

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 15, 1996 in Room 123-S of the Capitol.

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

Committee staff present: Alan Conroy, Legislative Research Department
Kathy Porter, 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: Larry Jackson, Vice Chair of the Kansas Public Broadcasting Council

Others attending: See attached list

Senator Morris moved, Senator Lawrence seconded, that bill draft 5 RS 2122 as requested by Senator Moran be introduced. The motion carried on a voice vote.

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

The Chairman noted that the bill was heard on February 12, and that the Committee had used the balloon that incorporated Dr. Flentje's recommendations as a basis for consideration (Attachment 1). He pointed out that if the Board of Indigents' Defense Services is abolished, the Committee needs to decide whether the agency would be freestanding or be a part of the Department of Administration. He stated that the way the bill is drafted, the agency is under the Department of Administration and the Director would report to the Governor, be appointed by the Governor, and serve at the pleasure of the Governor. In answer to Senator Rock, he said that the agency would be a part of the Department of Administration for budgeting and administrative purposes. Senator Rock moved, Senator Petty seconded, that SB 557 be conceptually amended to make the agency freestanding. It was noted that both the Governor and the Department of Administration prefer that the agency be freestanding. Senator Karr inquired whether the Director of the agency would assume the role of the Ombudsman of Corrections if that office were abolished (as recommended in SB 508). Chairman Kerr, a member of the Ombudsman of Corrections subcommittee, stated that though that subcommittee report is still in draft form, the subcommittee did not recommend the passage of SB 508. The motion to conceptually amend carried on a voice vote.

The revisor reviewed the balloon version of the bill. Senator Rock pointed out that a defendant could go through the process, be declared indigent, and then have that decision reversed as a result of the audit. He expressed concern for those defendants who were nonfraudulent and whose court costs might be turned over to a collection agency (Sec. 19, page 14 of the balloon). The revisor pointed out that under the provisions of the balloon, the court will order payment under the statewide schedule if the defendant can pay. In answer to questions regarding current practice, Pat Lawless, Director of Defense Services for the Board of Indigents' Services, stated that the Board sends the total cost per case to the court and at that point it becomes a civil procedure. He said that the court is supposed to consider the defendant's financial situation but no filing or proceeding is instituted by the court. Senator Burke asked how courts are recovering costs. Mr. Lawless stated that some judges assess fees or costs as a condition of parole, but there is some question as to whether judges can order assessment of attorney fees.

Senator Burke expressed concern about the conflict of interest between the Board representing the indigent defendant and also making the determination of indigency. He stated that he hoped this issue would be studied in greater detail.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS, Room 123-S Statehouse, at 11:00 a.m. on February 15, 1996.

Staff read a memorandum from the Department of Revenue indicating that Section 9 appears to be in conflict with current law which does not allow tax information to be divulged unless the release of such information is expressly authorized. The Department suggested that the conflict could be resolved by making an exception for BIDS so that they could receive tax information for the purposes of Section 9 (Attachment 2).

Senator Salisbury called attention to the auditing and reporting requirements in Sections 19 and 29 of the balloon and stated that she believed it would be necessary to determine the purpose of the audits to minimize paperwork. Chairman Kerr added that the primary purpose of the audits would be to make judges more diligent in their determination of indigency. The revisor stated that the expanded affidavit requirements would help in that determination. Scott Rothe, Director of Operations for the Board of Indigents' Defense Services, stated that it is a statutory requirement that the courts determine indigency. However, Saline County, because of the workload, has turned that responsibility over to the Board. Mr. Rothe stated that the Board will implement a pilot program in a month in which they will hire an Office Assistant IV to determine indigency with the possibility of doing this statewide.

Senator Salisbury expressed her concern that there were no provisions for qualifications for the new Director of Indigents' Defense Services. Chairman Kerr noted that those could be added to the bill.

Senator Petty stated that she believed the management issues provided by the Board during the February 12 meeting was more extensive than the proposed balloon. She expressed concern that the position of Director might need more continuity than what is provided with an appointing authority. Chairman Kerr asked for suggestions of a better method, but none was made.

