

Approved: 3-25-97
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 February 13, 1997 in Room 254-E of the Capitol.

All members were present.

Committee staff present: Mary Galligan, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Midge Donohue, Committee Secretary

Conferees appearing before the committee:

The Honorable Marla J. Luckert, District Court Judge and Chair of Judicial Council
Judicial Branch/Board of Indigent Defense Services Advisory Committee

Others attending: See attached list

Senator Oleen explained that **SB 28**, pertaining to recoupment of indigent defense service expenditures, was scheduled to be heard today and reminded the committee that a portion of the bill concerning bail bonds was now contained in **SB 158** and had been heard by the committee yesterday. She said she wanted to make it clear that discussion of the Board of Indigent Services (BIDS) was separate from the bonding issue; that she had spoken to proponents and opponents of both groups and all indicated they understood. She pointed out sections of the bill pertaining to the bonding issue that would no longer be a part of **SB 28** and invited discussion for clarification purposes.

Senator Harrington moved that Section 1 of **SB 28** which pertains to the bonding issue be struck along with all of Section 7 of the bill. Senator Schraad seconded the motion and the motion carried.

Senator Oleen gave the committee the option of introducing bills and considering a clarification amendment on **SB 29**, which pertains to accessible parking for the disabled, at this time or proceeding with the hearing on **SB 28** and conducting the former at the Rail later in the day. The committee elected to proceed with the hearing on **SB 28**, and Senator Oleen announced there would be no committee meeting tomorrow.

SB 28 **Relating to recoupment of certain state expenditures to provide counsel and other defense services to indigent defendants**

The Honorable Marla J. Luckert, District Court Judge and Chair of Judicial Council Judicial Branch/Board of Indigent Defense Services Advisory Committee, addressed the committee as a proponent of **SB 28** (Attachment #1). The first part of her testimony centered on the study the Legislature directed the Judicial Council to undertake regarding interaction between the Judicial Branch and the Board of Indigent Defense Services and paralleled testimony she presented yesterday to the committee. She discussed areas the Advisory Committee focused on in the study which included how to help judges determine indigence, how to ensure that judges actually scrutinize required affidavits of indigence, and other measures that would help increase recoupment efforts of the Board of Indigent Defense Services.

Judge Luckert directed the committee's attention to the Financial Affidavit form which is required to be completed by the defendant, a copy of which was included with her written testimony, and which the bill would require to be made a part of the court file. She pointed out that the legislative changes proposed in **SB 28** would require the judge to look at what portion the defendant should pay.

She pointed out that the proposed amendments require the sentencing judge to impose a judgment for attorney fees, and Section 13 of the bill obligates the BIDS to adopt and maintain a table for this use, which the Advisory Committee found to be the most efficient and fair method. Judge Luckert reported that the Advisory

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL & STATE AFFAIRS COMMITTEE, Room 254-E-Statehouse,
at 11:00 a.m. on February 13, 1997.

Committee concluded the most efficient way of according a defendant the necessary due process before judgment was to impose the amount at the time of sentencing, and Section 11 of the bill requires the attorney to present the billing at the time of sentencing; hence, the defendant is present to be heard on the amount billed.

She told the committee the Advisory Committee had recommended that those who are able to repay should do so as long as there are hardship exceptions and, she said, all provisions of the bill incorporate constitutionally required exceptions for circumstances where repayment would impose a hardship upon the defendant or the defendant's immediate family.

Senator Oleen expressed appreciation for the work of the Judicial Council and Advisory Committee on this issue and, because of time constraints, advised that the hearing on **SB 28** would continue at a later date.

The meeting adjourned at 12:10 p.m. The next meeting is scheduled for February 17, 1997.

Judicial Council
Testimony in Support of Senate Bill No. 28

Presented by Marla J. Luckert
District Court Judge and
Chair of Judicial Council
Judicial Branch/ Board of Indigent
Defense Services Advisory Committee

The 1996 Legislature requested the Kansas Judicial Council undertake a study of the interaction between the Judicial Branch and the Board of Indigents' Defense Services (BIDS). The direction from the Legislature was:

The study should include suggestions about how to help judges determine indigence, how to ensure that judges are actually scrutinizing the required affidavits of indigence, what factors are appropriate to examine in determining indigence, and any other measures that would help increase the recoupment efforts of the Board of Indigents' Defense Services. The study should also focus on reimbursement for services and costs for those defendants found to be partially indigent and whether judges should order defendants to reimburse costs at the time of sentencing.

