' performance in these areas if the information were provided in the annual report.

Senator Burke pointed out that Dr. Flentje had originally suggested the establishment of an office of cost containment (page v of the report) and inquired whether this recommendation would minimize the potential for conflict of interest that might occur if the Board represents the indigent and also makes the determination of "indigency" and is responsible for recovery of costs. Dr. Flentje responded that there will always be a conflict between those two assignments, but he had recommended that the office of cost containment be stricken from the bill and the function of collecting payments and performing random audits on affidavits of indigence be assigned to the director specifically. In lieu of establishing a separate entity responsible for cost containment, Dr. Flentje commented that a second level officer within the agency could be assigned the responsibility of cost containment.

Senator Karr inquired whether there was another department under which the functions of the Board could be established. Dr. Flentje responded that given that the judicial branch doesn't want the responsibility, bringing it into the executive branch and making it more accountable to the Governor is reasonable.

Brent Anderson, general counsel, office of the Governor, testified as a proponent for SB 557 and reviewed his written testimony (Attachment 3). He stated that capital murder cases quickly consume the amount appropriated for costs associated with indigents' defense services, and stated that the Governor believes that SB 557 is a good beginning in the attempt to control these costs. He added that the Governor would prefer the establishment of an independent agency rather than transferring the functions to the Department of Administration.

Senator Rock inquired whether it would be constitutional to "avoid supplemental appropriations by prorating, in other words, reducing compensation for assigned counsel and other defense services in accord with initial appropriations for these purposes." (page v of the report). Mr. Anderson stated that though there are existing statutes which allow it, he believes it would be subject to a court challenge. Dr. Flentje noted that the bill does not embrace proration.

Sheila Frahm, Lt. Governor/Secretary of Administration, appeared before the Committee and reviewed her written testimony (Attachment 4) which expressed support for SB 557, but which expressed concern about the initiative to place indigents' defense within the Department of Administration.

Chairman Kerr asked Michael Brunton, an attorney who had asked to testify on behalf of bondsmen, if he had concerns about the balloon. Mr. Brunton stated that he did not believe any sections of the bill would present concern to bondsmen.

Paul Shelby, Office of Judicial Administration, testified in opposition to New Section 10, page 9 of the bill which requires the Judicial Administrator to compile information on costs associated with the defense of indigents and report annually (Attachment 5). The Chairman observed that the current annual report compiled by the Judicial Administrator is used to improve the performance of judges in reducing the backlog of cases and inquired what would be wrong with including the information regarding costs associated with indigents' defense in the current report in order to improve performance in the area of cost recovery. Mr. Shelby stated that the information is provided to the Director of Indigents' Defense Services and the Office of Judicial Administration would have to duplicate everything. In answer to Chairman Kerr, he stated that it would be more acceptable if the report were prepared by the Director and subsequently published by the Office of the Judicial Administrator as a section in their annual report.

Scott Rothe, Director of Operations for the Board of Indigents' Defense Services, appeared before the Committee in opposition to SB 557 and stated that the Board has been under tight scrutiny and the subject of several studies. He noted that the Board has embraced these studies and has initiated agencywide changes, but at no time has lost sight of its constitutional and statutory mission. Mr. Rothe reviewed twenty-six steps which the agency has initiated since July, 1995 in reaction to internal and external concerns (Attachment 6).

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Members complimented the agency on the changes that have been initiated, but expressed frustration that it took the threat of **SB 557** to motivate the agency to initiate them. Senator Salisbury asked why the agency was able to accomplish these initiatives at this point in time. Mr. Rothe stated that the management studies authorized by the Legislature gave the agency both the time and the money to study and work on these initiatives, and the no limit on FTE positions provided the professional staff whereby to accomplish them. Senator Salisbury asked what was wrong with implementing **SB 557**. Mr. Rothe stated that he believed the proposal is premature and the agency would like the opportunity to implement the changes. He stated that he believes the agency does not belong under the Department of Administration but should be a free standing agency. Mr. Rothe testified that he believes the Board is important because the agency is an unpopular one and the Board serves as a buffer from political changes that occur from year to year.

The Chairman advised members that the Committee would work **SB 557** at a later date and adjourned the meeting at 12:30 P.M.

The next meeting is scheduled for February 13, 1996.

SENATE WAYS AND MEANS COMMITTEE GUEST LIST

DATE: February 12, 1996

NAME	REPRESENTING
Ken Behr	Ks. Governmental Consulting
Brent Anderson	Cons. office
Ed Hentzi	himself
John K...	himself
Michael A. ...	himself
Maui Butler	Kan an Butler
Glenn D Cogswell	Ks. Assn of Professional Services
Scott Byrth	Bd. of Indigents Defense
Ron Niles	BIDS
Pat Galen	BIDS
Paul Shelley	OJA
Whitney Damon	Kansas Bar Association
Hang Peng	Bd Member - BIDS
John J. ...	BIDS
Alvan Wessche	Chief - Wichita - BIDS
Ronald E. Warty	Death Penalty Unit - BIDS
Byron Cerrillo	Chief - Johnson Co. - BIDS
Jeff Wasaman	Dept of Adm'n.
Sheila Leahn	" "

SENATE WAYS AND MEANS COMMITTEE GUEST LIST

DATE: February 12, 1996

NAME	REPRESENTING
TK Shively	KANSAS LEGAL SERVICES
Katie Sparks	DOB
Randall Hodgkinson	

SENATE BILL No. 557

By Committee on Ways and Means

1-30

9 AN ACT abolishing the state board of indigents' defense services; trans-
10 ferring powers, duties and functions to the department of administra-
11 tion; amending K.S.A. 21-4610, 22-2805, 22-4501, 22-4502, 22-4503,
12 22-4504, 22-4505, 22-4506, 22-4507, 22-4508, 22-4512a, 22-4513, 22-
13 4514a, 22-4520, 22-4522, 22-4523, 22-4524, 22-4525, 22-4526, 22-
14 4527, 22-4528, 28-172b and 74-7320 and K.S.A. 1995 Supp. 75-4352
15 and repealing the existing sections; also repealing K.S.A. 22-4512, 22-
16 4519 and 22-4521.

17
18 *Be it enacted by the Legislature of the State of Kansas:*

19 New Section 1. The state board of indigents' defense services cre-
20 ated by K.S.A. 22-4519 and amendments thereto, and the state director
21 of indigents' defense services created by K.S.A. 22-4524 and amendments
22 thereto are hereby abolished.

23 New Sec. 2. There is hereby established within the department of
24 administration, a division of indigents' defense services, the head of which
25 shall be the director of indigents' defense services. Under the supervision
26 of the governor, the director of indigents' defense services shall admin-
27 ister the division of indigents' defense services. The director of indigents'
28 defense services shall be appointed by the governor, ~~be in the unclassified~~
29 ~~service under the Kansas civil service act and shall be appointed by the~~
30 ~~governor. The director of indigents' defense services~~ shall serve at the
31 pleasure of the governor.

32 New Sec. 3. (a) All the powers, duties and functions of the existing
33 state board of indigents' defense services and the existing state director
34 of indigents' defense services are hereby transferred to and conferred
35 upon the director of indigents' defense services created by this act, except
36 as otherwise provided.

37 (b) The director of indigents' defense services created by this act shall
38 be the successor in every way to the powers, duties and functions of the
39 existing state board of indigents' defense services and the existing state
40 director of indigents' defense services, in which the same were vested
41 prior to the effective date of this act. Every act performed in the exercise
42 of such powers, duties and functions by or under the authority of the
43 director of indigents' defense services created by this act shall be deemed

shall

*Senate Ways & Means
February 12, 1996
Attachment 1*

1 to have the same force and effect as if performed by the state board of
2 indigents' defense and the state director of indigents' defense services in
3 which such functions, powers and duties were vested prior to the effective
4 date of this act.

5 (c) When the state board of indigents' defense services, or words of
6 like effect, is referred to or designated by a statute, contract or other
7 document, such reference or designation shall be deemed to apply to the
8 director of indigents' defense created by this act. When the state director
9 of indigents' defense services, or words of like effect, is referred to or
10 designated by statute, contract or other document, such reference or des-
11 ignation shall be deemed to apply to the director of indigents' defense
12 services created by this act.

13 (d) All orders and directives of the state board of indigents' defense
14 services and the state director of indigents' defense services in existence
15 on the effective date of this act, shall continue to be effective and shall
16 be deemed to be orders and directives of the director of indigents' de-
17 fense services created by this act, until revised, amended, revoked or
18 nullified pursuant to law.

19 (e) The director of indigents' defense services shall be a continuation
20 of the state board of indigents' defense services created by K.S.A. 22-
21 4519 and amendments thereto and the state director of indigents' defense
22 services created by K.S.A. 22-4524 and amendments thereto.

23 (f) All rules and regulations of the state board of indigents' defense
24 services shall continue to be effective and shall be deemed rules and
25 regulations of the division of indigents' defense services until revised,
26 amended or nullified pursuant to law.

27 Sec. 4. K.S.A. 21-4610 is hereby amended to read as follows: 21-
28 4610. (a) Except as required by subsection (d), nothing in this section
29 shall be construed to limit the authority of the court to impose or modify
30 any general or specific conditions of probation, suspension of sentence
31 or assignment to a community correctional services program, except that
32 the court shall condition any order granting probation, suspension of sen-
33 tence or assignment to a community correctional services program on the
34 defendant's obedience of the laws of the United States, the state of Kansas
35 and any other jurisdiction to the laws of which the defendant may be
36 subject.

37 (b) The court services officer or community correctional services of-
38 ficer may recommend, and the court may order, the imposition of any
39 conditions of probation, suspension of sentence or assignment to a com-
40 munity correctional services program. For crimes committed on or after
41 July 1, 1993, in presumptive nonprison cases, the court services officer
42 or community correctional services officer may recommend, and the
43 court may order, the imposition of any conditions of probation or assign-

1 ment to a community correctional services program. The court may at
 2 any time order the modification of such conditions, after notice to the
 3 court services officer or community correctional services officer and an
 4 opportunity for such officer to be heard thereon. The court shall cause a
 5 copy of any such order to be delivered to the court services officer and
 6 the probationer or to the community correctional services officer and the
 7 community corrections participant, as the case may be.