Members discussed at length the conditions listed in Sec. 9 (b) for determining whether the defendant is financially capable of employing counsel. The revisor noted that the \$1,000,000 in line 40 was a typographical error and should read "1,000" and the "and" after "more:" and before "(4)" should be "or." Senator Rock moved, Senator Burke seconded, that the balloon be amended by striking the words "and (4) has been able to post cash bond of \$1,000,000 or more" on line 39 and 40 of the balloon and by inserting the words "and (4) has the capability of posting cash bonds of \$10,000" in their place. The members again discussed conditions that should be considered in the determination of indigency. Senator Rock suggested that a subcommittee study this issue. Chairman Kerr appointed a subcommittee of Senator Rock, Senator Burke and Senator Kerr to study and narrow the language of the bill. Senator Rock, with the permission of Senator Burke, withdrew the motion.

SB 661: Kansas public broadcasting council act, formula for allocation of grants

Larry Jackson, Vice Chair of the Kansas Public Broadcasting Council and station manager of KKSU-AM Manhattan, appeared before the Committee in support of the bill. He reviewed the proposed funding formula which he said had the support of all public broadcasting stations (Attachment 3). It was moved by Senator Karr and seconded by Senator Petty that SB 661 be recommended favorably for passage. The motion carried on a roll call vote.

It was moved by Senator Rock and seconded by Senator Brady that the minutes of the February 9, 12, and 13 meetings be approved. The motion carried on a voice vote.

The Chairman adjourned the meeting at 12:15 P.M.

The next meeting is scheduled for February 16, 1996.

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 created
 20 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
 3 director of indigents' defense services created by this act shall be deemed

shall

*Senate Ways & Means
February 15, 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-

1-2

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.

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 counsel
7 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,*
 43 *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.

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.*

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

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

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

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.

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.

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

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

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.

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.*

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

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

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 nomic 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 serv-
37 ices 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
hereto, the director shall:

91-1

division

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-

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. 22-4519 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:

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-
4525, 22-4526, 22-4527, 22-4528, 28-172b and 74-7320 and K.S.A. 1995
Supp. 75-4352 are hereby repealed.

4 Sec. 30.³ This act shall take effect and be in force from and after its
5 publication in the statute book.

MEMORANDUM

TO: Ms. Gloria M. Timmer, Director
Division of Budget

DATE: February 13, 1996

FROM: Kansas Department of Revenue

RE: Senate Bill 557 as
Introduced

BRIEF OF BILL:

Senate Bill 557, as introduced, abolishes the state board of indigent defense services and transfers the powers, duties and functions to the department of administration.

Section nine of the bill amends K.S.A. 22-4504 to require any defendant entitled to assistance of counsel to authorize the director of indigents' defense services to investigate the defendant's credit and wage records, state income tax records, vehicle ownership records and real and personal property records held by state and local governments. The defendant is ineligible for subsidized services if the defendant has: (1) liquid assets of \$5,000 or more; (2) owns two or more motor vehicles; (3) owns real estate which has appraised value that exceeds mortgages and liens by \$10,000; (4) has been able to post a cash bond of \$1,000,000 or more.

The effective date of this bill is on publication in the statute book.

FISCAL IMPACT:

It is estimated that passage of this bill will not affect Fiscal Year 1997 state general fund revenues.

ADMINISTRATIVE IMPACT:

None

ADMINISTRATIVE PROBLEMS AND COMMENTS:

None

LEGAL IMPACT:

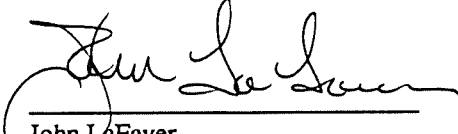
Section 9 appears to conflict with K.S.A. 79-3234(b) which statute limits the dissemination of tax information. K.S.A. 79-3234(b) states "Except in accordance with proper judicial order, or as provided in subsection (c) or in K.S.A. 46-1106, K.S.A. 46-1114, or K.S.A. 79-32,153a and amendments thereto, it shall be unlawful for the director, any deputy, . . . employee . . . to divulge, or to make known in any way, the amount of income or any particulars set forth or disclosed in any report, return, federal return or federal return information required under this act."

The department interprets the language quoted above that, tax information cannot be divulged unless the release of such information is expressly authorized in K.S.A. 79-3234(b). Obviously, the apparent conflict between K.S.A. 79-3234(b) and Section 9 of SB557 can be easily remedied by amending K.S.A. 79-3234(b) and adding K.S.A. 22-4504 to the exception clause at the beginning of that statute.

