

Approved: 2-17-97
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:10 a.m. on January 30, 1997 in Room 254-E of the Capitol.

All members were present.

Committee staff present: Theresa Kiernan, Revisor of Statutes
Midge Donohue, Committee Secretary

Conferees appearing before the committee:
Ms. Natalie Haag, Board of Indigent Defense Services

Others attending: See attached list

Senator Oleen recounted discussion before the committee yesterday concerning two separate and distinct issues within **SB 28**. She asked that it be split into two bills, the new version to include the first three sections of **SB 28**.

Senator Oleen pointed out the need to learn more about the agency that will be affected when a law is changed and, since members of the committee had not had an opportunity to work with the Board of Indigent Defense Services (BIDS) in the past, Ms. Natalie Haag had been asked to provide that information to the committee prior to hearings on both bills in the coming weeks.

Senator Oleen introduced Ms. Haag, noting that she was working with the State Gaming Agency until recently when she made an agency change. Ms. Haag acknowledged that she came to the Board of Indigent Defense Services in November and, although going from gaming to criminal defense work involved a change, she said it was not a great one for her.

Ms. Haag noted that the name of the agency is often confusing. She provided a written overview of the BIDS (Attachment #1) which was established in 1982 to replace the Supervisors of Panels to Aid Indigent Defendants under the Judicial Branch and explained the agency's involvement in the representation of a person charged with a felony after a district court judge determines the person is indigent. She said an assigned counsel list is maintained, and an attorney on the list does not have an option of refusing a judge's appointment; however, the attorney may request to withdraw under certain circumstances.

She noted that the cost to the agency for assigned counsel continues to exceed the cost of the public defender offices, and legislation in 1988 approved an increase in compensation rate for assigned counsel from \$30 to \$50 per hour. Included with Ms. Haag's information was a chart showing a county-by-county review of recoupment of FY 1996 expenditures for assigned counsel, along with maps depicting, county-by-county, the number of assigned counsel cases for which claims were paid during FY 1996 and the cost of assigned counsel per case. Ms. Haag advised that monies collected from indigent defendants go back into the State General Fund.

In response to questions concerning how a defendant's finances are checked, Ms. Haag told the committee the defendant gives a sworn affidavit and responds to additional questions from the district judge whose decision it is whether the individual qualifies as indigent. She mentioned an experimental program in Wichita which utilized an indigent screener to do an initial investigation to determine if an individual were indigent; however, she said a study by the Judicial Council last summer determined there would be no appreciable savings to this approach.

Senator Oleen advised that this particular issue had come before the Judiciary Committee, and members of that committee shared some of same concerns about the screening of individuals and how a determination is made concerning qualifications for indigent services. She noted the lengthy form currently in use and indicated an interest in a standardized one, as well as in spot checking to see if these individuals are verifiably indigent. She went on to say these are some of the issues that will be addressed during formal hearings before the committee, along with loop holes and incentives for the courts to recoup defense costs from the individual.

Ms. Haag then explained the composition of the Board of Indigent Defense Services, which consists of nine members, set by statute, from each of the Congressional Districts. She indicated the Board is made up of a

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL & STATE AFFAIRS COMMITTEE, Room 254-E, Statehouse, at 11:10 a.m. on January 30, 1997.

group of citizens who volunteer their time to review and make policy decisions regarding the agency, and the Board meets every three months unless there is an emergency.

When comparing recoupment of defense costs with other states, Ms. Haag reported that Kansas was second in the nation, and other states look to Kansas for guidance in matters involving handling of fees, rates and reimbursement.

Ms. Haag advised that the Board determines which counties have public defenders and the decision is usually based on whether the county has enough cases to warrant placing an attorney there.

The committee expressed an interest in determining where monies go that are confiscated in drug cases, and Senator Oleen indicated that information would be obtained and made available to them.

Senator Oleen also said that, if the committee is interested, she would make available the 1994 audit of the BIDS at a future meeting.