8 (c) The court may impose any conditions of probation, suspension of
 9 sentence or assignment to a community correctional services program
 10 that the court deems proper, including but not limited to requiring that
 11 the defendant:

12 (1) Avoid such injurious or vicious habits, as directed by the court,
 13 court services officer or community correctional services officer;

14 (2) avoid such persons or places of disreputable or harmful character,
 15 as directed by the court, court services officer or community correctional
 16 services officer;

17 (3) report to the court services officer or community correctional
 18 services officer as directed;

19 (4) permit the court services officer or community correctional serv-
 20 ices officer to visit the defendant at home or elsewhere;

21 (5) work faithfully at suitable employment insofar as possible;

22 (6) remain within the state unless the court grants permission to
 23 leave;

24 (7) pay a fine or costs, applicable to the offense, in one or several
 25 sums and in the manner as directed by the court;

26 (8) support the defendant's dependents;

27 (9) reside in a residential facility located in the community and par-
 28 ticipate in educational, counseling, work and other correctional or reha-
 29 bilitative programs;

30 (10) perform community or public service work for local govern-
 31 mental agencies, private corporations organized not for profit, or chari-
 32 table or social service organizations performing services for the commu-
 33 nity;

34 (11) perform services under a system of day fines whereby the de-
 35 fendant is required to satisfy fines, costs or reparation or restitution ob-
 36 ligations by performing services for a period of days determined by the
 37 court on the basis of ability to pay, standard of living, support obligations
 38 and other factors;

39 (12) participate in a house arrest program pursuant to K.S.A. 21-
 40 4603b, and amendments thereto; or

41 (13) in felony cases, except for violations of K.S.A. 8-1567 and amend-
 42 ments thereto, be confined in a county jail not to exceed 30 days, which
 need not be served consecutively.

Rewrite Bill To

1. Provide reimbursement and recovery of costs based on the uniform, statewide schedule of costs.

2. Assigned counsel or other defense services could petition court for reimbursement of extraordinary expenses beyond those contemplated by the uniform schedule.

3. Give director of indigent defense authority to recover costs from indigent defendants and allow indigent defendants petition court for waiver of unpaid obligations.

E-1

1-4

1 (d) In addition to any other conditions of probation, suspension of
2 sentence or assignment to a community correctional services program,
3 the court shall order the defendant to comply with each of the following
4 conditions:

5 (1) Make reparation or restitution to the aggrieved party for the dam-
6 age or loss caused by the defendant's crime, in an amount and manner
7 determined by the court and to the person specified by the court, unless
8 the court finds compelling circumstances which would render a plan of
9 restitution unworkable. If the court finds a plan of restitution unworkable,
10 the court shall state on the record in detail the reasons therefor;

11 (2) pay the probation or community correctional services fee pursu-
12 ant to K.S.A. 21-4610a, and amendments thereto; and

13 (3) reimburse the state general fund for all or a part of the expendi-
14 tures by the state board director of indigents' defense services to provide
15 counsel and other defense services to the defendant. In determining the
16 amount and method of payment of such sum, the court shall take account
17 of the financial resources of the defendant and the nature of the burden
18 that payment of such sum will impose. A defendant who has been re-
19 quired to pay such sum and who is not willfully in default in the payment
20 thereof may at any time petition the court which sentenced the defendant
21 to waive payment of such sum or of any unpaid portion thereof. If it
22 appears to the satisfaction of the court that payment of the amount due
23 will impose manifest hardship on the defendant or the defendant's im-
24 mediate family, the court may waive payment of all or part of the amount
25 due or modify the method of payment.

based on the uniform, statewide schedule of
the costs for legal services of indigent
defense adopted under subsection (c) of
K.S.A. 22-4522 and amendments thereto

26 Sec. 5. K.S.A. 22-2805 is hereby amended to read as follows: 22-
27 2805. (a) If it appears by affidavit that the testimony of a person is material
28 in any criminal proceeding, and it is shown that it may become imprac-
29 ticable to secure the witness' presence by subpoena, the court or magis-
30 trate may require the witness to give bond in an amount fixed by the court
31 or magistrate, or to comply with other conditions to assure the witness'
32 appearance as a witness. If a person fails to comply with the conditions
33 of release, the court or magistrate may, after hearing, commit the witness
34 to the custody of the sheriff or marshal pending final disposition of the
35 proceeding in which the testimony is needed. A material witness shall not
36 be held in custody more than 30 days unless the court or magistrate, after
37 hearing, determines that there is good cause to hold the witness for an
38 additional period of not more than 30 days. No material witness shall be
39 detained because of inability to comply with any condition of release if
40 the testimony of the witness can be secured for use at trial by deposition,
41 and further detention is not necessary to prevent a failure of justice.
42 Release may be delayed for a reasonable time until the deposition of the
43 witness can be taken pursuant to K.S.A. 22-3211 and amendments thereto.

1 (b) The court or magistrate shall appoint counsel to represent a wit-
2 ness committed to custody pursuant to this section when the court or
3 magistrate determines that the witness is financially unable to employ
4 counsel, based on the same standards as used to determine if a defendant
5 is able to employ counsel. Such appointment shall be from the panel for
6 indigents' defense services or as otherwise prescribed under the appli-
7 cable system for providing legal defense services for indigent persons
8 prescribed by the ~~state board~~ *director* of indigents' defense services for
9 the county or judicial district. The witness may obtain necessary investi-
10 gative, expert and other services in the manner provided by K.S.A. 22-
11 4508 and amendments thereto. Payment for the counsel and other serv-
12 ices shall be made in the manner provided by K.S.A. 22-4507 and
13 amendments thereto.

14 Sec. 6. K.S.A. 22-4501 is hereby amended to read as follows: 22-
15 4501. (a) The judge or judges of the district court of each county shall
16 prepare, and file in the office of the clerk of the district court, a list of
17 attorneys who are eligible for assignment to represent indigent persons
18 accused of crimes, such list to be known as the panel for indigents' de-
19 fense services.

20 (b) Each member of the panel for indigents' defense services shall
21 be available to represent indigent defendants upon the appointment of
22 any judge of the district court of the judicial district in which such mem-
23 ber maintains an office for the practice of law, or any adjacent judicial
24 district. All such appointments shall be in accordance with the applicable
25 system for providing legal defense services for indigent persons pre-
26 scribed by the ~~state board~~ *director* of indigents' defense services for the
27 county or judicial district. A judge of the district court may appoint an
28 attorney who is a member of the panel for indigents' defense services of
29 a county other than the county where the case is pending only after such
30 judge of the district court has found that no member of the panel for
31 indigents' defense services of the county where the case is pending is
32 eligible or qualified to represent the defendant.

33 (c) The panel for indigents' defense services may be amended by the
34 addition of names thereto or the deletion of names therefrom whenever
35 the removal of attorneys to or from the district or any other cause makes
36 such action appropriate, and at least once annually it shall be reviewed
37 and approved by the judge or judges of the district court of the county.

38 (d) The ~~state board~~ *director* of indigents' defense services shall pro-
39 vide by ~~rule and regulation~~ *rules and regulations* for the assignment of
40 attorneys to the panel for indigents' defense services, for the distribution
41 of the list of panel members to the judges of the district court and law
42 enforcement officials of the judicial district, and for the appointment, by
rotation or otherwise, of counsel from the panel for indigents' defense

1 services to represent indigent persons charged with crimes in such cases
2 and under such circumstances as may be required by law.

3 Sec. 7. K.S.A. 22-4502 is hereby amended to read as follows: 22-
4 4502. The ~~state board for~~ *director of* indigents' defense services shall
5 prescribe by ~~rule and regulation~~ *rules and regulations* the procedure to
6 be followed by law enforcement officials in obtaining the services of coun-
7 sel from the panel for indigents' defense services to represent indigent
8 persons detained by such law enforcement officials prior to appearance
9 before a court.

10 Sec. 8. K.S.A. 22-4503 is hereby amended to read as follows: 22-
11 4503. (a) A defendant charged by the state of Kansas in a complaint,
12 information or indictment with any felony is entitled to have the assistance
13 of counsel at every stage of the proceedings against such defendant and
14 a defendant in an extradition proceeding, or a habeas corpus proceeding
15 pursuant to K.S.A. 22-2710 *and amendments thereto*, is entitled to have
16 assistance of counsel at such proceeding. A person subject to an order or
17 commitment pursuant to K.S.A. 22-3428 or 59-2917 *and amendments*
18 *thereto* shall be entitled to the assistance of counsel at every stage of a
19 habeas corpus proceeding brought by such person and the provisions of
20 this section relating to defendants shall be applicable to such persons.

21 (b) If such a defendant appears before any court without counsel to
22 assist and conduct the defendant's defense, it shall be the duty of the
23 court to inform the defendant that such defendant is entitled to counsel
24 ~~and~~ that counsel will be appointed to represent the defendant if the de-
25 fendant is not financially able to employ an attorney. The court shall give
26 the defendant an opportunity to employ counsel of the defendant's own
27 choosing if the defendant states the defendant is able to do so. If the
28 defendant asks to consult with counsel of the defendant's own choosing,
29 the defendant shall be given a reasonable opportunity to do so.

30 (c) If it is determined that the defendant is not able to employ coun-
31 sel, as provided in K.S.A. 22-4504 and amendments thereto, the court
32 shall appoint an attorney from the panel for indigents' defense services
33 or otherwise in accordance with the applicable system for providing legal
34 defense services for indigent persons prescribed by the ~~state board di-~~
35 *rector of* indigents' defense services for the county or judicial district. A
36 record of the proceedings provided for by this section shall be entered in
37 the journal, and any order binding the defendant for trial or directing
38 further detention upon the charge and the journal entry of trial and judg-
39 ment shall recite the substance of such proceedings.

40 (d) Counsel employed by or appointed for the defendant shall have
41 free access to the defendant at all times for the purpose of conferring
42 with the defendant relative to the charge, for advising the defendant re-
43 specting the defendant's plea and for the preparation of the defense, if a

and that defendant will be required to
reimburse the state for the costs of defense
services when the defendant is able to pay
such costs

1 defense is to be made. It is the duty of an attorney appointed by the court
2 to represent a defendant, without charge to such defendant, to inform
3 the defendant fully of the crime charged against the defendant and the
4 penalty therefor, and in all respects fully and fairly to represent the de-
5 fendant in the action.

6 (e) If, after the attorney's appointment, the attorney learns that the
7 defendant has funds or other resources sufficient to enable the defendant
8 to employ counsel, the attorney shall report these facts to the court and
9 ask permission to withdraw from the case or to be permitted to accept
10 compensation for services.

11 Sec. 9. K.S.A. 22-4504 is hereby amended to read as follows: 22-
12 4504. (a) When any defendant who is entitled to have the assistance of
13 counsel, under the provisions of K.S.A. 22-4503 and amendments thereto,
14 claims to be financially unable to employ counsel, the court shall require
15 that the defendant file an affidavit containing such information and in the
16 form as prescribed by rules and regulations adopted by the state board
17 director of indigents' defense services. *In addition to other information*
18 *contained in such affidavit, the affidavit shall contain the defendant's so-*
19 *cial security number. The affidavit shall be accompanied by authorization,*
20 *in form provided by rules and regulations, giving the defendant's author-*
21 *ization for the director to investigate the defendant's credit and wage*
22 *records, state income tax records, vehicle ownership records and real*
23 *property records which are held by state and local governments. The*
24 *court may interrogate the defendant under oath concerning the contents*
25 *of the affidavit and may direct the county or district attorney, sheriff,*
26 *marshal or other officer of the county to investigate and report upon the*
27 *financial condition of the defendant and may also require the production*
28 *of evidence upon the issue of the defendant's financial inability to employ*
29 *counsel.*

and shall contain language informing a defendant claiming indigency that the affidavit is subject to audit and a fraudulent filing of information by the defendant may subject the defendant to additional prosecution.

