

Approved: 4-9-97  
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 17, 1997 in Room 254-E of the Capitol.

All members were present except:  
Senator Donald Biggs, Excused  
Senator Laurie Bleeker, Excused

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

Conferees appearing before the committee:  
Shelby Smith, Wichita

Others attending: See attached list.

Mr. Shelby Smith, Wichita, appeared as a private citizen and former legislator who served on the House Tax Committee, to request introduction of a conceptual measure concerning school district finance. He said he was asking for introduction of the bill for study by the Senate Assessment and Taxation Committee and explained the issues the measure would address.

Senator Vidricksen moved for introduction of the bill. Senator Schraad seconded the motion, and the motion carried.

Senator Oleen advised there was a bill on the House side, **HB 2080**, pertaining to the Riley County Law Enforcement Agency. She explained that part of the agency's base funding was lost, and she requested introduction of a bill to allow the City of Manhattan to pick up law enforcement costs.

Senator Vidricksen moved for introduction of the bill. Senator Becker seconded the motion, and the motion carried.

Senator Oleen advised that former State Representative Joan Adams had contacted her regarding introduction of a bill, and asked staff to explain the nature of the proposal. Staff advised that the bill would increase mortgage registration fees by one cent, with two cents going to the Heritage Trust Fund.

Senator Becker moved for introduction of the bill. Senator Jones seconded the motion, and the motion carried.

Senator Oleen advised that the Kansas Forest and Extension Service had requested a bill to allow for a name change to the Kansas Forest Service. She said it would probably be an agriculture bill and that she had spoken with the chairman of the Agriculture Committee who indicated that committee would have time to consider the measure.

Senator Jones moved for introduction of the bill. Senator Becker seconded the motion, and the motion carried.

Senator Oleen inquired if there were any other requests for bill introduction. There being none, she advised she would continue the hearings on **SB 28**.

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

Senator Oleen recognized Ms. Natalie Haag, Board of Indigent Defense Services (BIDS), and noted that

## CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL & STATE AFFAIRS COMMITTEE, Room 254-E-Statehouse, at 11:00 a.m. on February 17, 1997.

conferees from last Friday's hearing were also present. She stated it was her intent, following Ms. Haag's remarks, to have conferees who testified earlier respond to questions for clarification purposes.

Ms. Natalie Haag, Board of Indigent Defense Services (BIDS), spoke in support of **SB 28** (Attachment #1). She explained the bill would basically enhance efforts to recoup attorney fees and costs expended by the BIDS for indigent defense services. She pointed out that, currently, Kansas is second in the nation in total dollars recouped per case from indigent defendants, which she said was indicative that the agency was not opposed to seeking reimbursement from its clients.

Ms. Haag discussed the average cost per case for assigned counsel versus the cost per case for a public defender. She told the committee the only concern she had about the bill was, under current language, BIDS would lose the right to collect an average of \$200 per case. She recommended striking the referenced language and include language that would require a defendant to be assessed the actual cost of the services provided.

She explained the reimbursement table which shows the cost to the Board for providing public defender services for each category of service and stated that the need for statutory authority to order reimbursement of attorney fees and costs is paramount. Ms. Haag told the committee that the majority of counties in Kansas do not have a public defender and **SB 28**, as drafted, could result in giving a price break to all defendants represented by assigned counsel, not just those defendants whose co-defendant is represented by a public defender. She said the most fair approach would be to assess a defendant the actual cost of the services provided.

Discussion followed concerning the quality of representation by the public defender and/or assigned counsel, with Senator Gooch expressing concern about individuals who were not properly represented, saying he believed the level of defense is often based on funds available.

Ms Haag told the committee that the attorney's fee submitted to the District Court Judge at the time of sentencing is not always the amount paid by the BIDS to the attorney. It was the Board's recommendation that, because of a number of factors affecting the amount of reimbursement actually owed, the language of the bill be amended regarding court ordered attorney fees and costs.