In part, this request was prompted by a Legislative Post Audit report conducted in September 1994 and a study funded by the Legislature and conducted by the Wichita State University Hugo Wall School of Urban and Public Affairs. These studies concluded that controls to ensure services were provided to only those who are actually indigent were inadequate. The Legislative Post Audit report concluded that in nearly one-half of the 192 cases reviewed, the judge did not have all the information required under statutes and regulations before declaring a defendant indigent. The researchers also determined that in approximately ten percent of the cases reviewed there appeared to be income or property holdings which might disqualify the defendant from free legal services. Finally, the report

criticized the recoument of attorneys' fees and the significant lack of uniformity in these efforts in the various parts of the state.

To address these issues, the Judicial Council appointed the Judicial Branch/Board of Indigents' Defense Services Advisory Committee consisting of legislators, judges, and attorneys. The committee included Representative Gayle Mollenkamp, Russell Springs, and Senator Stephen R. Morris, Hugoton. Judges serving on the committee in addition to me were Jack L. Burr; Goodland, William F. Lyle, Jr., Hutchinson; Paul E. Miller, Manhattan; and Clark V. Owens II, Wichita. Professor William Rich of Washburn University, Mark J. Sachse, Kansas City and Ronald Wurtz, Topeka were the attorney members. The committee met over a several month period and heard from a number of conferees, including those who had conducted the legislative post audit.

The committee's report contains some recommendations to the Board of Indigents' Defense Services regarding the forms which are utilized in the determination of indigency. The only statutory change recommended which relates to the affidavit is in section 10 of the bill. This requires the filing of the affidavit in the court file.

The recommendations which result in more substantial legislative changes relate to mechanisms which will improve recoupment. The committee reached the consensus that district court's should presume that defendants were able to pay some amount for defense services. The amount may be minimal or it may be a rough equivalent of the actual cost. Hence, while a defendant may have been truly indigent when arrested or even at the time of sentence, he or she may gain the ability to pay the costs while on probation, parole or post-release supervision.

Kansas law before 1972 mandated repayment. However, this statute was found unconstitutional by the United States Supreme Court. *James v. Strange*, 407 U.S. 128 (1972).

Subsequently, the Court, in *Fuller v. Oregon*, 417 U.S. 40 (1974), determined it was constitutional to require those able to repay to do so as long as there were hardship exceptions. The Judicial Council's recommendation is that this approach be adopted.

Under current statutes, specifically K.S.A. 22-4513, BIDS may send to the county or district attorney a notice that expenditures have been made on behalf of a named defendant. The county or district attorney may then petition the court to require the defendant to repay the state all or part of that amount. The reality is that the procedure is not uniformly followed. Orders to repay are not always sought. Where the procedure is followed, it is cumbersome and costly because additional proceedings are required.

The proposed amendments require the sentencing judge to impose a judgment for an attorney fee. The amount assessed is the lesser of all expenditures made by the state board of indigents' defense services to provide counsel and other defense services or the amount allowed by the board of indigents' defense reimbursement table (a current table is attached). Section 13 of the bill imposes an obligation upon BIDS to adopt and maintain a table for this use. Under this method, full reimbursement to the State will not be achieved. However, realistically, even if the full amount of the fee were assessed as a judgment, we will never achieve 100 percent recoupment. There were several reasons why the committee believed working with a scheduled amount was the most efficient and fairest method. First, to set the judgment at the full amount approved after audit and final payment of the fee by BIDS would be the status quo and a system which has not been effective. We concluded the most efficient way of according a defendant the necessary due process before judgment was to impose the amount at the time of sentencing. Section 11 requires the attorney to present the billing at the time of sentencing. Hence, the defendant is present to be heard on the amount.

Obviously, at this point BIDS would not have reviewed the billing. Second, the committee felt that there should be some uniformity in the amounts of the judgment. Under the current system, defendants charged of a crime in a public defender district would generally pay a substantially smaller fee than a defendant in a non-public defender district. Third, it adds some predicability to the process. BIDS can determine the scheduled rates and may raise the amounts as appropriate. Over time an average percentage of recoupment will become known and revenue can be estimated.