30 (b) Upon the basis of the defendant's affidavit, the defendant's state-
31 ments under oath, *the findings of the [Office of cost containment]* and such
32 other competent evidence as may be brought to the attention of the court,
33 which shall be made part of the record in the case, the court shall deter-
34 mine whether the defendant is financially unable to employ counsel. *In*
35 *making such determination, the defendant shall be presumed ineligible*
36 *for subsidized defense services, if the defendant is found by the court to:*
37 *(1) Have liquid assets of \$5,000 or more; (2) own two or more motor*
38 *vehicles; (3) own real estate which has appraised value that exceeds ex-*
39 *isting mortgages and liens by \$10,000 or more; and (4) has been able to*
40 *post cash bond of ~~\$1,000,000~~ or more. Also, in making such determination*
41 *the court shall consider the defendant's assets and income; the amount*
42 *needed for the payment of reasonable and necessary expenses incurred,*
3 *or which must be incurred to support the defendant and the defendant's*

director of indigents' defense services

\$1,000

1 immediate family; the anticipated cost of effective representation by em-
 2 ployed counsel, and any property which may have been transferred or
 3 conveyed by the defendant to any person without adequate monetary
 4 consideration after the commission of the alleged crime. *Subject to the*
 5 *other provisions of this subsection (b)*, if the defendant's assets and in-
 6 come are not sufficient to cover the anticipated cost of effective repre-
 7 sentation by employed counsel when the length and complexity of the
 8 anticipated proceedings are taken fully into account, the defendant shall
 9 be determined indigent in full or in part and the court shall appoint an
 10 attorney as provided in K.S.A. 22-4503 and amendments thereto. If the
 11 court determines that the defendant is financially able to employ counsel,
 12 the court shall so advise the defendant and shall give the defendant a
 13 reasonable opportunity to employ an attorney of the defendant's own
 14 choosing. All determinations by a court as to whether a defendant is
 15 financially unable to employ counsel shall be subject to and in accordance
 16 with rules and regulations adopted by the ~~state board~~ director of indi-
 17 gents' defense services under this act.

based on the uniform, statewide schedule of the costs for legal services of indigent defense adopted under subsection (c) of K.S.A. 22-4522 and amendments thereto

18 (c) The court shall inform the defendant for whom counsel is ap-
 19 pointed that the amount expended by the state in providing counsel and
 20 other defense services may be entered as a judgment against the defen-
 21 dant if the defendant is convicted and found to be financially able to pay
 22 the amount, and that an action to recover such amount may be brought
 23 against any person to whom the defendant may have transferred or con-
 24 veyed any of the defendant's property without adequate monetary con-
 25 sideration after the date of the commission of the alleged crime. A de-
 26 termination by the court that the defendant is financially unable to employ
 27 counsel or pay other costs of the defendant's defense may preclude a
 28 recovery from the defendant but may not preclude recovery from any
 29 person to whom the defendant may have transferred or conveyed any
 30 property without adequate monetary consideration after the date of the
 31 commission of the alleged crime. *When the court finds a defendant in-*
 32 *digent and orders appointment of counsel, the court shall: (1) Order the*
 33 *indigent defendant to pay the cost of legal services according to a uniform*
 34 *statewide schedule; and (2) submit both court orders and the supportive*
 35 *affidavit of indigence to the director.*

Insert new language lines 31 to 35 here and delete from lines 31 to 35.

of the costs of legal services if indigent defense adopted under subsection (c) of K.S.A. 22-4522 and amendments thereto

36 (d) If found to be indigent in part, the defendant shall be promptly
 37 informed of the terms under which the defendant may be expected to
 38 pay for counsel. Any payments pursuant to such terms shall apply upon
 39 any judgment entered pursuant to K.S.A. 22-4513 and amendments
 40 thereto. Payments made for services of appointed counsel provided under
 41 K S A 22-4503 and amendments thereto shall be paid to the clerk of the
 42 district court. The clerk of the district court shall remit all moneys re-
 43 ceived as payment for services of appointed counsel under this section to

6-1

1 the ~~state board~~ director of indigents' defense services at least monthly
2 and the ~~board~~ director shall remit all moneys received under this section
3 to the state treasurer at least monthly. Upon receipt of each such remit-
4 tance, the state treasurer shall deposit the entire amount thereof in the
5 state treasury to the credit of the state general fund.

6 (e) The determination that a defendant is indigent or partially indi-
7 gent shall be subject to review at any time by any court before whom the
8 cause is then pending.

9 (f) The ~~state board~~ director of indigents' defense services shall adopt
10 rules and regulations in accordance with K.S.A. 77-415 et seq., and
11 ~~amendments thereto~~, relating to the income, assets and anticipated costs
12 of representation for the purpose of determining whether a defendant is
13 financially able to employ counsel and the ability of a defendant to con-
14 tribute to the cost of the defendant's legal defense services.

based on the uniform, statewide schedule of the costs for legal services of indigent defense adopted under subsection (c) of K.S.A. 22-4522 and amendments thereto

by

15 New Sec. 10. The judicial administrator shall compile and report an-
16 nually by judicial district and judge the following:

- 17 (a) (1) Amounts payable for indigent defense;
- 18 (2) amounts specifically court-ordered for investigative, expert or
- 19 other defense services; and
- 20 (3) amounts and details of exceptional claims by assigned counsel.

21 (b) Recovery of costs for indigent defense from indigent defendants.

22 Sec. 11. K.S.A. 22-4505 is hereby amended to read as follows: 22-
23 4505. (a) When a defendant has been convicted in the district court of
24 any felony, the court shall inform the defendant of such defendant's right
25 to appeal the conviction to the appellate court having jurisdiction and that
26 if the defendant is financially unable to pay the costs of such appeal such
27 defendant may request the court to appoint an attorney to represent the
28 defendant on appeal and to direct that the defendant be supplied with a
29 transcript of the trial record.

on expenditures and recovery of costs for indigent defense including specifically:
(a) Total expenditures for indigent defense, including separately expenditures for legal services and for other defense services;
(b) court-ordered expenditures for investigative, expert or other defense services;
(c) the number and amount of extraordinary claims for reimbursement of legal services and other defense services approved by the court; and
(d) indigent defense costs recovered from indigent defendants.

30 (b) If the defendant files an affidavit stating that the defendant in-
31 tends to take an appeal in the case and if the court determines, as provided
32 in K.S.A. 22-4504 and amendments thereto, that the defendant is not
33 financially able to employ counsel, the court shall appoint counsel from
34 the panel for indigents' defense services or otherwise in accordance with
35 the applicable system for providing legal defense services for indigent
36 persons prescribed by the ~~state board~~ director of indigents' defense ser-
37 vices, to represent the defendant and to perfect and handle the appeal. If
38 the defendant files a verified motion for transcript stating that a transcript
39 of the trial record is necessary to enable the defendant to prosecute the
40 appeal and that the defendant is not financially able to pay the cost of
41 procuring such transcript, and if the court finds that the statements con-
42 tained therein are true, the court shall order that such transcript be sup-
43 plied to the defendant as provided in K.S.A. 22-4509 and amendments

1 thereto and paid for by the ~~state board~~ director of indigents' defense
2 services pursuant to claims submitted therefor.

3 (c) Upon an appeal or petition for certiorari addressed to the supreme
4 court of the United States, if the defendant is without means to pay the
5 cost of making and forwarding the necessary records, the supreme court
6 of Kansas may by order provide for the furnishing of necessary records.

7 Sec. 12. K.S.A. 22-4506 is hereby amended to read as follows: 22-
8 4506. (a) Whenever any person who is in custody under a sentence of
9 imprisonment upon conviction of a felony files a petition for writ of ha-
10 beas corpus or a motion attacking sentence under K.S.A. 60-1507 and
11 amendments thereto and files with such petition or motion such person's
12 affidavit stating that the petition or motion is filed in good faith and that
13 such person is financially unable to pay the costs of such action and to
14 employ counsel therefor, the court shall make a preliminary examination
15 of the petition or motion and the supporting papers.

16 (b) If the court finds that the petition or motion presents substantial
17 questions of law or triable issues of fact and if the petitioner or movant
18 has been or is thereafter determined to be an indigent person as provided
19 in K.S.A. 22-4504 and amendments thereto, the court shall appoint coun-
20 sel from the panel for indigents' defense services or otherwise in accor-
21 dance with the applicable system for providing legal defense services for
22 indigent persons prescribed by the ~~state board~~ director of indigents' de-
23 fense services, to assist such person and authorize the action to be filed
24 without a deposit of security for costs. If the petition or motion in such
25 case raises questions shown by the trial record, the court shall order that
26 the petitioner or movant be supplied with a transcript of the trial pro-
27 ceedings, or so much thereof as may be necessary to present the issue,
28 without cost to such person.

29 (c) If an appeal is taken in such action and if the trial court finds that
30 the petitioner or movant is an indigent person, the trial court shall appoint
31 counsel to conduct the appeal, order that the appellant be supplied with
32 a record of the proceedings or so much thereof as such counsel deter-
33 mines to be necessary and order that the deposit of security for costs be
34 waived.

35 Sec. 13. K.S.A. 22-4507 is hereby amended to read as follows: 22-
36 4507. (a) An attorney, other than a public defender or assistant public
37 defender or contract counsel, who performs services for an indigent per-
38 son, as provided by this act, shall at the conclusion of such service or any
39 part thereof be entitled to compensation for such services and to be re-
40 imbursement for expenses reasonably incurred by such person in performing
41 such services. Compensation for services shall be paid in accordance with
42 standards and guidelines contained in rules and regulations adopted by
43 the ~~state board~~ director of indigents' defense services under this section.

1 (b) Claims for compensation and reimbursement shall be certified by
2 the claimant. In accordance with standards and guidelines adopted by the
3 ~~state board~~ *director* of indigents' defense services under this section, all
4 such claims shall be reviewed and approved by one or more judges of the
5 district court before whom the service was performed, or, in the case of
6 proceedings in the court of appeals, by the chief judge of the court of
7 appeals and in the case of proceedings in the supreme court, by the
8 departmental justice for the department in which the appeal originated.
9 Each claim shall be supported by a written statement, specifying in detail
10 the time expended, the services rendered, the expenses incurred in con-
11 nection with the case and any other compensation or reimbursement
12 received. When properly certified and reviewed and approved, each claim
13 for compensation and reimbursement shall be filed in the office of the
14 ~~state board~~ *director* of indigents' defense services. If the claims meet the
15 standards established by the board, the ~~board~~ *director* shall authorize
16 payment of the claim.