Senator Oleen inquired about the disposition of bail forfeiture monies. Ms. Haag told the committee, as a matter of practice, court costs are paid first, then restitution and the BIDS last. She said there are no statutory guidelines or tracking mechanism in place at the present time on the amount of money turned into the State General Fund on bond forfeitures. Ms. Haag advised that **SB 28** would specify the amount that stays with the court and what goes to the General Fund.

Senator Oleen noted that time would not allow for **SB 28** to be worked in committee today but advised that staff would highlight specific amendments and prepare a working paper for presentation later. She asked the committee to be prepared to take action on the bill tomorrow.

Senator Oleen reminded the committee the hearing on **SB 21** concerning carrying of concealed weapons was scheduled for Wednesday, February 19th, on **SB 21** in Room 313-S.

Senator Becker moved for approval of the minutes from the January 29, January 30, and February 3 meetings. Senator Harrington seconded the motion, and the motion carried.

The meeting adjourned at 12:01. The next meeting is scheduled for February 18, 1997.

SENATE FEDERAL & STATE AFFAIRS COMMITTEE  
GUEST LIST

DATE: 2-17-97

NAME	REPRESENTING
Robert Marsh	Kansas Preservation Alliance
Pat Lawless	BIDS
Natalie Haag	BIDS
Suzanne Tuma	Student visitor
Marla G. Zuchert	Judicial Council
Don Forner	DoB.

**TESTIMONY**  
**BOARD OF INDIGENTS' DEFENSE SERVICES**  
**BEFORE THE**  
**SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS**  
**FEBRUARY 13, 1997**  
**Natalie G. Haag, Executive Director**

On behalf of the Board of Indigents' Defenses Services, I appear in support of Senate Bill 28. As you have heard, this legislation would require the court to order defendants to reimburse the State of Kansas for expenditures by BIDS. As I previously testified, Kansas is currently second in the nation in total dollars per case recouped from indigent defendants. Thus, this agency is not opposed to seeking reimbursement from our clients.

We have only one concern regarding the proposed language of the bill:

As the bill is written, the defendant will be assessed the lesser of the actual costs of defending his/her case or the costs set forth in a reimbursement table. The reimbursement table is defined as a table setting forth the cost of the board of indigents' defense for providing public defender services for each separate category of service provided.

As you may recall, the average cost per case for assigned counsel was \$595, whereas the average cost per case for a public defender was \$391. Under the current language of this bill, the board of indigents' defense services would be losing the right to collect an average of \$200 per case for approximately 11,000 cases. This totals \$2,200,000 which would not be ordered reimbursed. This reduction in attorney fees assessed can occur in cases where the defendant is able to pay the full amount because the statute requires the court to order the lesser of the two amounts.

The need to have statutory authority to order reimbursement of attorney fees and costs is paramount. The issue of improving recoupment to the State General Fund can not be adequately addressed without this statutory amendment. However, the implementation of how to determine the amount of attorney's fees to assess is complicated. The Judicial Council was concerned about fairness in assessing co-defendants different rates for attorney's fees where one defendant is represented by assigned counsel and the co-defendant is represented by a public defender. This concern arises only in those jurisdictions where a public defender office is located. The majority of the counties in Kansas do not have a public defender. As drafted Senate Bill 28 could be giving a "price break" to all defendants represented by assigned counsel and not just those defendants whose co-defendant is represented by a public defender. We think the fairest approach is to assess a defendant the actual cost of the services provided.

This equation is further complicated by the fact that the attorney's fees submitted to the District Court Judge at the time of sentencing is not always the amount paid by BIDS to the

attorney. The BIDS staff audits the bills and reduces them in accordance with the Board's policies. During the last fiscal year, the Board cut \$368,870 from submitted attorney fees claims. In these circumstances, the court would have ordered the defendant to reimburse the state for monies the state did not expend. The actual expenditures of the Board on each case is reported to the Clerk of the District Court on a monthly basis. The practicality of using this information for sentencing has not been explored.