Section 4 of the bill imposes these requirements at sentencings for crimes committed before July 1, 1993, and section 5 imposes the requirements for crimes committed after that date. Section 6 allows the court to order the reimbursement as a condition of probation. Sections 8 and 9 require the parole board to impose repayment of the costs of defense as a condition of parole or post release supervision, except in cases of compelling circumstances. Procedures are prescribed for situations where an amount was not set at sentencing.

All of the provisions incorporate the constitutionally required exception for circumstances where repayment would impose a hardship upon the defendant or the defendant's immediate family.

To aid in recoupment, sections 12 and 14 make available civil remedies such as garnishments and allow the courts to contract with collection services.

Section 2, 3 and 7 relate to bond provisions. Section 2 and 3 work in a tandem to allow counties to receive one-half of the amounts of forfeited bonds. Our research related to section 1 of the bill revealed that often county and district attorneys do not cause the forfeiture of the bond. This is true whether the bond is a professional surety or other type of surety bond. At least in part, the reason for this is the expense. Additionally, the county bears the expense of transporting fugitives

from justice. The intent of these provisions is to allow some reimbursement for these expenses and expenses which arise from the cash bonding program.

FINANCIAL AFFIDAVIT
 For Court-Appointed Attorney, Expert or Other Services
 (K.A.R. 105-4-3)

CASE NO. _____
CHARGES: _____
CUSTODY:
<input type="checkbox"/> Jail <input type="checkbox"/> R O R
<input type="checkbox"/> Cash Bond \$ _____
<input type="checkbox"/> Surety Bond \$ _____

Judicial Dist. _____
 County _____

DEFENDANT: _____ Last First MI Age

SPOUSE, If Married _____ Last First MI

ADDRESS: _____ Street City State Phone

IN EMERGENCY, CONTACT: _____ Last First MI

_____ Street City State Phone

INCOME	EMPLOYMENT: Are you (check one): <input type="checkbox"/> Employed <input type="checkbox"/> Unemployed <input type="checkbox"/> Self-employed Complete the information below for the last 12 months:		Monthly Income
	EMPLOYER	ADDRESS	Dates of Employment
	You	_____	_____
	Spouse	_____	_____
	If living with your parents or others to whom you look for support, enter their monthly income Totals		\$ _____
	Est'd Annual Income		\$ _____ × 12
ASSETS	OTHER INCOME: Have you received within the past 12 months any other income, including from a business, rent payments, public assistance, support or other sources? <input type="checkbox"/> Yes <input type="checkbox"/> No Sources		\$ _____
	If yes, give the amount received and identify sources. (Attach additional sheets, if necessary)		Total Annual Income \$ _____
	CASH: Have you any available cash or money in savings or checking accounts, certificates of deposit or other funds? <input type="checkbox"/> Yes <input type="checkbox"/> No Value		\$ _____
OBLIGATIONS & DEBTS	PROPERTY: Do you own a home, land or other property? (Do not include ordinary household furnishings and clothing) Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, approximately how much is it worth? \$ _____ Less amount still owed on it, approximately \$ _____ Total Other Assets \$ _____ A + B = Total Liquid Assets \$ _____		\$ _____
	DEPENDENTS: Total No. Dependents _____ Check one: List their names, ages and relationship to you: <input type="checkbox"/> Single _____ <input type="checkbox"/> Married _____ <input type="checkbox"/> Widowed _____ <input type="checkbox"/> Separated/ Divorced _____		DEBTS/MONTHLY BILLS
			Rent/House Payment \$ _____ Food/Clothing/Medicine _____ Utilities _____ Alimony/Child Support _____ Installment Payments _____ Other Payments _____ TOTAL MONTHLY EXPENSES \$ _____

STATEMENT OF DEFENDANT: I can afford to pay \$ _____ to the Clerk of District Court toward the costs of my defense at this time.

I, _____, of lawful age and under penalty of perjury, declare that I have read this affidavit, or that it has been read to me, about my financial condition and the statements contained therein are true.