17 (c) If the ~~state board~~ *director* of indigents' defense services deter-
18 mines that the appropriations for indigents' defense services or the mon-
19 eys allocated by the ~~board~~ *director* for a county or judicial district will be
20 insufficient in any fiscal year to pay in full claims filed and reasonably
21 anticipated to be filed in such year under this section, the ~~board~~ *director*
22 may adopt a formula for prorating the payment of pending and anticipated
23 claims under this section.

24 (d) The ~~state board~~ *director* of indigents' defense services may make
25 expenditures for payment of claims filed under this section from appro-
26 priations for the current fiscal year regardless of when the services were
27 rendered.

28 (e) The ~~state board~~ *director* of indigents' defense services shall adopt
29 rules and regulations prescribing standards and guidelines governing the
30 filing, processing and payment of claims under this section.

31 Sec. 14. K.S.A. 22-4508 is hereby amended to read as follows: 22-
32 4508. An attorney other than a public defender who acts as counsel for a
33 defendant who is financially unable to obtain investigative, expert or other
34 services necessary to an adequate defense in the defendant's case may
35 request them in an *ex parte* application addressed to the district court
36 where the action is pending. Upon finding, after appropriate inquiry in
37 the *ex parte* proceeding, that the services are necessary and that the de-
38 fendant is financially unable to obtain them, the district court shall au-
39 thorize counsel to obtain the services on behalf of the defendant. The
40 district court may, in the interests of justice, and upon a finding that
41 timely procurement of necessary services could not await prior authori-
42 zation, ratify such services after they have been obtained. Within the
3 standards and guidelines adopted by the ~~state board~~ *director* of indigents'

1 defense services, the district court shall determine reasonable compen-
 2 sation for the services and approve payment to the organization or person
 3 who rendered them upon the filing of a certified claim for compensation
 4 supported by a written statement specifying the time expended, services
 5 rendered, expenses incurred on behalf of the defendant, and the com-
 6 pensation received in the same case or for the same services from any
 7 other source. Payment shall be made in the manner provided in K.S.A.
 8 22-4507 and amendments thereto. *The court shall order the defendant to*
 9 *pay the cost of defense services in accordance with a uniform ~~schedule~~*
 10 *which shall be established by the director. The court shall submit such*
 11 *order requiring reimbursement by the defendant to the director.*

**, statewide schedule of the cost for legal
 services of indigent defense adopted under
 subsection (c) of K.S.A. 22-4522 and
 amendments thereto**

12 Sec. 15. K.S.A. 22-4512a is hereby amended to read as follows: 22-
 13 4512a. Whenever a court appoints counsel for an indigent defendant or
 14 a material witness held in custody or authorizes any expenditure which
 15 may be a charge against the ~~state board~~ director of indigents' defense
 16 services, the court shall promptly forward to the ~~board~~ director a copy of
 17 the order making the appointment or authorizing the expenditure, to-
 18 gether with any other information and in the form required by rules and
 19 regulations of the ~~board~~ director.

20 Sec. 16. K.S.A. 22-4513 is hereby amended to read as follows: 22-
 21 4513. (a) Within 30 days after any expenditure has been made by the ~~state~~
 22 ~~board~~ director of indigents' defense services to provide counsel and other
 23 defense services to any defendant and such defendant has been convicted,
 24 the ~~state~~ director of indigents' defense services may send to the county
 25 or district attorney of the county where the defendant was convicted a
 26 notice stating the name of the defendant and the amount of the expend-
 27 iture. The county or district attorney, in such attorney's discretion, may
 28 petition the district court to require the defendant to repay to the state
 29 all or a part of the amount expended by the ~~state board~~ director of indi-
 30 gents' defense services on behalf of such defendant. Subject to the pro-
 31 visions of subsection (b), the procedure for the filing of the petition and
 32 subsequent procedure to be followed in the action shall be the same as
 33 in other civil actions pursuant to chapter 60 of the Kansas Statutes An-
 34 notated, except that no docket fee shall be charged for the filing of the
 35 petition. At the hearing on the petition the court shall determine whether
 36 or not the defendant is or will be able to repay all or a part of the ex-
 37 penditures paid by the ~~state board~~ director of indigents' defense services
 38 on behalf of the defendant.

39 (b) In determining the amount and method of payment of such sum,
 40 the court shall take account of the financial resources of the defendant
 41 and the nature of the burden that payment of such sum will impose. A
 42 defendant who has been required to pay such sum and who is not willfully
 43 in default in the payment thereof may at any time petition the court which

1 sentenced the defendant to waive payment of such sum or of any unpaid
2 portion thereof. If it appears to the satisfaction of the court that payment
3 of the amount due will impose manifest hardship on the defendant or the
4 defendant's immediate family, the court may waive payment of all or part
5 of the amount due or modify the method of payment.

6 (c) Whenever any expenditure has been made by the ~~state board di-~~
7 ~~rector~~ of indigents' defense services to provide counsel and other defense
8 services to any defendant, a sum equal to such expenditure may be re-
9 covered by the state of Kansas for the benefit of the state general fund
10 from any persons to whom the indigent defendant shall have transferred
11 any of the defendant's property without adequate monetary consideration
12 after the commission of the alleged crime, to the extent of the value of
13 such transfer, and such persons are hereby made liable to reimburse the
14 state of Kansas for such expenditures with interest at 6% per annum. Any
15 action to recover judgment for such expenditures shall be prosecuted by
16 the attorney general, who may require the assistance of the county attor-
17 ney of the county in which the action is to be filed, and such action shall
18 be governed by the provisions of the code of civil procedure relating to
19 actions for the recovery of money. No action shall be brought against any
20 person under the provisions of this section to recover for sums expended
21 on behalf of an indigent defendant, unless such action shall have been
22 filed within two years after the date of the expenditure by the ~~state board~~
23 ~~director~~ of indigents' defense services.

24 Sec. 17. K.S.A. 22-4514a is hereby amended to read as follows: 22-
25 4514a. (a) Any nonprofit corporation, organized under the laws of the
26 state of Kansas for the purpose of providing legal services to indigent
27 inmates of Kansas correctional institutions may submit its annual oper-
28 ating budget for the next fiscal year of the state, including salaries and all
29 other expenses of operation, to the ~~state board director~~ of indigents' de-
30 fense services. Such budget shall set forth the maximum obligation of
31 financial aid and contributions proposed for payment by the ~~state board~~
32 ~~director~~ of indigents' defense services and the availability of any additional
33 funds from the federal government and other sources to meet such op-
34 erating costs.

35 (b) If such budget is approved by the ~~state board director~~ of indigents'
36 defense services, on July 1 of the next fiscal year the amount of the max-
37 imum obligation of financial aid to be paid by the ~~state board director~~ of
38 indigents' defense services as set forth in the approved budget may then
39 be paid in a lump sum to the corporation.

40 (c) After the end of the fiscal year any such nonprofit corporation
41 shall furnish to the post auditor and the director of the budget an audited
42 statement of actual expenditures incurred. Any balance remaining unused
43 shall be applied to the next budget for the purposes specified in this

1 section.

2 Sec. 18. K.S.A. 22-4520 is hereby amended to read as follows: 22-
3 4520. The ~~state board~~ director of indigents' defense services shall not
4 make any decision regarding the handling of any case nor interfere with
5 the appointed counsel, contract counsel or public defender, or any mem-
6 ber of the staff thereof, in carrying out ~~their professional~~ such director's
7 duties.

8 Sec. 19. K.S.A. 22-4522 is hereby amended to read as follows: 22-
9 4522. The ~~state board~~ director of indigents' defense services shall:

10 (a) Provide, supervise and coordinate, in the most efficient and eco-
11 nomical manner possible, the constitutionally and statutorily required
12 counsel and related services for each indigent person accused of a felony
13 and for such other indigent persons as prescribed by statute;

14 (b) establish, in each county or combination of counties designated
15 by the ~~board~~ director, a system of appointed counsel, contractual arrange-
16 ments for providing contract counsel or public defender offices, or any
17 combination thereof, on a full- or part-time basis, for the delivery of legal
18 services for indigent persons accused of felonies;

19 (c) ~~approve an annual operating budget for the board and submit that~~
20 ~~budget as provided in K.S.A. 75-3717;~~

21 (d) (c) adopt rules and regulations in accordance with K.S.A. 77-415
22 et seq., and amendments thereto, which are necessary for the operation
23 of the ~~board [director]~~ and the performance of its duties and for the guid-
24 ance of appointed counsel, contract counsel and public defenders, in-
25 cluding but not limited to:

26 (1) Standards for entitlement to legal representation at public ex-
27 pense;

28 (2) ~~standards and guidelines for compensation of appointed counsel~~
29 ~~and investigative, expert and other services within the limits of appropri-~~
30 ~~ations;~~

31 (3) criteria for employing contract counsel; and

32 (4) qualifications, standards and guidelines for public defenders, ap-
33 pointed counsel and contract counsel;

34 (e) (d) prepare and submit to the governor and legislature an annual
35 report on the operations of the ~~board [director]; and~~

36 (f) ~~hold a hearing before changing the system for providing legal ser-~~
37 ~~vices for indigent persons accused of felonies in any county or judicial~~
38 ~~district if such a hearing is requested by two or more members of the~~
39 ~~board.~~

40 Sec. 20. K.S.A. 22-4523 is hereby amended to read as follows: 22-
41 4523. The ~~state board~~ director of indigents' defense services may:

42 (a) Accept the services of volunteer workers and consultants at no
43 compensation other than reimbursement of actual and necessary ex-

division of indigents' defense services

a uniform, statewide schedule of the costs of legal services for indigent defense by severity of charge and extent of proceedings and a uniform statewide schedule for the cost of other defense services

division of indigents' defense services;

(e) collect payments from indigent defendants as ordered by the court, when necessary, through utilization of debt collection procedures authorized in K.S.A. 75-6201 et seq.; and
(f) perform random audits on affidavits of indigence, advise the court if a defendant claiming indigency is not eligible for defense service under state guidelines for the determination of indigency and provide to appropriate state and local prosecutors any evidence of fraud in claims of indigency; and
(g)

1 penses;

(b) prepare and publish statistical and case studies and other data pertinent to the legal representation of indigent persons;

4 (c) conduct programs having a general objective of training and ed-
5 ucating attorneys and other persons who are involved in the legal repre-
6 sentation of indigent persons;

7 (d) appoint public defenders and provide for the establishment and
8 staffing of public defender offices;

9 (e) enter into contracts pursuant to competitive bids or by negotia-
10 tion, as determined and administered by the ~~board~~ *director*, with one or
11 more attorneys or professional corporations providing legal services, or
12 any combination thereof, to provide for legal defense services for indigent
13 persons, and no such contract shall be subject to the provisions of K.S.A.
14 75-3739 and amendments thereto;

15 (f) enter into contracts with cities or counties to provide, at the ex-
16 pense of the city or county, for the defense of misdemeanors or other
17 defense services required to be provided at public expense;

18 (g) provide technical aid and assistance to counsel providing legal
19 representation to indigent persons, including assistance on appeals; and

20 (h) accept and expend governmental and private grants.