Due to the large number of factors effecting the amount of reimbursement actually owed to the State General Fund, we recommend the bill be amended by deleting the last sentence of the proposed language regarding court ordered attorney fees and costs. The court would still be required to order attorney's fees but the implementation of how the amount of fees is determined would be worked out between the BIDS office and the District Court Judges.

Further, we recommend the Judicial Council committee which studied these issues meet again to study potential Supreme Court Rules or revised legislation regarding the implementation issues assessing attorney fees and costs, the revision of the indigency affidavit to make a "Judge friendly" form, and additional amendments to legislation regarding recoupment of appellate costs in indigent criminal cases.

## AVERAGE COST PER CASE TABLES

### NON-DRUG (Tried/Non-Tried)

SEVERITY LEVEL	ASSIGNED COUNSEL	PUBLIC DEFENDER
10	\$1,320/\$390	\$905/\$254
9	\$877/\$463	\$595/\$305
8	\$1,070/\$455	\$730/\$299
7	\$1,262/\$514	\$864/\$341
6	\$2,165/\$528	\$1,496/\$357
5	\$1,482/\$637	\$1,018/\$427
4	\$1,170/\$545	\$800/\$362
3	\$2,271/\$739	\$1,570/\$498
2	\$2,584/\$793	\$1,790/\$536
1	\$3,191/\$967	\$2,215/\$658
TOTAL	\$1,663/\$543	\$1,145/\$361

### DRUG (Tried/Non-Tried)

SEVERITY LEVEL	ASSIGNED COUNSEL	PUBLIC DEFENDER
4	\$1,162/\$521	\$795/\$345
3	\$1,684/\$667	\$1,160/\$448
2	\$2,167/\$590	\$1,498/\$394
1	\$1,530/\$780	\$1,052/\$527
TOTAL	\$1,574/\$587	\$1,083/\$392

**STATE BOARD OF INDIGENTS' DEFENSE SERVICES**  
**PROPOSAL NO. 2**

**Bill Title:**     **Recoupment of Monies from Partially Indigent Defendants Deposited to the Credit of the Indigents' Defense Services Fee Fund**

**Bill Summary:**

The proposal will allow the agency to retain money collected from indigent and partially indigent defendants as reimbursement ordered pursuant to K.S.A. 21-4610, and deposit these funds into the indigents' defense services fee fund, thereby allowing the agency to reduce its reliance on the state general fund.

K.S.A. 21-4610, 22-4504, and 22-4513 will be amended under this proposal. The primary change in these statutes will be to replace the words "state general fund" with the phrase "indigents' defense services fund".

**Fiscal Impact:**

The proposal is not included in the FY 1997 Budget Document, since it does not affect the expenditures by the agency. The proposal will allow the agency to spend money which currently goes into the state general fund and, therefore, there is no fiscal impact to the state. The transfer is dollar for dollar from the general fund (anticipated revenue from the reimbursement orders) to the indigents' defense services fund.

**Policy Implications and History:**

Policy implications include an increased reliance on a revenue source that has increased steadily over the years. There will be a corresponding decrease in reliance on the state general fund. The state's public defenders are opposed to the implications inherent in defending persons who will later reimburse the agency for work they are performing as part of their legal obligation.

The agency administrators support the proposal since it will provide an incentive for increased recoupment efforts by the courts, court services officers and attorneys and may enable the agency to realize an increase in its collections, even staying ahead of projections for the year.

**Impact on Other State Agencies:**

None.

**Proposed Statutory Changes Attached.**

**21-4610. Conditions of probation or suspended sentence.** (a) Except as required by subsection (d), nothing in this section shall be construed to limit the authority of the court to impose or modify any general or specific conditions of probation, suspension of sentence or assignment to a community correctional services program, except that the court shall condition any order granting probation, suspension of sentence or assignment to a community correctional services program on the defendant's obedience of the laws of the United States, the state of Kansas and any other jurisdiction to the laws of which the defendant may be subject.