Ms. Shirley Lusko-Strong was then introduced by Senator Jones. Ms. Lusko-Strong is interning with Senator Jones' office during this legislative session.

The meeting adjourned at 11:55; the next meeting is scheduled for February 3.

SENATE FEDERAL & STATE AFFAIRS COMMITTEE
GUEST LIST

DATE: 1-30-97

NAME	REPRESENTING
Ellyn Lipp	Legislature Post Audit
Natalie H. Haag	Board of Judges' Defense Services
NOBLE MORRELL	DIV. OF PERSONNEL - DoA
Dennis Priest	SRS
Shirley Lusco-Strong	Intern - S. Jones
Mandi Ferrone	KTLA

**OVERVIEW OF THE
BOARD OF INDIGENTS' DEFENSE SERVICES
PRESENTATION TO THE
SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS
JANUARY 30, 1997**

by Natalie G. Haag, Executive Director

The Board of Indigents' Defense Services (BIDS) was established in 1982 to replace the Supervisors of Panels to Aid Indigent Defendants under the Judicial Branch. The agency exists because the 6th Amendment of the United States Constitution guarantees the right of assistance of counsel to any person. This constitutional right to counsel was extended to the states in *Gideon v. Wainwright*, a 1963 landmark decision of the U.S. Supreme Court. BIDS assumes the constitutional and statutory obligation of the State of Kansas to provide legal representation to indigent defendants charged with a felony.

Generally, this agency becomes involved in the representation of a person charged with a felony after a District Court Judge has determined the person is indigent. The District Court reviews information provided by the defendant on an affidavit of indigency. The District Judge can also question the defendant regarding his/her financial assets and income. A defendant determined to be indigent can be appointed a public defender or a private attorney on the assigned counsel list. These attorneys do not have the option of refusing the Judge's appointment. However, the attorney can request to withdraw if the defendant is later found not to be indigent or a conflict of interest arises.

BIDS currently has public defender offices in Olathe, Topeka, Junction City, Salina, Hutchinson, Wichita, Garden City, Liberal and Paola. The agency also has an appellate office and a capital defender office. In addition to hiring public defenders, the agency is responsible for paying private attorneys appointed by the District Court Judge to represent indigent defendants. Recently, the agency has also contracted with attorneys at a reduced hourly rate or flat fee per case rate for legal services.

The cost to the agency for assigned counsel continues to exceed the cost of the public defender offices. In fact, during FY 1996 the cost per case for assigned counsel was \$595 per case whereas the cost per case for the public defender offices was \$391 per case.

The Kansas Supreme Court case of *Stephan vs. Smith* substantially effected assigned counsel cost by holding the state's system of appointing and compensating assigned counsel unconstitutional. The court overturned the mandatory appointment process for assigned counsel and ruled the state has an obligation to pay appointed counsel such sums as will fairly compensate the attorney. As a result of this case, the 1988 legislature approved an increase in the compensation rate for assigned counsel from \$30 to \$50 per hour.

Vouchers for assigned counsel fees are aggressively audited and reduced in accordance with standard guidelines and fee limits established by the Board.

Reimbursement of the attorney fees and expenses incurred by the State of Kansas in the representation of an indigent defendant can be ordered by the District Court Judge if the defendant is convicted. Reimbursement is not authorized by statute in those cases where the defendant is found not guilty or the case is dismissed.

Collection of any amounts ordered to be reimbursed is handled by the probation or parole officers and courts. Due to the potential conflict of interest the attorneys in this agency do not enforce the court ordered reimbursement. The administrative office of BIDS does work with the district court clerks to appropriately enforce the court reimbursement orders.

A county-by-county review of the amount of recoupment for assigned counsel expenditures for FY 1996 is attached as exhibit "A". Kansas ranks second in the nation in total dollars collected in recoupment of expenses. For comparison, Missouri only recouped \$597,375 for approximately 70,000 cases handled by that agency. Oklahoma reports recoupment of approximately \$3,000 per month. Whereas, Kansas handled 21,528 cases and collected \$864,703 in total recoupment.