21 Sec. 21. K.S.A. 22-4524 is hereby amended to read as follows: 22-
22 4524. (a) There is hereby created the position of state director of indi-
23 gents' defense services. The director shall be in the unclassified service
24 under the Kansas civil service act, shall be appointed by the state board
25 of indigents' defense services and shall devote full time to the perform-
26 ance of the duties of the office of director.

27 (b) ~~The state director of indigents' defense services; the assistant di-~~
28 ~~rector and~~ All attorneys appointed or employed by the state board *direc-*
29 *tor* of indigents' defense services shall be in the unclassified service under
30 the Kansas civil service act. All other ~~officers and~~ employees of the ~~board~~
31 *division of indigents' defense services* shall be in the classified service.

32 (c) Each person who has been employed continuously for at least the
33 six-month period immediately prior to the effective date of this act who
34 is an officer or employee of the board, which is placed in the classified
35 service under the Kansas civil service act by this act, shall continue in
36 such position and shall attain permanent status in that classified position
37 without examination and without a probationary period. Such person shall
38 retain all retirement benefits earned prior to the effective date of this act
39 and such person's service shall be deemed to have been continuous.

40 Sec. 22. K.S.A. 22-4525 is hereby amended to read as follows: 22-
41 4525. The state director of indigents' defense services shall be chief ex-
42 ecutive officer of the state board of indigents' defense services. In addition
thereto, the director shall:

1-16

1 (a) Supervise the operation, policies and procedures of the office of the
2 ~~board~~ *division of indigents' defense services*;

3 (b) prepare and submit to the ~~board~~ *governor* an annual report of the
4 operation of the ~~office~~ in such form as the ~~board~~ *governor* directs; and

5 (c) perform such other duties as the ~~board~~ *governor* requires.

6 Sec. 23. K.S.A. 22-4526 is hereby amended to read as follows: 22-
7 4526. All moneys received by the ~~state board~~ *director* of indigents' de-
8 fense services under contracts entered into with one or more cities or
9 counties under subsection (f) of K.S.A. 22-4523 and amendments thereto
10 shall be remitted by the ~~board~~ *director* to the state treasurer at least
11 monthly. Upon receipt of each such remittance, the state treasurer shall
12 deposit the entire amount thereof in the state treasury to the credit of
13 the indigents defense services fund.

14 Sec. 24. K.S.A. 22-4527 is hereby amended to read as follows: 22-
15 4527. (a) The ~~board of supervisors of panels to aid indigent defendants~~
16 ~~created by K.S.A. 22-4514~~ is hereby abolished.

17 (b) On the effective date of this act, all ~~officers~~ and employees who
18 were engaged immediately preceding the effective date of this act in the
19 performance of powers, duties and functions of the board of ~~supervisors~~
20 ~~of panels to aid indigent defendants or public defenders indigents' defense~~
21 ~~services~~ and who, in the opinion of the ~~state board~~ *director* of indigents'
22 defense services, are necessary to perform the powers, duties and func-
23 tions of the ~~state board~~ *division* of indigents' defense services ~~under this~~
24 ~~act~~, may become ~~officers~~ and employees of the ~~state board~~ *division* of
25 indigents' defense services. Any such ~~officer~~ or employee shall retain all
26 retirement benefits and all rights which had accrued to or vested in such
27 ~~officer~~ or employee in the unclassified service under the Kansas civil
28 service act immediately preceding the effective date of this act, and the
29 service of each such ~~officer~~ and employee shall be deemed to have been
30 continuous. All transfers and any abolishment of positions of personnel
31 shall be in accordance with law and applicable rules and regulations.

32 (c) All ~~rules and regulations, orders, directives and standards~~ of the
33 ~~board of supervisors of panels to aid indigent defendants or of the su-~~
34 ~~preme court relating to powers, duties and functions transferred to or~~
35 ~~imposed upon the state board of indigents' defense services; which rules~~
36 ~~and regulations, orders, directives and standards were in existence im-~~
37 ~~mediately preceding the effective date of this act, shall continue to be~~
38 ~~effective and shall be deemed to be the rules and regulations, orders,~~
39 ~~directives and standards of the state board of indigents' defense services~~
40 ~~until amended, revoked or nullified pursuant to law.~~

41 (d) The system providing legal defense services for indigent persons
42 which is in existence and effect in each county and judicial district im-
43 mediately preceding the effective date of this act shall continue in exis-

division

1-17

1 tence and effect subject to change by the state board of indigents' defense
2 services in accordance with this act.

3 (e) (b) On and after the effective date of this act, all books, records
4 and other property which relate to providing legal defense services for
5 indigent persons and belonging to the ~~supreme court, the board of su-~~
6 ~~perisors of panels to aid indigent defendants or offices of public defend-~~
7 ~~ers state board of indigents' defense services~~ immediately preceding the
8 effective date of this act shall become the property of the ~~state board~~
9 ~~director~~ of indigents' defense services.

10 (f) ~~Whenever the board of supervisors of panels to aid indigent de-~~
11 ~~fendants is mentioned by statute, contract or other document, the ref-~~
12 ~~erence shall be deemed to apply to the state board of indigents' defense~~
13 ~~services.~~

14 Sec. 25. K.S.A. 22-4528 is hereby amended to read as follows: 22-
15 4528. The provisions of ~~K.S.A. 22-4501 to 22-4518, inclusive, and amend-~~
16 ~~ments thereto, and K.S.A. 22-4510 to 22-4528, inclusive, this act shall be~~
17 construed together and may be cited as the indigents' defense services
18 act.

19 Sec. 26. K.S.A. 28-172b is hereby amended to read as follows: 28-
20 172b. (a) There is hereby established in the state treasury an indigents'
21 defense services fund.

22 (b) The clerk of the district court shall charge a fee of \$.50 in each
23 criminal case, to be deducted from the docket fee as provided in K.S.A.
24 28-172a and amendments thereto and shall charge a fee of \$.50 in each
25 case pursuant to the Kansas code for care of children or the Kansas ju-
26 venile offenders code and each mental illness, drug abuse or alcoholism
27 treatment action as provided by subsection (d) of K.S.A. 28-170 and
28 amendments thereto. The clerk of the district court, at least monthly,
29 shall pay all such fees received to the state treasurer who shall deposit
30 the entire amount in the state treasury and credit it to the indigents'
31 defense services fund.

32 (c) Moneys in the indigents' defense services fund shall be used ex-
33 clusively to provide counsel and related services for indigent defendants.
34 Expenditures from such fund shall be made in accordance with appro-
35 priation acts upon warrants of the director of accounts and reports issued
36 pursuant to vouchers approved by the ~~chairperson of the state board~~
37 ~~director~~ of indigents' defense services ~~or a person designated by the chair-~~
38 ~~person.~~

39 Sec. 27. K.S.A. 74-7320 is hereby amended to read as follows: 74-
40 7320. Upon the receipt of any moneys pursuant to K.S.A. 74-7319 and
41 amendments thereto, the crime victims compensation board shall deposit
42 the entire amount in a separate escrow account to be used only as follows:

81-1

1 (a) Upon dismissal of charges against the accused person or upon
2 acquittal of the accused person, the board shall promptly pay the entire
3 amount to such person, or such person's representatives or assignees.

4 (b) Upon conviction of the accused person or if the accused person
5 has already been convicted, the board shall promptly distribute the entire
6 amount and any future moneys paid to the board under K.S.A. 74-7319
7 and amendments thereto as follows:

8 (1) First, to pay any restitution ordered by the court or by the Kansas
9 parole board to be paid by the convicted person to the person directed
10 by the court or board;

11 (2) if any moneys remain after payment pursuant to ~~subsection (b)(1)~~,
12 to repay any amount expended by the ~~state board director~~ of indigents'
13 defense services on behalf of the convicted person in defending prose-
14 cution for the crime, including appeals;

15 (3) if any moneys remain after payment pursuant to ~~subsections (b)(1)~~
16 and (2), to pay any court costs assessed against the convicted person in
17 proceedings for prosecution for the crime, including appellate proceed-
18 ings;

19 (4) if any moneys remain after payment pursuant to ~~subsections~~
20 ~~(b)(1)~~, (2) and (3), to pay compensation pursuant to K.S.A. 74-7321 and
21 amendments thereto; and

22 (5) if any moneys remain after payment pursuant to ~~subsections~~
23 ~~(b)(1)~~, (2), (3) and (4), to pay crime victims compensation pursuant to
24 K.S.A. 74-7301 through 74-7318 and amendments thereto, for which pur-
25 pose such moneys shall be deposited in the state treasury and credited to
26 the state general fund.

27 Sec. 28. K.S.A. 1995 Supp. 75-4352 is hereby amended to read as
28 follows: 75-4352. (a) All interpreters appointed under the provisions of
29 this act shall be appointed by the judge if the appearance is before any
30 court or by the chairman or presiding or executive officer of any board,
31 commission or agency by which the proceeding involving the person is
32 being conducted. The court or agency conducting the proceeding shall
33 determine and fix a reasonable fee for the services of the interpreter and
34 may provide for the payment of such costs out of funds appropriated for
35 the operation of the courts and agencies. At no time shall the fees for
36 interpreter services be assessed against the person whose primary lan-
37 guage is one other than English or who is deaf, hard of hearing or speech
38 impaired.

39 (b) Fees for interpreters paid by the ~~state board director~~ of indigents'
40 defense services shall be in accordance with standards adopted by such
41 ~~board director~~.

42 ~~Sec. 29.~~³⁰ K.S.A. 21-4610, 22-2805, 22-4501, 22-4502, 22-4503, 22-
43 4504, 22-4505, 22-4506, 22-4507, 22-4508, 22-4512, 22-4512a, 22-4513,

New Sec. 29.--See Attached

Sec. 29. (a) The administrative judge of each judicial district shall report to the office of judicial administration on an annual basis the following:

(1) The number of affidavits of indigency considered by each judge hearing cases in that judicial district; and

(2) of the affidavits of indigency considered, the number in which the applicant is determined to be indigent and the number in which the applicant is found to be partially indigent.