(b) The court services officer or community correctional services officer may recommend, and the court may order, the imposition of any conditions of probation, suspension of sentence or assignment to a community correctional services program. For crimes committed on or after July 1, 1993, in presumptive nonprison cases, the court services officer or community correctional services officer may recommend, and the court may order, the imposition of any conditions of probation or assignment to a community correctional services program. The court may at any time order the modification of such conditions, after notice to the court services officer or community correctional services officer and an opportunity for such officer to be heard thereon. The court shall cause a copy of any such order to be delivered to the court services officer and the probationer or to the community correctional services officer and the community correctional participant, as the case may be.

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

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

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

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

(4) permit the court services officer or community correctional services officer to



visit the defendant at home or elsewhere;

- (5) work faithfully at suitable employment insofar as possible;
- (6) remain within the state unless the court grants permission to leave;
- (7) pay a fine or costs, applicable to the offense, in one or several sums and in the manner as directed by the court;
- (8) support the defendant's dependents;
- (9) reside in a residential facility located in the community and participate in educational, counseling, work and other correctional or rehabilitative programs;
- (10) perform community or public service work for local governmental agencies, private corporations organized not for profit, or charitable or social service organizations performing services for the community;
- (11) perform services under a system of day fines whereby the defendant is required to satisfy fines, costs or reparation or restitution obligations by performing services for a period of days determined by the court on the basis of ability to pay, standard of living, support obligations and other factors;
- (12) participate in a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto;
- (13) In felony cases, except for violations of K.S.A. 8-1567 and amendments thereto, be confined in a county jail not to exceed 30 days, which need not be served consecutively.

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

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

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

(3) *pay the indigents' defense administrative fee pursuant to K.S.A. 22-4504 and amendments thereto; and*

(4) reimburse the ~~state state-general fund~~ for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment.

**22-4504. Same; determination of indigency; partial indigency, effect; disposition of payments for appointed counsel services.** (a) When any defendant who is entitled to have the assistance of counsel, under the provisions of K.S.A. 22-4503 and amendments thereto, claims to be financially unable to employ counsel, the court shall require that the defendant file an affidavit containing such information and in the form as prescribed by rules and regulations adopted by the state board of indigents' defense services. The court may interrogate the defendant under oath concerning the contents of the affidavit and may direct the county or district attorney, sheriff, marshal or other office of the county to investigate and report upon the financial condition of the defendant and may also require the production of evidence upon the issue of the defendant's financial inability to employ counsel.

(b) Upon the basis of the defendant's affidavit, the defendant's statements under oath, and such other competent evidence as may be brought to the attention of the court, which shall be made part of the record in the case, the court shall determine whether the defendant is financially unable to employ counsel. In making such determination the court shall consider the defendant's assets and income; the amount needed for the payment of reasonable and necessary expenses incurred, or which must be incurred to support the defendant and the defendant's immediate family; the anticipated cost of effective representation by employed counsel; and any property which may have been transferred or conveyed by the defendant to any person without adequate monetary consideration after the commission of the alleged crime. If the defendant's assets and income are not sufficient to cover the anticipated cost of effective representation by employed counsel when the length and complexity of the anticipated proceedings are taken fully into account, the defendant shall be determined indigent in full or in part and the court shall appoint an attorney as provided in K.S.A. 22-4503 and amendments thereto. If the court determines that the defendant is financially able to employ counsel, the court shall so advise the defendant and shall give the defendant a reasonable opportunity to employ an attorney of the defendant's own choosing. All determinations by a court as to whether a defendant is financially unable to employ counsel shall be subject to and in accordance with rules and regulations adopted by the state board of indigents' defense services under this act.

(c) The court shall inform the defendant for whom counsel is appointed that the amount expended by the state in providing counsel and other defense services may be entered as a

judgment against the defendant if the defendant is convicted and found to be financially able to pay the amount, and that an action to recover such amount may be brought against any person to whom the defendant may have transferred or conveyed any of the defendant's property without adequate monetary consideration after the date of the commission of the alleged crime. A determination by the court that the defendant is financially unable to employ counsel or pay other costs of the defendant's defense may preclude a recovery from the defendant but may not preclude recovery from any person to whom the defendant may have transferred or conveyed any property without adequate monetary consideration after the date of the commission of the alleged crime.