The department recommends that the following language be added to SB 557: "Any person receiving tax information under the provisions of subsection (a) shall be subject to the same duty of confidentiality imposed by law upon the personnel of the department of revenue and shall be subject to any civil or criminal penalties imposed by law for violations of such duty of confidentiality." This language is identical to that found in K.S.A. 46-1106(c).

*Senate Ways & Means
February 15, 1996
Attachment 2*

APPROVED BY:

A handwritten signature in cursive script, appearing to read "John LaFaver". The signature is written in black ink and is positioned above a horizontal line.

John LaFaver
Secretary of Revenue

Stotts



KANSAS PUBLIC BROADCASTING COUNCIL

"Enhancing the quality of life for Kansas citizens."

Chair

David Wilson
CEO & General Manager
KOOD-TV, Hays
KSWK-TV, Lakin
P.O. Box 9
Bunker Hill, KS
(913)483-6990

PROPOSED CHANGES IN OPERATING GRANT FUNDING FORMULA

HISTORY

Vice Chair

Larry Jackson
Station Manager
KKSU-AM
McCain Auditorium #20
Manhattan, KS 66506
(913) 532-5851

When the Kansas Public Broadcasting Council Act was approved by the Kansas State Legislature in 1993, the formula by which operating funds were distributed to stations was based on a division of dollars between television and radio stations that was consistent with that used at the federal level: 75% to television stations and 25% to radio stations. It was projected that the disparity between those figures became less critical as state funding would rise from \$.25 to \$2.00 per capita in the five year plan that was approved by the legislature.

Secretary

Bill Reed
President
KCPT-TV
125 East 31st Street
Kansas City, MO 64108
(816)756-3580

With shrinking federal revenue, sparse populations in some coverage areas, and a state funding environment that was not meeting expectations, it became evident that some stations were facing funding challenges, and that the federal model was not adequate to public broadcasting stations in Kansas. The Council resolved to discuss the formula by which operating funds are distributed in the state, and recommend to the legislature a formula modification that is more equitable between television and radio stations, and which recognizes the special challenges facing stations which serve primarily rural communities. After eighteen months of study and discussion, an alternative formula was devised which will be presented in the current legislative session as a technical revision to the Kansas Public Broadcasting Act of 1993.

Treasurer

Dale Bolton
Executive Director
KANZ-FM, Garden City
KZNA-FM, Hill City
210 N. 7th Street
Garden City, KS 67846
(316)275-7444

RECOMMENDATIONS

Board

Dale N. Anderson
General Manager
KTWU-TV, Topeka

1) It was determined that the 75/25 split was not appropriate for the public broadcasting system in Kansas, so it should be discarded, leaving a single pool of funds for stations as a group rather than one for TV and one for radio.

Howard Hill,
General Manager
KANU-FM, Lawrence

2) Rural stations are most at financial risk and offer services that are most vital to many parts of Kansas, so a base grant should be given to stations that serve primarily rural communities (currently KOOD-TV in Bunker Hill and KANZ-FM in Garden City). Rural grants will be the first awarded; other operating funds will be distributed to remaining stations from the appropriated funds that remain after the rural grants are given. For television stations it is recommended that the base grant be \$120,000 and for radio, \$35,000.

David M. Horning
General Manager
KHCC-FM, Hutchinson
KHCD-FM, Salina
KHCT-FM, Great Bend

3) It is recommended that 50% of the remaining funds be distributed as base grants to stations, based on type and facilities. Recognizing that television is more expensive to operate, TV stations will receive 3 base units, and TV repeating and translating stations will receive .5 units. Radio stations will receive 1 base unit, with .1 base units for each repeating station. Thus, the more extensive and complex operations will receive the most funding. KCPT-TV in Kansas City will receive 1 unit, since it serves both Kansas and Missouri.

Jon R. Howard
General Manager
KRPS-FM, Pittsburg

Mark McCain
Station Manager
KMUW-FM, Wichita

4) It is recommended that the remaining 50% of funds (after rural and base grants) be awarded as incentive grants, based on per capita non-federal, non-state, non-licensee funding. This incentive grant will reward stations that are successful in serving their audience, regardless of population size.

Zoel Parenteau
President & General Manager
KPTS-TV, Wichita

Senate Ways & Means
February 15, 1996
Attachment 3