(b) The division of indigents' defense services shall report on an annual basis, by judicial district and judge, the following:

(1) The number of cases in which a defendant is represented by either a division of indigents' defense services attorney or by assigned counsel and no current valid affidavit of indigency exists;

(2) the number of determinations of indigency or partial indigency later determined to be unsupported by the appropriate documentation or determined to be false; and

(3) the amount of money recovered from those defendants determined to be partially indigent for whom the division of indigents' services provides legal services and who are ordered to make payments for those services.

1 22-4514a, 22-4519, 22-4520, 22-4521, 22-4522, 22-4523, 22-4524, 22-
2 4525, 22-4526, 22-4527, 22-4528, 28-172b and 74-7320 and K.S.A. 1995
3 Supp. 75-4352 are hereby repealed.
4 Sec. 20. This act shall take effect and be in force from and after its
5 publication in the statute book.

1-20


WICHITA STATE UNIVERSITY*Hugo Wall School of Urban & Public Affairs*

February 1996

The Honorable Dave Kerr
Chairman
Senate Committee on Ways and Means
State Capitol
Topeka, Ks 66612

Dear Chairman Kerr:

This letter is in response to your request that I review and comment on S.B. No. 557, which was drafted in response to a study I directed last summer entitled "Indigent Defense in Kansas: A Report on State Policy and Management."

As drafted S.B. 557 proposes changes that are intended to: 1) realign indigent defense as an executive agency of state government; and 2) make indigent defense more efficient and economical. I will comment on these objectives separately.

Realign Indigent Defense as an Executive Agency of State Government

S.B. 557 proposes that the Board of Indigents' Defense Services be abolished and that the agency be made a division in the Kansas Department of Administration. Authority formerly lodged with the board would be assigned to the director of the division who would be appointed by and serve at the pleasure of the governor.

This proposed change is sound, would achieve the objective of realignment, and would address problems identified in my study.

While I do not know of an ideal placement for the agency within the executive branch, placement as a division within the Department of Administration makes sense for at least four reasons. First, indigent defense would be administered in a departmental environment which has concern for efficiency and economy, as well as quality services. Second, improving cost recovery for indigent defense will require close cooperation with the debt collection unit in the Department of Administration and access to data held by other cabinet-level departments. Third, improving management of indigent defense will require automated information management and enhanced computer usage, both of which will require cooperation with units within the Department of Administration. Finally, placement in the Department of Administration would preclude the necessity of reinventing the wheel in establishing simple management practices—which might possibly be necessary in a somewhat new, independent agency.

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At the same time, Governor Graves in his letter of December 29, 1995, expressed a preference that the board be abolished and indigent defense be established as an independent agency with an executive director appointed by and accountable to the governor. Further, Deputy Secretary of Administration Jeff Wagaman expressed extreme reluctance to placement of indigent defense in the department. Your committee may want to defer to the preferences of the administration on the issue of placement.

In sum, either option for indigent defense, as a division within the Department of Administration or as an independent agency would accomplish the objective of realigning indigent defense as an executive agency. I advise consultation with the governor and the secretary of administration before the committee resolves the issue of placement and considers action on S.B. 557.

Striking redundant language is recommended in New Sec. 2, p. 1, lines 29 and 30, as follows: on line 29, strike language after "and" through "shall" on line 30.

Other minor amendments in language are recommended as follows:

- 1) on p. 14, line 23: strike "director" and insert "division of indigents' defense services."
- 2) on p. 14, line 35: strike "director" and insert "division of indigents' defense services."
- 3) on p. 16, line 1: strike "office of the."
- 4) on p. 16, line 4: strike "office" and insert "division."

Make Indigent Defense More Efficient and Economical

S.B. 557 incorporates a number of suggestions made in my study to make the management of indigent defense more efficient and economical. Most of these proposed changes are intended to emphasize cost containment by: 1) assuring that only truly indigent persons receive defense services; and 2) recovering the cost of defense services from indigent defendants who are able to pay. Accomplishing these changes by statute is substantially more complicated than organizational realignment because steps taken to achieve efficiencies and economies must not infringe on the constitutional right to counsel, as interpreted by the U.S. Supreme Court. I advise consultation with an attorney experienced in criminal law, but also concerned with state's interest in providing indigent defense as efficiently and economically as possible.

One fundamental change in the administration of indigent defense recommended in my study is the establishment of a uniform, statewide schedule for the reimbursement of legal services and other defense services for indigent defendants. Current law is based on the notion that for purposes of reimbursement or cost recovery, the precise cost of indigent defense services can and, if necessary, will be determined for each of the nearly 20,000 indigent defense cases

The Honorable Dave Kerr

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each year. This system breaks down at almost every point of decision making in the administration of indigent defense. Given the multitude of parties required for the delivery of indigent defense, I have concluded that the requirements of current law are too cumbersome to be administered effectively and thereby present an obstacle to more efficient, economical administration of indigent defense.

My study proposes a uniform, statewide schedule of the costs of indigent defense be developed by severity of charge and extent of proceedings and that this schedule be used for reimbursement of legal and other defense services and for recovery of costs from indigent defendants. Adoption of such a schedule would dramatically simplify the reimbursement process and could enhance the state's ability to recover costs. A heavy paperwork burden would be lifted from assigned counsel and other providers of defense services, judges, and the state indigent defense agency. Those seeking to aid indigent defendants would know with certainty their level of reimbursement. Indigent defendants would know the costs incurred for legal and defense services at each step of legal proceedings.

Moving to a uniform, statewide schedule would require protections, and likely statutory changes, for those who assist in indigent defense and for indigent defendants:

First, in cases that place extraordinary demands on assigned counsel or other defense service, these parties should be allowed to petition the court for reimbursement of extraordinary requirements beyond that contemplated or provided by a uniform schedule. To keep such petitions from becoming commonplace, the court should be required to make and record a finding of compelling necessity for each exception to the uniform schedule. Reimbursement of such exceptions should also be subject to change and approval by the director of indigents' defense services. Finally, the judicial administrator should be required to perform an annual accounting of the number and amount of exceptions by judge and by judicial district.

Second, the director of indigent defense, as well as the courts, would be given authority for recovery of costs from indigent defendants, and the director would be authorized to collect payments ordered by the court utilizing existing state authority and capacity for debt collection. Statutory protections should assure that an indigent defendant may at any time petition the court for waiver of unpaid obligations if such obligations impose manifest hardship on the defendant or the defendant's immediate family. Also, the director should be required to comply with state laws protecting individual debtors.

These protections and changes affect a number of existing state laws and will require the attention of a competent bill drafter. One key change would be in the statutory instructions to the courts concerning recovery of costs, likely requiring a rewrite of K.S.A. 21-4610(d)(3), now in Sec. 4 on p. 4 of S.B. 557. Similar rewrite would be required in K.S.A. 22-4513(b), now in Sec. 16 on p. 12 and 13.

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Moving to a uniform, statewide schedule would also require changes in the director's rule making authority by replacing existing language in K.S.A. 22-4522(c)(2) now in Sec. 19 on p. 14 with the following language:

- uniform statewide schedule of the costs of legal services for indigent defense by severity of charge and extent of proceedings and a uniform statewide schedule for the cost of other defense services;

Further, I would recommend amending K.S.A. 22-4522 also in Sec. 19 by adding language that the director shall:

- collect payments from indigent defendants as ordered by the court, when necessary, through utilization of debt collection procedures authorized in K.S.A. 75-6201-6214.

In addition to changes required by moving to a uniform, statewide schedule, I would suggest additional changes in S.B. 557, as follows:

First, clarify the authority of the director of indigents' defense services to contain the costs of indigent defense by adding language to K.S.A. 22-4522 in Sec. 19 that the director shall:

- perform random audits on affidavits of indigence, advise the court if a defendant claiming indigency is not eligible for defense service under state guidelines for the determination of indigency, and provide to appropriate state and local prosecutors any evidence of fraud in claims of indigency;

Second, when the court informs a defendant that defendant is entitled to counsel and that counsel will be appointed to represent the defendant if the defendant is not financially able to employ an attorney, as required by K.S.A. 22-4503(b), court should also be required to inform defendant that defendant will be expected to reimburse the costs of defense services when defendant is able to pay. I would recommend the addition of such language to Sec. 8 on p.6.

Third, the affidavit of indigency should contain language informing a defendant claiming indigency that the affidavit of indigency is subject to audit and a fraudulent filing of information by the defendant may subject the defendant to additional prosecution. I would recommend language to this effect in Sec. 9(a) on p. 7.

Fourth, I believe the new language inserted in Sec. 9(c) on p. 8, beginning on line 31 and ending on line 35 would be more appropriately inserted in Sec. 9(b) on p. 8, at the end of the sentence, on line 10.

Fifth, I recommend that the language in New Sec. 10 on page 9 be clarified, as follows:

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The judicial administrator shall compile and report annually by judicial district and by judge on expenditures and recovery of costs for indigent defense including specifically:

- 1) total expenditures for indigent defense, including separately expenditures for legal services and for other defense services;
- 2) court-ordered expenditures for investigative, expert, or other defense services;
- 3) the number and amount of extraordinary claims for reimbursement of legal services and other defense services approved by the court; and
- 4) indigent defense costs recovered from indigent defendants.

Sixth, I recommend that public defenders as well as assigned counsel be required to secure court authorization for investigative, expert, or other defense services and that Sec. 14 amending K.S.A. 22-4508 be revised by striking on line 32, "An attorney other than a public defender" and substituting "Any attorney."

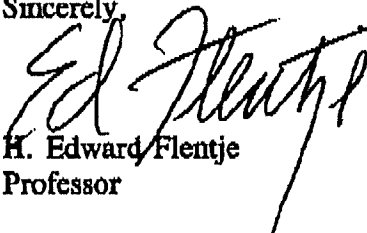
Other minor amendments in language are recommended as follows:

- 1) on p. 7, line 31: findings of the "director of indigents' defense services" rather than the office of cost containment since the audit authority would be lodged in the director;
- 2) on p. 7, line 40: cash bond of "\$1,000 or more" rather than \$1,000,000;

I have no further comments on S.B. 557. My apologies for the length of this response to your request. I wish the subject were simpler, but it is not!

If you have questions, please do not hesitate to contact me.

Sincerely,


H. Edward Flentje
Professor

STATE OF KANSAS

L. L. GRAVES, Governor
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OFFICE OF THE GOVERNOR

TESTIMONY IN SUPPORT OF SENATE BILL 557
SUBMITTED TO THE SENATE WAYS AND MEANS COMMITTEE
ON FEBRUARY 12, 1996,
BY BRENT ANDERSON, COUNSEL TO THE GOVERNOR

Governor Graves supports Senate Bill 557 and commends Chairman Kerr and other legislative leaders for their foresight in attempting to take management and organizational steps now to ensure that constitutionally required legal services to indigent defendants charged with felony crimes are provided effectively and efficiently in the future.