The cost of this agency fulfilling its constitutional and statutory mandate is continually effected by outside factors. A brief fact sheet, attached as exhibit "B", outlines the increase in violate crime and felony complaints, which are two factors greatly impacting our agency. Additionally, the legislative changes creating new criminal laws or enhancing sentencing substantially effect our agency. Despite the growth in costs necessary to handle the significant case load increases, the cost of a public defender handling a case has only grown from \$314 in 1982 to \$391 in 1996.

Exhibit "B" also establishes the extreme impact *Stephan vs. Smith* had on the costs of providing indigent defense services through assigned counsel. Exhibits "C" and "D" are maps showing county by county the number of assigned counsel cases for which claims were paid by this agency during FY 1996 and the cost of assigned counsel per case.

Additionally, exhibit "E" provides you with a snapshot view of the number of cases handled by the agency and the agency's budget during the last five fiscal years. These figures do not include the additional costs of the capital defender office, which has an FY 1997 budget of \$1.4 million. A chart of the capital defender cases is attached as exhibit "F".

Assigned Counsel Recoupment for Fiscal Year 1996

County	Number of Defendants	Recoupment
ALLEN	41	\$9,417
ANDERSON	26	\$9,633
ATCHISON	31	\$4,966
BARBER	5	\$1,586
BARTON	42	\$11,756
BOURBON	37	\$13,233
BROWN	36	\$11,579
BUTLER	104	\$38,114
CHASE	6	\$3,270
CHAUTAUQUA	11	\$2,250
CHEROKEE	15	\$3,584
CHEYENNE	7	\$7,882
CLARK	7	\$3,146
CLAY	3	\$213
CLOUD	2	\$432
COFFEY	40	\$13,517
COMANCHE	1	\$50
COWLEY	92	\$22,202
CRAWFORD	28	\$5,775
DECATUR	7	\$2,881
DICKINSON	5	\$1,120
DONIPHAN	19	\$5,246
DOUGLAS	83	\$22,925
EDWARDS	5	\$1,736
ELK	8	\$2,134
ELLIS	43	\$13,898
ELLSWORTH	17	\$5,274
FINNEY	30	\$6,854
FORD	85	\$28,044
FRANKLIN	40	\$7,753
GEARY	23	\$3,150
GOVE	0	\$0
GRAHAM	7	\$3,121
GRANT	10	\$4,128
GRAY	5	\$1,721
GREELEY	4	\$1,413
GREENWOOD	35	\$6,310
HAMILTON	1	\$121
HARPER	11	\$2,742
HARVEY	56	\$34,722
HASKELL	11	\$4,565
HODGEMAN	3	\$644
JACKSON	4	\$1,141
JEFFERSON	21	\$4,689
JEWELL	0	\$0
JOHNSON	69	\$16,332
KEARNY	7	\$2,368
KINGMAN	13	\$3,025
KIOWA	3	\$254
LABETTE	81	\$39,893
LANE	1	\$900
LEAVENWORTH	74	\$13,740
LINCOLN	0	\$0
LINN	11	\$1,726
LOGAN	5	\$1,545
LYON	100	\$32,618
MARION	2	\$400
MARSHALL	10	\$2,151
MCPHERSON	54	\$15,804
MEADE	11	\$2,475
MIAMI	27	\$6,397
MITCHELL	6	\$1,365
MONTGOMERY	113	\$24,632
MORRIS	0	\$0
MORTON	4	\$1,221
NEMAHA	8	\$2,129
NEOSHO	65	\$19,389
NESS	6	\$1,607