 Date Signature
 Subscribed and sworn to before me this _____ day of _____, 19____
 My commission expires _____ Notary Public

OFFICE USE ONLY

APPLICANT ABOVE GUIDELINES: YES NO Amount \$ _____ PER _____ REFUSED BY TWO PRIVATE ATTORNEYS YES NO

RECOMMENDATION TO THE COURT:
 ELIGIBLE PARTIALLY INDIGENT, ABLE TO PAY \$ _____ PER MONTH FOR PUBLIC DEFENDER OR COUNSEL, TO BE REIMBURSED IF ACQUITTED.
 NOT ELIGIBLE REQUIRES A HEARING BEFORE FINAL DETERMINATION.

ORDER:
 AS RECOMMENDED _____ Date Eligibility Investigator
 AS FOLLOWS: _____ Date Judge

BIOS-72
 Note: Table of reasonable and necessary living expenses and table of costs of legal representation are on the reverse side of this form. These should be referred to in the determination of indigency or partial indigency.

DETERMINATION OF ELIGIBILITY—K.A.R. 105-4-1(b): "An eligible indigent defendant is a person whose combined household income and liquid assets equal less than the sum of the defendant's reasonable and necessary living expenses plus the anticipated cost of private legal representation."

**TABLE D
REASONABLE AND NECESSARY LIVING EXPENSES**

Size of Family Unit	Amount Allowed
1	\$ 9,338
2	12,538
3	15,738
4	18,938
5	22,138
6	25,338
7	28,538
8	31,738

Add \$3,200 for each additional family member.

(K.A.R. 105-4-2)

**TABLE E
COSTS OF LEGAL REPRESENTATION**

Most Serious Offense	Cost
A	\$9,000
B	3,500
C	2,000
D	1,800
E	1,500
Others	500
Appeals	3,000

Total Liquid Assets (Line C from front) _____ (1)

Amount from Table D above _____

Amount from Table E above _____

Sum of D and E _____ (2)

If defendant's Total Liquid Assets (Line 1) are less than the amount on Line 2, defendant should be determined to be indigent.

In all other cases, defendant may be determined to be indigent or partially indigent. If partially indigent, defendant should be ordered to reimburse the state for all or part of the expenditures made on his or her behalf. The court may take into account unusual debts or other circumstances in determining eligibility for defense services.

(See K.A.R. 105-4-1 through 105-4-5.)

107

REIMBURSEMENT TABLE IN PUBLIC DEFENDER CASES

	DRUG GRID 1, 2, 3 OFF GRID & NON-DRUG GRID 1-5			DRUG GRID 4 NON-DRUG GRID 6-10		OTHER
	A	B	C	D	E	
Plea before Preliminary Hearing	350	350	350	250	250	150
Plea after Preliminary Hearing	550	550	550	350	350	
Trial	550	550	550	350	350	
	Plus \$210 per day in trial					
Appeals	Actual preparation time and \$35 per hour, plus \$105					

*** Other includes show cause hearings (probation revocation), extradition, modification of sentence hearings, habeas corpus cases, diversion and all others that fall under the \$250 or \$100 maximum in the assigned counsel rules.

Criminal Caseload

	Criminal	Felony	Misdemeanor	MC	Inquisition
1985	2425	1110	1315	71	3
1986	2597	960	1637	77	3
1987	2861	1210	1651	48	2
1988	2740	1292	1448	26	1
1989	2919	1232	1687	27	4
1990	2774	1001	1773	27	2
1991	2952	1061	1891	24	7
1992	3103	1143	1950	38	10
1993	3547	1604	1937	18	6
1994	4215	1861	2345	30	5
1995	4511	2201	2295	21	11
1996	4011	2309	1691	23	8

Criminal Documents

	Totals	Warrants	Commitment	Summons	Subpoena *
1985	3749	2839	102	412	396
1986	4142	2823	126	554	639
1987	4003	2451	156	792	604
1988	4739	3107	147	679	806
1989	4974	3109	177	896	792
1990	4833	3167	156	634	876
1991	5330	3501	181	662	986
1992	5601	3786	169	575	1071
1993	6614	4520	154	859	1081
1994	8197	5647	171	1158	1221
1995	9042	5901	235	1629	1277
1996	9062	5108	228	1822	1904

* Does not include plaintiff's subpoenas

Civil Caseload

Domestic 7/19
U.S. District Court
W. Va. Dist. Ct.