(d) If found to be indigent in part, the defendant shall be promptly informed of the terms under which the defendant may be expected to pay for counsel. Any payments pursuant to such terms shall apply upon any judgment entered pursuant to K.S.A. 22-4513 and amendments thereto. Payments made for services for appointed counsel provided under K.S.A. 22-4503 and amendments thereto shall be paid to the clerk of the district court. The clerk of the district court shall remit all moneys received as payment for services of appointed counsel under this section to the state board of indigents' defense services at least monthly and the board shall remit all moneys received under this section to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the *indigents' defense services fund* ~~state general fund~~.

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

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

**22-4513. Liability of defendant for expenditures by state board; determination of amount and method of payment; liability of others for expenditures.** (a) Within 30 days after any expenditure has been made by the state board of indigents' defense services to provide counsel and other defense services to any defendant and such defendant has been convicted, the state director of indigents' defense services *shall may* send to the county or district attorney of the county where the defendant was convicted a notice stating the name of the defendant and the amount of the expenditure. The county or district attorney, in such attorney's discretion, may petition the district court to require the defendant to repay to the state all or a part of the amount expended by the state board of indigents' defense services on behalf of such defendant. Subject to the provisions of subsection (b), the procedure for the filing of the petition and subsequent procedure to be followed in the action shall be the same as in other civil actions pursuant to Chapter 60 of the Kansas Statutes Annotated, except that no docket fee shall be charged for the filing of the petition. At the hearing on the petition the court shall determine whether or not the defendant is or will be able to repay all or a part of the expenditures paid by the state board of indigents' defense services on behalf of the defendant.

(b) In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment.

(c) Whenever any expenditure has been made by the state board of indigents' defense services to provide counsel and other defense services to any defendant, a sum equal to such expenditures may be recovered by the state of Kansas for the benefit of the

*indigents' defense services fund* ~~state general fund~~ from any persons to whom the indigent defendant shall have transferred any of the defendant's property without adequate monetary consideration after the commission of the alleged crime, to the extent of the value of such transfer, and such persons are hereby made liable to reimburse the state of Kansas for such expenditures with interest at 6% per annum. Any action to recover judgment for such expenditures shall be prosecuted by the attorney general, who may require the assistance of the county attorney of the county in which the action is to be filed, and such action shall be governed by the provisions of the code of civil procedure relating to actions for the recovery of money. No action shall be brought against any person under the provisions of this section to recover for sums expended on behalf of an indigent defendant, unless such action shall have been filed within two years after the date of the expenditure by the state board of indigents' defense services.

**STATE BOARD OF INDIGENTS' DEFENSE SERVICES**  
**PROPOSAL NO. 3**

**Bill Title:**     **Administrative Fee Assessed on Partially Indigent Defendants at time of Appointment of Counsel**

**Bill Summary:**

The proposal would allow the court to assess an "up-front" administrative fee of \$50 in order to receive services of court-appointed counsel. The court would be allowed to waive all or part of the fee if warranted by the defendant's indigency status or other factors. The fee would be paid to the clerk of the district court who would remit the fee to the state board of indigents' defense services for deposit into the "indigents' defense services fund". The board's rules and regulations would be amended to include a new rule K.A.R. 105-4-6 (attached) as would the statute K.S.A. 22-4504 (attached).

**Fiscal Impact:**

Depending on the applicability of the statutory change and how often judicial discretion is used to waive the fee, the agency could collect as much as \$100,000. Since the court also orders recoupment at the conclusion of many cases, the amount collected as a fee would be in addition to those recoupment efforts.

**Policy Implications and History:**

The agency's management study and post audit report both identified problems with the court's determination of indigency. Both reports opined that as many as 10% of the clients served by the agency may not have been eligible for the services. A further problem identified was that the courts were not enforcing recoupment orders and were releasing defendants from probation prior to meeting this obligation.