County	Number of Defendants	Recoupment
NORTON	16	\$7,555
OSAGE	27	\$7,338
OSBORNE	5	\$1,396
OTTAWA	2	\$193
PAWNEE	20	\$5,239
PHILLIPS	7	\$2,578
POTTOWATOMIE	27	\$6,670
PRATT	21	\$6,748
RAWLINS	5	\$5,360
RENO	55	\$11,407
REPUBLIC	0	\$0
RICE	6	\$884
RILEY	14	\$2,555
ROOKS	38	\$14,784
RUSH	5	\$3,176
RUSSELL	15	\$3,810
SALINE	21	\$2,691
SCOTT	5	\$937
SEDGWICK	99	\$25,889
SEWARD	61	\$14,821
SHAWNEE	43	\$6,317
SHERIDAN	0	\$0
SHERMAN	28	\$12,860
SMITH	0	\$0
STAFFORD	18	\$7,841
STANTON	11	\$5,236
STEVENS	6	\$2,335
SUMNER	46	\$10,166
THOMAS	22	\$10,154
TREGO	12	\$4,864
WABAUNSEE	6	\$3,472
WALLACE	0	\$0
WASHINGTON	1	\$163
WICHITA	2	\$889
WILSON	33	\$7,998
WOODSON	6	\$1,798
WYANDOTTE	2	\$1,335

Defendant Total 2,422.00 Recoupment Total \$ 718,361

Exhibit A

BOARD OF INDIGENTS' DEFENSE SERVICES

January 30, 1997

Presentation to the Senate Committee on Federal and State Affairs

Background

Compiled by: Scott B. Rothe, Public Service Executive II

- ▶ Since 1970 the incidents of violent crime in Kansas have increased from just over 4,000 to nearly 13,000 over the period, an increase of 225 percent.
- ▶ Felony cases filed in district courts in Kansas since 1970 have risen from 3,400 to over 14,000, a rise of 312 percent. The number incarcerated in state correctional facilities has tripled during the same period.
- ▶ Since 1982 the Kansas Legislature has passed at least 45 pieces of legislation which have either enacted new felonies or increased penalties on existing felonies. These changes escalate the demand for indigent defense and require more time to prepare an adequate defense.
- ▶ In FY 1982 BIDS handled 5,500 assigned counsel cases and 1,200 public defender cases. In FY 1996 BIDS handled 10,960 assigned counsel cases, 9,235 public defender cases, and 1,333 appellate cases.
- ▶ The average expenditure per case handled by public defenders has only grown from \$314 in 1982 to \$391 in 1996.
- ▶ State General Fund expenditures for the Department of Corrections and its facilities have increased from \$63.5 million in FY 1987 to \$185.6 million in FY 1998. Expenditures for BIDS have increased from \$3.4 million to \$12.4 million during the same period. Outside of a doubled caseload during the period, two other factors contributed to our growth: (a) a late 1987 Kansas Supreme Court ruling (*Stephan v. Smith*) resulted in an increase in the assigned counsel rate from \$30 to \$50 per hour (\$3.0 million per year increase) and, (b) the 1994 Legislature passed the death penalty (\$1.4 million per year).

State of Kansas

Assigned Counsel Cost Per Case for Fiscal Year 1996

\$850 Cheyenne	\$2487 Rawlins	\$373 Decatur	\$708 Norton	\$352 Phillips	\$396 Smith	\$450 Jewell	\$2702 Republic	\$234 Washington	\$1370 Marshall	\$687 Nemaha	\$677 Brown	\$663 Doniphan	
\$603 Sherman	\$769 Thomas	\$351 Sheridan	\$526 Graham	\$445 Rooks	\$528 Osborne	\$436 Mitchell	\$559 Cloud	\$569 Clay	\$394 Riley	\$405 Pottawatomie	\$532 Jackson	\$449 Atchison	
\$408 Wallace	\$648 Logan	\$850 Gove	\$730 Trego	\$677 Ellis	\$316 Russell	\$1059 Lincoln	\$304 Ottawa	\$857 Dickinson	\$394 Geary	\$474 Wabaunsee	\$594 Shawnee	\$377 Jefferson	\$509 Wyandotte
\$861 Greeley	\$498 Wichita	\$710 Scott	\$0 Lane	\$526 Ness	\$623 Rush	\$558 Barton	\$735 Ellsworth	\$974 Marion	\$642 Geary	\$554 Morris	\$586 Lyon	\$491 Douglas	\$459 Johnson
\$1093 Hamilton	\$617 Kearny	\$539 Finney	\$193 Hodgeman	\$533 Pawnee	\$917 Stafford	\$518 Reno	\$453 Rice	\$727 McPherson	\$518 Chase	\$586 Lyon	\$619 Osage	\$449 Franklin	\$319 Miami
\$574 Stanton	\$509 Grant	\$521 Haskell	\$379 Gray	\$393 Ford	\$821 Klowa	\$487 Pratt	\$518 Kingman	\$628 Harvey	\$942 Sedgwick	\$662 Butler	\$268 Greenwood	\$542 Coffey	\$352 Linn
\$566 Morton	\$550 Stevens	\$518 Seward	\$536 Meade	\$603 Clark	\$1230 Comanche	\$288 Barber	\$788 Harper	\$504 Sumner	\$354 Cowley	\$360 Elk	\$476 Wilson	\$373 Anderson	\$352 Linn
												\$386 Allen	\$603 Bourbon
												\$502 Neosho	\$502 Crawford
												\$399 Labette	\$724 Cherokee
												\$368 Montgomery	\$502 Crawford