As you know, the Governor has reviewed Dr. Flentje's report and met with legislative leaders in October to discuss the report in the hope that action could be taken this session to improve the providing of indigent defense services in this state. As you might imagine, Governor Graves took special note of cost projections contained in the report, which indicate that unless some steps are taken to check expenditures, the cost to the state for indigent defendants is likely to at least double, from \$12 to \$24 million, within five years.

Candidly, I think those projections are on the low side. It would only take a handful of capital murder cases, which tend to be far more expensive and protracted than other criminal cases, to blow the state indigents' defense budget out of the water. Unless they think about it, few citizens appreciate that the state is constitutionally required to provide adequate legal defense services to those accused of crimes who can't afford to hire their own lawyers. There is no doubt the State Board of Indigent Defense Services is the red-headed step child of state government, a program no legislator or citizen really wants to pay for. And that is why Governor Graves today commends Director Ron Miles and those who have served on the Board of Indigents' Defense Services over the years for their hard work in carrying out this difficult and almost always thankless responsibility.

Mr. Chairman, Senate Bill 557 takes a giant step forward in streamlining indigents'

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February 12, 1996
Attachment 3*

defense services. The board system for setting policy, reviewing and paying vouchers and providing management for the public defender and assigned counsel system has proved cumbersome and inefficient. Governor Graves strongly supports elimination of the board and appointment of a director who is appointed by and reports directly to the governor. This step dramatically heightens both fiscal and performance accountability. Governor Graves would prefer, however, that because of its uniqueness, this agency be independent rather than be placed within the Department of Administration, to which it has no operational or management connection.

Section 9 of the bill, which would tighten restrictions on who qualifies for appointed counsel, is a desperately needed step toward restoring judicial accountability in the indigents defense process. In my experience, and Dr. Flentje's report bears this out, judges use appointment of counsel as a tool of expediency rather than for what it is intended--providing state-paid lawyers to those who truly cannot afford to hire an attorney. By requiring the courts to tighten up on indigency requirements, some degree of fiscal responsibility is restored. And by requiring a court ordered repayment of taxpayer supported legal defense, SB 557 assists in collecting money paid to those defendants who end up able to repay the state for the legal services they received.

Finally, and perhaps most importantly, by providing rule and regulation authority to a director of indigents' defense services accountable to the governor, you empower a manager to do the job he or she is hired to do--operate a state-funded agency as efficiently and responsibly as possible. The Governor believes in letting managers manage, and SB 557 does just that. I would be happy to respond to questions from the committee, if any.

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Testimony Before Senate Ways and Means
By Sheila Frahm, Lt. Governor/Secretary of Administration
Senate Bill 557
February 12, 1996 - 11:00 A.M.

Good morning. Thank you Mr. Chairman and members of the Senate Ways and Means Committee for the opportunity to testify in front of you today on Senate Bill 557. As you are aware, this measure would make significant changes in the organization of Indigents' Defense. The Administration of Governor Graves supports this legislative initiative to reconstitute and redirect the providing of legal services to indigent defendants charged with state crimes.

During the 1994 session, the Kansas Legislature appropriated \$40,000 to the Board of Indigents' Defense Services for the agency to contract for a management analysis and development of a strategic plan for the agency. Indigents' Defense contracted with Wichita State University to perform a management study of the agency. Professor H. Edward Flentje served as Project Director for the study.

Dr. Flentje's report provides an excellent overview of indigents' defense services and makes valuable recommendations on what can be done to improve the management of this constitutionally required function. He also points out that unless something is done to install sound financial policies to providing indigents' defense services, the cost to the state will at least double, from \$12 million to \$24 million dollars in 5 years. It is likely the increase will be more than double because the state starts paying this year for the legal defense of capital murder cases. As we are all aware, these are far more expensive and protracted than other criminal cases.

Like you, I have had a chance to examine Dr. Flentje's report. I read his four strategic options for addressing indigents' defense. Dr. Flentje has done a fine job in assessing the trends in Indigents' Defense and outlining various options for making policy improvement.

I support your belief, and the concern of the Governor, there is a need to make changes. I do have reservations with the initiative to place indigents defense within the Department of Administration. As I understand the bill, indigents' defense would be placed under the umbrella of Department of Administration. However, the Governor would appoint the Executive Director of Indigents' Defense and it appears most of the overall management reporting responsibility would be to the Governor.

Within option 3, Professor Flentje made significant recommendations to realign the Board of Indigents' Defense as an executive agency in state government. Dr. Flentje recommends abolishing the Board and establishing the position of Executive Director in the unclassified service to be appointed and serve at the pleasure of the Governor.

Option 3 appears workable, however, I do suggest that Indigents' Defense remain an independent entity.

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Attachment 4

The Department of Administration provides central administrative services to state agencies. As Secretary, I am appointed and serve at the pleasure of the Governor and oversee:

- Division of Accounts and Reports - they operate and supervise a uniform central accounting system.
- Division of Purchases - this Division operates a centralized purchasing system
- Division of Personnel Services - they administer a statewide uniform personnel system;
- Division of Architectural Services - this Division oversees the design and construction of all state owned buildings;
- Division of Facilities Management - they oversee the state's Central Motor Pool and operates and maintains the state owned buildings and grounds in Topeka;
- Division of Information Systems and Communications - this Division manages the statewide telecommunications system;
- Division of Printing - they operate the State Printing Plant.

We have seven distinct divisions in the Department of Administration, each headed by an unclassified director, which I appoint as Secretary. Together these seven divisions provide central services. In addition to these divisions, we have the Budget Division, and manage the State Employee Health Benefits Administration.

These divisions provide central services to all state agencies. In looking at the mission statement of the Board of Indigents' Defense, it does not appear to be a good fit within the Department of Administration.

I understand your concern for better accountability of the Board, but I would ask your consideration of an amendment to maintain Indigents' Defense as an Executive Agency or entity.

Mr. Chairman and members of the Committee, I do appreciate the opportunity to appear before you today and express our support and concerns of Senate Bill 557. I look forward to your suggestions and expectations for the Department of Administration and its responsibilities.

Thank you.

Senate Bill No. 557
Senate Ways and Means Committee
February 12, 1996

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman and members of the committee:

We appreciate the opportunity to appear today and discuss Senate Bill No. 557 which relates to the State Board of Indigents' Defense Services.

I bring to your attention, New Section 10, Page 9 of the bill which requires the Judicial Administrator to compile and report annually by judicial district and by judge the following:

- (a) (1) Amounts payable for indigent defense;
 - (2) Amounts ordered for investigative and expert or other services; and
 - (3) Amounts and details of exceptional claims by assigned counsel
- (b) Recovery of costs for indigent defense from indigent defendants.

We find no language in the bill that directs any information to our office. All the information goes to the Director of Indigents' Defense Services so it appears it would be logical that the Director compile this information.

If the intent is for the Office of Judicial Administration to compile this, it will impact our office greatly and would duplicate the work of the accounting staff of the Director of Indigents' Defense Services. If assigned to our office we could not absorb these new responsibilities without additional staff and equipment. Moreover, it does not state where to report the information.

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February 12, 1996
Attachment 5*

We recommend two options:

1. Delete New Section 10.
2. Change the words judicial administrator to Director of Indigents' Defense Services.

We respectfully urge your considerations on these options.

BOARD OF INDIGENTS' DEFENSE SERVICES

February 12, 1996

Presentation to the Senate Committee on Ways and Means

The 1994 Legislature requested a performance audit of BIDS by the Legislative Division of Post Audit. The audit recommended improvements in management information, the establishment of a public defender office in Wyandotte County, the expanded use of public defenders where cost-effective, the consideration of the use of contract counsel, and the development of a strategic plan.

During the 1995 Legislative Session \$40,000 was appropriated to conduct a management study of the agency. The Senate Ways and Means Subcommittee Report reiterated that "the study should determine whether additional offices should be opened, what the agency should look like five years from now, and the procedures to be used by judges in determining indigency. The management study is expected to culminate in a strategic plan for the agency."

Management Study

The agency contracted with the Wichita State University Hugo Wall School of Urban and Public Affairs with the following purpose: "To perform a management study of the agency and facilitate a process to prepare a strategic plan to accomplish the agency's mission in an efficient and cost-effective manner." To complete the study the contractor conducted an exhaustive study of the agency, analyzed a decade of statistics, reviewed Board minutes, interviewed internal and external personnel, conducted a comprehensive survey of all BIDS personnel, facilitated a two-day management retreat at WSU, and published a management report.

The most positive results of the employee survey demonstrated a clear understanding of the agency's mission, the employee's contributing role, and the commitment to client interests. However, staff felt undervalued and unappreciated by the public and elected officials. Comments about agency leadership were fairly negative, including limited communication and inadequate support for field staff. Good working relationships between field offices were reported, but most felt that agency wide planning was limited. Although most respondents reported they are providing a valuable service and that they take pride in their work, nearly half say they often consider leaving the agency. General frustrations included a shortage of support staff, high caseload, inadequate office furnishings and computer equipment, and inequitable salaries.

The survey was followed by a two-day retreat at Wichita State University of 30 agency employees in mid-July. One of the first panels included a presentation on vision, performance, and suggested changes from the following professional and governmental leadership:

Senator Tim Emert, Chair, Senate Judiciary Committee
Representative Henry Helgerson, Jr., Ranking Member, House Appropriations Committee
Gloria Timmer, Director, Division of the Budget
Lee Thompson, Triplett, Woolf and Garretson
Ron Smith, Kansas Bar Association

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Attachment 6*

Comments from the external leadership panel provoked a great deal of thought and introspection among retreat participants for the rest of the meeting. The remainder of the retreat focused on the identification of critical issues facing the agency and the brainstorming of strategies to address those issues.

In response to the Governor's vision of "a government willing to do more with less," the Board of Indigents' Defense Services has initiated the following steps since July, 1995, in reaction to internal and external concerns:

1. The Administration Office held a mini-retreat immediately following the Wichita retreat to discuss concerns of agency employees. The State Director, Ronald E. Miles reorganized the office to include two units managed by the following two professionals: The Director of Defense Services manages the Assigned Counsel Program and the Regional Defense Delivery function. The Director of Operations manages the Personnel, Accounting, and Computer Sections. A professional staff has been hired to provide the statewide administrative support mandated by an agency of our size.
2. The agency Director appointed the Director of Operations as Chair of the Strategic Plan Steering Committee, composed of eight agency employees (including administrative, legal and support staff). The Committee met eight times to complete a strategic plan for the agency, using tools identified during the retreat and from the Management Study. Our first professional strategic plan was submitted to the Budget Division on October 31, 1995. The plan includes a revised agency philosophy, and goals, objectives and strategies to address organizational structure, internal and external communications, Board responsibilities, retention of qualified personnel, and management of agency expenditures.
3. The agency fully cooperated with Dr. H. Edward Flentje in his completion of the contracted Management Study, which was completed in September and included the following main points:
 - a. A recommendation that the agency consider a temporary proration of fees;
 - b. A recommendation that the agency consider a permanent reduction in assigned counsel hourly rates;
 - c. A recommendation encouraging the use of contracts for all defense services;
 - d. Recommendations to implement public defender offices as cost-efficient alternatives to assigned counsel, averaging \$200 less per case than assigned counsel; and
 - e. Three management options, including 1) options regarding proper administrative placement within state government; 2) implement indigency guideline limitations; and 3) increase recoupment collections.
4. Agency administrators took to heart the messages taken from the employee survey, the agency retreat, and the Management Study in its preparation of the annual budget. Funds were requested in the budget to classify most of our unclassified employees to bring them up to the salary level of their classified peers in order to reduce turnover and inefficiency. Funds were also requested for a three-to-five year acquisition of computer technology, library materials, investigator equipment, and office furnishings.