The proposal allows the agency to adopt the Kentucky Public Defense system's example and initiate an "up-front" administrative fee that is charged to all defendants to whom they are appointed. This fee can be waived in situations of extreme poverty. A small fee that most defendants could pay would generate some recoupment, although it would generate less than the existing recoupment procedures. The fee would need to be assessed **with** existing recoupment orders, not replace them.

Public defenders are concerned that "up-front" charges put a chill on the constitutionally mandated services provided and create a conflict situation. Making this fee subject to waiver for those who are truly destitute should avoid that problem. In discussing this change, lawmakers must be made aware that there must be **no** consequence to the public defense system if attorneys are successful in arguing for waiver, thereby reducing the fees generated.

**Impact on Other State Agencies:**

Court employees will be required to receipt monies paid under this proposal and remit to the agency.

**Proposed Statutory and Regulatory Changes Attached.**

**22-4504. Same; determination of indigency; partial indigency, effect; disposition of payments for appointed counsel services.** (a) When any defendant who is entitled to have the assistance of counsel, under the provisions of K.S.A. 22-4503 and amendments thereto, claims to be financially unable to employ counsel, the court shall require that the defendant file an affidavit containing such information and in the form as prescribed by rules and regulations adopted by the state board of indigents' defense services. The court may interrogate the defendant under oath concerning the contents of the affidavit and may direct the county or district attorney, sheriff, marshal or other office of the county to investigate and report upon the financial condition of the defendant and may also require the production of evidence upon the issue of the defendant's financial inability to employ counsel.

(b) Upon the basis of the defendant's affidavit, the defendant's statements under oath, and such other competent evidence as may be brought to the attention of the court, which shall be made part of the record in the case, the court shall determine whether the defendant is financially unable to employ counsel. In making such determination the court shall consider the defendant's assets and income; the amount needed for the payment of reasonable and necessary expenses incurred, or which must be incurred to support the defendant and the defendant's immediate family; the anticipated cost of effective representation by employed counsel; and any property which may have been transferred or conveyed by the defendant to any person without adequate monetary consideration after the commission of the alleged crime. If the defendant's assets and income are not sufficient to cover the anticipated cost of effective representation by employed counsel when the length and complexity of the anticipated proceedings are taken fully into account, the defendant shall be determined indigent in full or in part and the court shall appoint an attorney as provided in K.S.A. 22-4503 and amendments thereto. If the court determines that the defendant is financially able to employ counsel, the court shall so advise the defendant and shall give the defendant a reasonable opportunity to employ an attorney of the defendant's own choosing. All determinations by a court as to whether a defendant is financially unable to employ counsel shall be subject to and in accordance with rules and regulations adopted by the state board of indigents' defense services under this act.

(c) The court shall inform the defendant for whom counsel is appointed that the amount expended by the state in providing counsel and other defense services may be entered as a



judgment against the defendant if the defendant is convicted and found to be financially able to pay the amount, and that an action to recover such amount may be brought against any person to whom the defendant may have transferred or conveyed any of the defendant's property without adequate monetary consideration after the date of the commission of the alleged crime. A determination by the court that the defendant is financially unable to employ counsel or pay other costs of the defendant's defense may preclude a recovery from the defendant but may not preclude recovery from any person to whom the defendant may have transferred or conveyed any property without adequate monetary consideration after the date of the commission of the alleged crime.

(d) If found to be indigent *in full or* in part, the defendant shall be promptly informed of the terms under which the defendant may be expected to pay for counsel, *including an administrative fee to be assessed by the court as an administrative fee of the state board of indigents' defense services. The state board of indigents' defense services shall adopt rules and regulations setting the amount of such administrative fee.* Any payments pursuant to such terms shall apply upon any judgment entered pursuant to K.S.A. 22-4513 and amendments thereto. Payments made for services for appointed counsel provided under K.S.A. 22-4503 and amendments thereto *payments of the administrative fees under this section* shall be paid to the clerk of the district court. The clerk of the district court shall remit all moneys received ~~as payment for services of appointed counsel~~ under this section to the state board of indigents' defense services at least monthly and the board shall remit all moneys received under this section to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the *indigents' defense services fund* ~~state general fund~~.