State of Kansas

Number of Assigned Counsel Cases for Fiscal Year 1996

11 Cheyenne	10 Rawlins	7 Decatur	23 Norton	18 Phillips	11 Smith	4 Jewell	3 Republic	3 Washington	23 Marshall	19 Nemaha	35 Brown	20 Doniphan
63 Sherman	31 Thomas	2 Sheridan	11 Graham	26 Rooks	8 Osborne	7 Mitchell	7 Cloud	19 Clay	39 Jackson	122 Atchison	67 Jefferson	389 Leavenworth
2 Wallace	7 Logan	12 Gove	21 Trego	99 Ellis	46 Russell	7 Lincoln	3 Ottawa	26 Dickinson	83 Riley	88 Pottawatomie	24 Wabaunsee	594 Shawnee
7 Greeley	6 Wichita	5 Scott	0 Lane	11 Ness	12 Rush	42 Ellsworth	295 Saline	108 McPherson	4 Morris	270 Lyon	79 Osage	457 Douglas
2 Hamilton	18 Kearny	146 Finney	4 Hodgeman	12 Barton	182 Barton	35 Rice	42 Saline	9 Marion	118 Geary	26 Chase	79 Osage	514 Johnson
11 Stanton	29 Grant	39 Haskell	19 Gray	45 Pawnee	34 Barton	13 Edwards	108 McPherson	165 Harvey	4 Morris	270 Lyon	70 Coffey	121 Franklin
9 Morton	29 Stevens	346 Seward	38 Meade	11 Ness	12 Rush	45 Pawnee	35 Rice	165 Harvey	26 Chase	270 Lyon	70 Coffey	129 Miami
29 Grant	39 Haskell	19 Gray	277 Ford	13 Edwards	34 Barton	13 Edwards	36 Pratt	424 Reno	882 Sedgwick	314 Butler	39 Woodson	125 Allen
9 Morton	29 Stevens	346 Seward	38 Meade	9 Clark	2 Comanche	7 Kiowa	36 Pratt	52 Kingman	882 Sedgwick	314 Butler	39 Woodson	118 Linn
29 Stevens	346 Seward	38 Meade	9 Clark	2 Comanche	13 Barber	28 Harper	127 Sumner	198 Cowley	9 Elk	39 Woodson	83 Wilson	215 Neosho
29 Stevens	346 Seward	38 Meade	9 Clark	2 Comanche	13 Barber	28 Harper	127 Sumner	198 Cowley	9 Elk	39 Woodson	83 Wilson	262 Crawford
29 Stevens	346 Seward	38 Meade	9 Clark	2 Comanche	13 Barber	28 Harper	127 Sumner	198 Cowley	9 Elk	39 Woodson	83 Wilson	77 Cherokee
29 Stevens	346 Seward	38 Meade	9 Clark	2 Comanche	13 Barber	28 Harper	127 Sumner	198 Cowley	9 Elk	39 Woodson	83 Wilson	77 Cherokee