5. Administrators also took to heart the expectation that we will get our fiscal house in order, and comply with cost-cutting directives in response to a decline in statewide revenue growth. Our recent budget submission for FY 1996 contains the first current year budget estimate in recent history that does not include a request for a supplemental appropriation. Administrators prepared a list of recommendations to the Board to initiate a series of cost-cutting and revenue-raising proposals. Many of the proposals are controversial and some have been met with varying levels of acceptance from private attorneys and public defenders. The Board approved many of the changes that will be presented today, some of which would require a change in statutes or rules and regulations. The Board did not take action on a proposal to prorate assigned counsel vouchers for FY 1996. However, anticipated savings in capital defense and regional expansion accounts of the State General Fund will likely lead us to request an Omnibus Appropriations Bill item which would transfer unspent funds from those two accounts to our Operating Expenditures account to enable us to make it through the fiscal year without a supplemental appropriation.
6. The agency Director assigned the Director of Defense Services the task of seeking and initiating opportunities throughout the state to offer defense services in a more efficient and cost-effective manner. Items seven through twelve describe several successes.
7. One of the proposals approved by the Board that began reducing expenditures on October 1 was an agreement to sign a contract negotiated with the members of the Leavenworth County Criminal Defense Bar to voluntarily reduce claims for out-of-court time from \$50 per hour to \$30 per hour for one year. In return, BIDS agreed not to pursue the establishment of a regional public defender office in Leavenworth county during the next year. The agency intends to seek further such contracts, in addition to other unique ways of reducing costs while ensuring effective service to our clients.
8. Judges in Douglas and Barton counties have initiated changes which will provide for a more efficient administration of justice, and which will reduce costly "wait time" for attorneys.
9. Public defender services may be introduced in both Barton and Miami counties within the next three months. Counties surrounding Sedgwick county are also under review to determine the most efficient method for offering defense services.
10. Contracts are being negotiated for private defense at less than \$50 per hour where possible. For example, a contract is under negotiation to address an increasing number of conflict cases in Sedgwick county that will result in cost efficiencies.
11. An additional public defender will be hired in Sedgwick county to address the backlog of conversion appeals out of the Sedgwick County District Court.
12. The judges and members of the private bar in Wyandotte County have worked in tandem since the 1995 Legislative Session to implement efficiencies and reduce the average cost per assigned counsel case below \$500 (compared to an average cost per case of \$591 in FY 1995). A Senate Ways and Means Committee Report during the 1995 Legislative Session recommended that the Wyandotte county legal community be given until December 31, 1995, to implement additional reforms and attempt to lower expenditures for assigned counsel in

Wyandotte county to the rate of expenditures which would be made for public defense services (\$500 average). That goal has been attained. Wyandotte county reduced its costs per case by \$140, to a mid-year figure of \$457 (attorney costs only).

13. Assigned counsel guidelines issued to private attorneys have been tightened (with a right to appeal available), and are still under review for further adjustment. The Director has initiated additional voucher audit guidelines for assigned counsel that are reducing the cost per case.
14. The agency is reviewing changes in indigency forms and procedures to implement as soon as possible in order to provide judges with much clearer direction in the determination of indigency.
15. The agency submitted a letter to all state district court judges reminding them of their responsibility in the determination of indigency and in requiring full or partial repayment by defendants. The agency advised the judiciary that BIDS will no longer pay for services without proof that an affidavit of indigency was filed in the case and that the judge found the defendant to be indigent in part or in full, per K.S.A. 22-4504.
16. In response to suggestions in the WSU Management Report, and in recognition of an overburdened court staff throughout the state, our agency will initiate a pilot program this Spring in Saline county to identify those clients who are not indigent and therefore ineligible for defense services at state expense. The statutory responsibility for determining indigency currently rests with judges. Our agency will initiate an Indigency Screening Pilot Program with the employment of an Office Assistant IV who will work out of our Saline county office but will report to the Administration Office in Topeka. The Indigency Screener will review affidavits of prospective clients interviewed, investigate financial resources of the applicants, contact relatives, employers, friends, associates and others to determine if the applicants are eligible for public defense services. We will report to the 1997 Legislature our findings regarding savings in time for court personnel, and expenditure savings resulting from a more intense screening than is now available to persons who request our services.
17. An Accountant was hired on October 2 to address a deluge of payment vouchers, a manual accounting system, and inefficient accounting and budgeting methods throughout our nine existing offices. One especially significant change occurred when the Accountant brought the agency "online" with our payment voucher system by centralizing payments in the Administration Office in order to reduce the growing work burden on regional office managers. Transferring this function to the Administration Office will negate the need to immediately add clerical support in each of our offices.
18. The Director of Defense Services and our Microcomputer Support Technician are working with a group of Wichita public defenders on a new case reporting system. Once tested and proven, and once the compatible technology is available in all regional offices, a consistent, reliable and automated process will be in place to track and project caseload, resulting in the availability of long-needed statistics for policy-makers.
19. The Microcomputer Support Technician will complete the first Information Management Plan for BIDS in FY 1996, resulting in a three-to-five year strategy to improve internal and external communications. Within limited appropriations, the Plan will include the

development of new policies and procedures for the management of information, a gateway for effective communication of electronic messaging/data between our offices across Kansas, the ability to compare costs of assigned counsel and public defenders on comparable cases, an independent basis for knowing when public defenders are overloaded and cases should be assigned to private attorneys, a vehicle for assessing whether staffing expenditures and office practices of public defender offices are efficient, and the capacity to track how many cases a single client generates over time.

20. The wait time between assigned counsel voucher transactions (over 12,000 per year) was reduced from 30 seconds to five seconds with the upgrade of one computer.
21. Administration office professionals will bring all assigned counsel voucher and recoupment transactions online on approximately April 1, directly entering our more than 12,000 annual vouchers with the state Division of Accounts and Reports. This change will reduce the time it takes to pay assigned counsel in half. It will also provide a reliable method to determine our level of expenditures and improve our ability to predict future expenditures at any point in the fiscal year.
22. The agency requests that its FY 1997 appropriation (H.B. 2724, Section 3(b)) be amended to include a no-limit inservice Education Workshop Fee Fund to enable our staff to offer in-house training for attorneys and paraprofessionals in a much more efficient and cost effective manner than is now permitted. We have attempted to implement several innovative in-house trainings recently in order to save money. Without an in service education fund, however, innovation and cost savings are extremely difficult. The state and our employees will benefit with the establishment of this fund.
23. The agency takes very seriously a misperception that capital defender costs are costing \$150 per hour or more per case. Our agency has employed five experienced capital defenders who have been able to defend the majority of the cases assigned to the Capital Defender Office. In several cases where our capital defense staff was not yet on board, we have utilized trained public defenders to handle the overflow. In only a few cases before our staff was fully hired and organized did we contract with private counsel at costs exceeding \$100 per hour. This was based on the "law of supply and demand" immediately following passage of death penalty legislation in Kansas. The 1995 Legislature authorized our agency to hire an appropriate number of attorneys to ensure the minimal use of private counsel in capital cases. Additionally, we are focusing training for eligible public defenders to become adept at defending capital cases, ensuring an adequate number of attorneys will soon be available for multiple cases. Indeed, the agency anticipates it will request an Omnibus Bill amendment to transfer unexpended funds from the Capital Defense Operations account to the Operating Expenditures account for FY 1996 in order to avoid supplemental funding for non-capital assigned counsel (depending upon the caseload in April, 1996).
24. The agency is responding to another misperception that we lack agency policies and procedures. The Director has formed a committee to review existing policies for the agency and state, and to create and reissue an entirely new set of policies to be distributed to every employee in a loose leaf binder to enable us to maintain up-to-date manuals on every desk.
25. The Board of Indigents' Defense Services continues to maintain the second highest recoupment rate in the country per capita (\$800,000 estimated for FY 1996). All of the

recoupment funds are deposited in the State General Fund, and have increased every year since FY 1984.

26. The agency Director submitted several legislative initiatives to assist us with the changes we seek to make. Our House Appropriations Subcommittee has agreed to introduce several bills (attached) that would begin to reduce our near 100 percent reliance on the State General Fund.

CONCLUSION

Following two years of studies, criticism, and introspection we have made sweeping changes to respond to the concerns of policy makers. We are proud of our accomplishments and of further innovations still on the drawing board. The introduction of Senate Bill No. 557 was in response to the agency as it existed in FY 1994. That agency no longer exists. The new Board of Indigents' Defense Services is meeting its constitutional and statutory mission while implementing changes that will result in an efficient and cost-effective delivery of legal services. In return we request a chance to implement these changes without the disruption of an agency reorganization.

STATE BOARD OF INDIGENTS' DEFENSE SERVICES
1996 Legislative Initiatives

The agency is proposing several legislative changes which will serve to decrease the agency's reliance on state general fund appropriations or help decrease the number and complexity of cases which must be represented by public defender staff and appointed counsel. Among these are:

- ▶ **Legislation which would allow the Board to spend monies which have been recouped from partially indigent defendants (amending K.S.A. 21-4610, 22-4504 and K.S.A. 22-4513);**
- ▶ **Amendments to K.S.A. 22-4504 which would allow the court to assess an "Indigents' Defense Administrative Fee" of \$50 per client as an "up-front" assessment for the defense services to be rendered. These funds will be deposited into the agency's indigents' defense services fund and are not intended to diminish the collections of reimbursements from partially indigent defendants;**
- ▶ **Legislation which would divert a portion of the drug stamp taxes and penalties, (K.S.A. 1995 Supp. 79-5211) currently going to local law enforcement agencies, into the state treasury. Twenty-five percent of these funds would be deposited into the Board's indigents' defense services fund;**
- ▶ **Legislation which diverts 50% of the forfeited assets (drug forfeiture procedures under K.S.A. 60-4117) currently going to the state treasury to be deposited into the Board's indigents' defense services fund.**