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

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

# THE SPANGENBERG GROUP

## Up-Front Application/Registration Fee Rates (Updated December 1996)

D R A F T

1-15

State (Authority)	Current Fee	Revenues from Fee: FY 1996	Implementation Date	Recipient of Revenue	Agency responsible for Screening/collections	% of clients from which fee is collected	Overhead expenditure for fee collections	Mechanism for partial payment
California (County adopted state statute)	\$25	N/A	Legislation enacted in August 1996. Implementation dates dependent on county.	County general fund	Varies from county to county.	N/A	Varies from county to county.	Defendant may be assessed a portion of the fee.
Colorado (State Statute)	\$25 <sup>1</sup>	\$161,928	1990	State treasury	The courts	N/A	None	Fee may be reduced to \$10 or waived completely.
Connecticut (State Statute)	\$25 <sup>2</sup>	\$87,280	July 1, 1993	Public Defender Services	Public Defender Services.	Fee is collected from 20% of those defendants who are assessed. The Public Defender Services assesses 30% of their clientele (incarcerated defendants are not assessed). They collect the reimbursement from approximately 6% of all indigent defendants.	None	Defendant may be assessed a portion of the fee.
Florida (State Statute)	\$40	N/A	January 1, 1997	Indigent Criminal Defense Fund	The courts	N/A	None	Defendant may be assessed a portion of the fee.
Kentucky (State Statute)	\$40	\$620,831	July 15, 1994	Department of Public Advocacy	The courts	Approximately 45% <sup>3</sup>	None	Defendant may be assessed a portion of the fee.
Massachusetts (State statute)	\$100 <sup>4</sup>	\$1,884,604	July 1, 1991	State general fund	Probations Department does screening and collections. Judge makes final assessment.	N/A	None	Defendant may be assessed a portion of the fees.

<sup>1</sup> The Colorado fee was originally \$10. It was raised to \$25 in 1993.

<sup>2</sup> Connecticut's program is called "client reimbursement." State law states that all fees must be returned to the general fund while collections from reimbursements return directly to the agency providing services.

<sup>3</sup> The estimate is based on projected revenues of \$1,200,000 to be collected from 60% of indigent defendants. The estimate also represents an statewide average. Some urban counties report that collection rate range as high as 75% - 90%.

<sup>4</sup> Originally, Massachusetts instituted a \$40 fee effective on July 1, 1990. The fee was then raised to \$75 to be effective on July 1, 1992. The current \$100 fee went into effect on July 1, 1994.

# THE SPANGENBERG GROUP

## Up-Front Application/Registration Fee Rates (Updated December 1996)

DRAFT

2/1/96

State (Authority)	Current Fee	Revenues from Fee: FY 1996	Implementation Date	Recipient of Revenues	Agency responsible for Screening/collections	% of clients from which fee is collected	Overhead expenditure for fee collections	Mechanism for partial payment
New Jersey (State statute)	\$50	\$203,500	July 1, 1991	State Public Defender	State Public Defender	6-7%	None	Defendant may be assessed a portion of the fee.
New Mexico (State statute)	\$10	\$78,000	July 1, 1993	Public Defender's Automation Account	Indigency screenings and collections are conducted by public defenders in the six district that have PD services. The courts are responsible in the other seven districts.	Approximately 15% <sup>5</sup>	The collection overhead costs averages out to be about the same as the revenues generated.	If the defendant cannot pay the full \$10, then the fee is waived.
Oklahoma (State statute)	\$40 <sup>6</sup>	\$5,000	July 1, 1992	First \$20 to Oklahoma Indigent Defense System. Second \$20 to the courts.	The courts	4-5%	None	Partial payments are allow. First \$20, or any portion thereof, is dedicated to Oklahoma's indigent defense system. Next \$20 goes to courts.
South Carolina (State statute)	\$25	\$160,000	July 1, 1993	Office of Indigent Defense	Screenings/Collections are left up to the counties. All but four counties have court clerks collect the fee. Three counties have PDs collect the fee, and one county has the magistrate's office perform the function.	Approximately 10% <sup>7</sup>	None	Defendant may be assessed a portion of the fee.
Washington (King County)	\$5 <sup>8</sup>	\$15,000	1991	Indigent Defense Expense Fund	Office of Public Defender <sup>9</sup>	N/A	N/A	Fee is waived if defendant cannot pay the \$5.