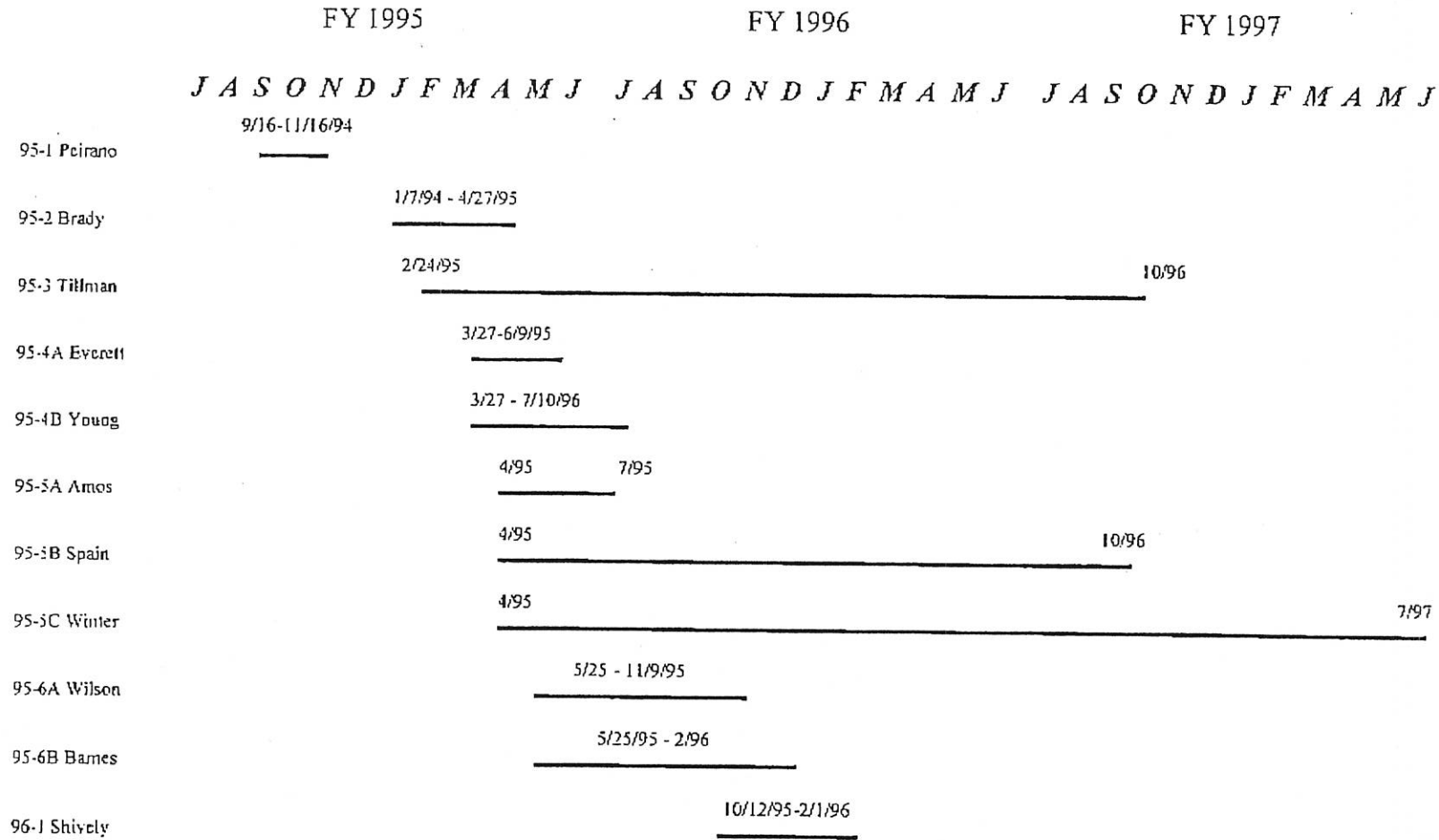
FY	1991	1992	1993	1994	1995	1996
A.C. Cases	6,182	6,712	8,341	8,485	9,746	10,960
P.D. Cases	5,583	6,862	6,458	7,295	8,947	9,235
Appellate Cases	513	673	707	1,228	1,335	1,333
Total Cases	12,278	14,247	15,506	17,008	20,028	21,528
% Change		16%	9.0%	10%	18%	7%
Agency Budget	\$7,206,429	\$7,880,927	\$9,006,249	\$9,206,554	\$10,855,777	\$11,470,882
% Change		9%	14%	2%	18%	6%