	CV	LA	U	SC	SP
1985	1860	6499	632	896	10
1986	1911	5928	509	941	16
1987	2248	6219	466	1091	6
1988	2130	7179	332	1047	15
1989	2273	9685	673	1059	8
1990	2427	11758	639	1134	3
1991	1872	11851	501	1031	6
1992	1644	11541	974	957	12
1993	1542	14500	1224	820	8
1994	1470	16218	692	755	8
1995	1385	17258	1102	711	10
1996	1518	20199	462	717	10

Chapter 60 Documents

	Total	Garn	Wrnts	Summons	Subpoena
1985	2007	2007			
1986	1567	1567			
1987	1512	1512			
1988	9390	1997	347	5238	1808
1989	9098	1795	324	5175	1804
1990	9902	1674	361	5617	2250
1991	7068	874	12	3590	1075 *
1992	7442	862	8	3304	1121
1993	8426	910	80	2681	1439
1994	6865	622	62	2541	1286
1995	4891	668	10	2478	1222
1996	5140	661	6	2667	1168

* 1982-1990 - Civil & Domestic documents combined.
Effective 1991 Domestic statistics separate from Civil.

Chapter 61 Documents

	Total	Garn	Wrnts	Summons	Aids	Citations
1985	15292	7260	928		4887	2217
1986	18760	8567	892		6671	2630
1987	20198	9382	1063		6879	2874
1988	28685	11691	798	6514	7000	2682
1989	42873	13497	767	16538	7756	4315
1990	51633	14978	1064	16473	10463	8655
1991	56183	14568	1323	16361	11367	12564
1992	56155	13257	1827	15491	11285	14295
1993	66404	15194	1886	18782	14043	16499
1994	90178	18619	2885	20826	15377	20223
1995	96235	20108	4993	21036	15714	24255
1996	113479	24640	2917	24870	17901	31119

Domestic Caseload

	D	DC	DP	DV	R	(Prot)	DR	Total
1985	1541							1541
1986	1426				80			1506
1987	1551				98	170 *		1649
1988	1805				83	380 *		1888
1989	1798				72	460 *		1870
1990	1957				98	541 *		2055
1991	1481	8	345	570	123			2527
1992	1253	11	353	663	202		37	2519
1993	1252	22	522	710	180		142	2828
1994	1284	17	487	784	237		171	2980
1995	1328	15	507	856	224		179	3109
1996	1223	17	488	791	202		140	2861

* Protection cases included in Domestic total.
 1991 - First year Domestic separate from Civil.

Domestic Documents

	Total	Garn	Wrnts	Summons	Subpoena
1991	3713	583	435	2131	564
1992	3811	472	580	2109	650
1993	4496	362	937	2535	662
1994	8110	329	1042	2811	785
1995	8738	326	1124	2753	781
1996	8593	361	1201	2756	717

Traffic Caseload

	Traffic	DUI	F&G	HV
1985	9585	305	114	
1986	10398	331	167	
1987	9956	382	122	
1988	9207	306	50	114
1989	10083	359	53	133
1990	11628	360	52	215
1991	12231	373	48	190
1992	11007	244	108	115
1993	10626	227	37	179
1994	11506	295	52	193
1995	10625	242	35	---
1996	9418	358	16	---

*** 1995 HV cases handled by DMV

Traffic Documents

	Wrmts	Comm	Sumn	Susp Ltr.
1987	1223			1674
1988	1419	393	1182	2153
1989	1259	364	1314	2192
1990	973	311	828	2605
1991	905	393	924	2743
1992	658	400	849	2820
1993	630	500	786	2183
1994	845	687	855	2969
1995	1032	704	706	2641
1996	1371	734	747	2722

Juvenile Caseload

	Total	JV	JC
1985	1100		
1986	1382	985	397
1987	2010	1581	429
1988	1483	1091	392
1989	1485	983	502
1990	1632	1150	482
1991	1633	1069	564
1992	1574	989	585
1993	1532	876	656
1994	1561	966	595
1995	1492	897	595
1996	1999	1335	664

Juvenile Documents

	Wrnts	Notice of Hearing	Order of Convey	Sumns	Subp
1985	96				
1986	96				
1987	143				
1988	147				
1989	232				
1990	245				
1991	372				
1992	257				
1993	247	499	104	2870	106
1994	329	342	82	2649	225
1995	290	423	52	2358	289
1996	576	401	74	3123	262