<sup>5</sup> This estimate represents widely disparate numbers from county to county. The New Mexico Public Defender Department has offices in 6 of the 13 judicial districts. In these six districts, fees are collected from 25% of the defendants. The collections rates in the other seven districts stand at less than eight percent.

<sup>6</sup> From July 1, 1992 to June 30, 1996, Oklahoma's fee was \$15. At that time, 10% of the fee went to the courts (\$1.50) while 90% (\$13.50) went to Oklahoma Indigent Defense System (OIDS).

<sup>7</sup> Currently, the South Carolina Office of Indigent Defense has no means to track the number of cases in which the fee is waived. The estimation is based on projected revenues of \$1,400,000.

<sup>8</sup> On January 1, 1997 the fee will be raised to \$25.

<sup>9</sup> The Finance Office pursues non-collected fees without a charge to the Office of Public Defense. After two years, a collection agency is contracted to collect the fees.

**THE SPANGENBERG GROUP**  
**Up-Front Application/Registration Fee Rates (Updated December 1996)**

DRAFT

1-17

State (Authority)	Current Fee	Revenues from Fee: FY 1996	Implementation Date	Recipient of Revenues	Agency responsible for Screening/collections	% of clients from which fee is collected	Overhead expenditure for fee collections	Mechanism for partial payment
Wisconsin (State statute)	Varies <sup>10</sup>	\$626,000	August 1, 1995	Wisconsin Public Defender	Wisconsin Public Defender	Approximately 8% <sup>11</sup>	Two positions had to be transferred from public defender field office to the central office to handle the payments.	Defendant can elect to pay the defense services in installments, but he/she loses out on the prepayment discount. <sup>12</sup>

<sup>10</sup> The prepayment fee is based upon a detailed matrix that takes into account the type and number of charges brought against the defendant. The client can elect to prepay the charges at a reduced rate within 30 days of the application for counsel.

<sup>11</sup> Estimate is based on the projected revenues of \$7,000,000.

<sup>12</sup> Wisconsin Public Defender contracts with a collection agency to collect these payments.

February 12, 1997

To: Natalie Haag  
From: Glenn Adamson  
Re: Recoupment

**IOWA -**

Total Recoupment: \$2,283,000

Total Cases: Unavailable

Comments: a. Collection Unit exists in Revenue Dept.

- b. State income tax refunds are used to pay debts.
- c. Person who owes money can not get driver's licence renewed.
- d. County attorneys may keep up to 35% of recoupment for their county.

**MARYLAND -**

Total Recoupment: \$1,417,507

Total Cases: 160,000

Comments: a. Service fee of \$50 for adult and \$25 for juvenile.

- b. Court ordered recoupment of \$417,963.
- c. Service fee recoupment of \$999,544.

**NEW JERSEY -**

Total Recoupment: \$1,250,000

Total Cases: 76,000

Comments: a. Service fee of \$50.

- b. State income tax refunds are used to pay debts.
- c. Accounts receivable department sends quarterly billings.
- d. Court ordered recoupment of \$500,000.
- e. Remainder is recoupment of service fees and tax refund money.

**WISCONSIN -**

Total Recoupment: \$933,000

Total Cases: 120,000

Comments: a. Service fee of \$50.

- b. Court ordered recoupment of \$160,000.
- c. Parents of juveniles paid recoupment of \$100,000.
- d. Recoupment of partial indigence \$27,000.
- e. Service fee recoupment of \$620,000.
- f. If service fee is paid up front then no other payment is required.