Excluding the Death Unit, there was a 59% increase in the agency budget and a 75% increase in the total number of cases handled by the agency between the fiscal years 1991 and 1996.

Exhibit E

TIMELINE FOR CURRENT CAPITAL CASES

The following chart describes Kansas capital cases to date. The first date on the timeline is the date the case began, and the latter date is the date the case became non-capital. The latter may be an estimate, especially on cases not yet settled.



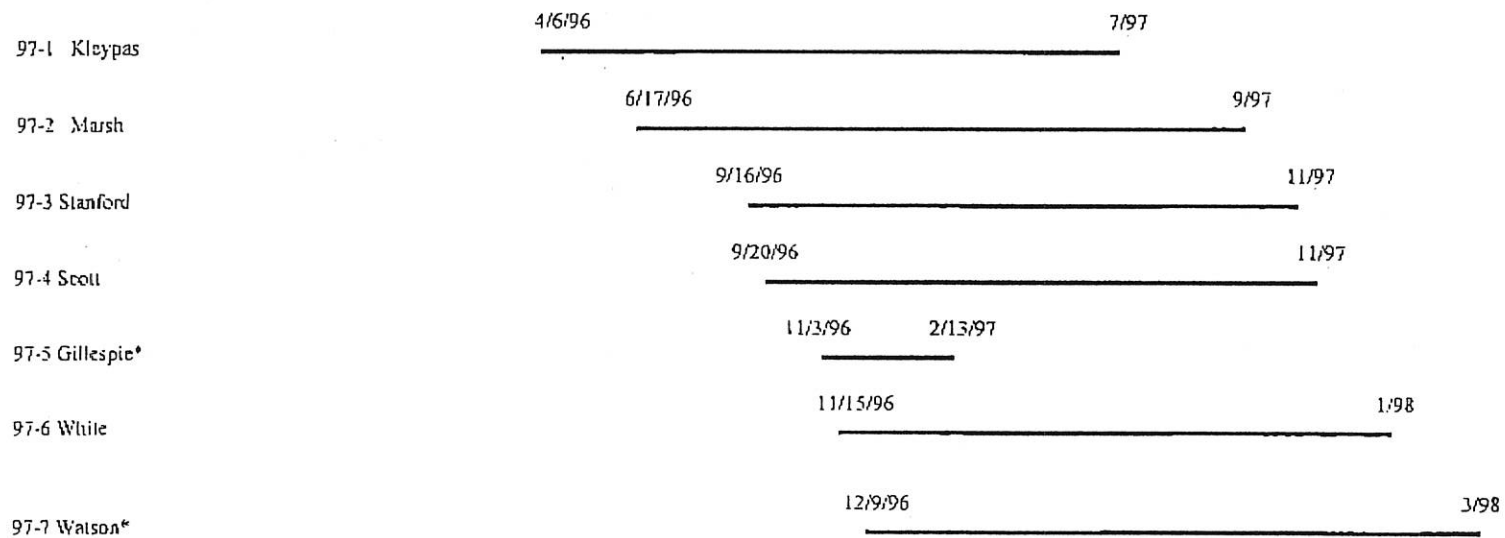
"F" EXHIBIT

FY 1996

FY 1997

FY 1998

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*Cases not filed as capital but appear to be potentially eligible because two victims are charged. Gillespie has pled at the time of this edition with sentencing set 2/13/97.