

**Notice of Hearing on Proposed
Administrative Regulation**

Proposed

A public hearing will be conducted at 9 a.m. Wednesday, September 28, 2011 in Room 200, Jayhawk Walk, 714 S.W. Jackson, Topeka, to consider the adoption of proposed regulations of the State Board of Indigents' Defense Services on a permanent basis.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to Patricia A. Scalia, Executive Director, State Board of Indigents' Defense Services, 714 S.W. Jackson, Room 200, Topeka, 66603, or at pscalia@sbids.state.ks.us. All interested parties will be given a reasonable opportunity to present their views orally on the adoption of the proposed regulations during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Patricia Scalia at pscalia@sbids.state.ks.us or at (785) 368-6295. The entrance to the Jayhawk Walk is accessible, and parking for persons with disabilities is in front of the building.

Copies of the proposed regulations may be obtained by contacting Patricia Scalia. A summary of the proposed regulations and the economic impact statement follows:



Proposed

SUMMARY OF PROPOSED REGULATION

K.A.R. 105-4-2 defines the terms used in this section. The definition of liquid assets is updated to include a car with a value of over \$20,000. This mirrors the bankruptcy statute for property exempted from legal attachment. Previously any vehicle was not considered an asset for eligibility purposes.

Additionally, the term “reasonable and necessary living expenses” and the reference to a table being calculated has been deleted. This added a step in the eligibility calculation that was not helpful to the court. With this deletion, the emphasis returns to the comparison with the federal poverty guidelines.

This regulation is proposed on both a temporary and permanent basis in the interest of the public welfare. It is not mandated by federal law.

There is no cost associated with this amendment to this agency or any other Government entity. There is no cost associated with this amendment to private citizens other than the consumers of this services – the defendants applying for eligibility, in terms of limiting eligibility. The proposing agency is unable to estimate the saving since the court may find special circumstances and makes the final decision on eligibility.



Proposed

SUMMARY OF PROPOSED REGULATION

K.A.R. 105-4-3 sets out the items to be included in the BIDS form completed by defendants to receive services. This is their financial affidavit. Two items have been deleted because they added nothing to the court's ability to determine indigency. These are the "table of reasonable and necessary living expenses" and the anticipated cost of private legal representation.

This regulation is proposed on both a temporary and permanent basis in the interest of the public welfare. It is not mandated by federal law.

There is no cost associated with this amendment to this agency or any other Government entity. There is no cost associated with this amendment to private citizens other than the consumers of this services – the defendants applying for eligibility, in terms of limiting eligibility. The proposing agency is unable to estimate the saving since the court may find special circumstances and makes the final decision on eligibility.



Proposed

SUMMARY OF PROPOSED REGULATION

K.A.R 105-11-1 provides for the adoption by reference of the “attorney cost reimbursement tables: assigned counsel and public defender.” This table is revised annually and is used by the Court to order defendants to pay some or all of the cost of their defense.

This regulation is not mandated by federal law. There is no cost to any state or federal agency created by this regulation. However, this regulation provides the table for an assessment of defense cost against private persons for the professional services of public defenders or assigned counsel.

There is no environmental impact. This regulation is proposed on both a temporary and permanent basis in the interest of the public welfare.

Patricia A. Scalia

Executive Director



105-4-2. Definition of terms. Terms used to determine eligibility for indigents' defense services shall have the following meanings: (a) Liquid assets. The defendant's liquid assets shall be defined as cash in hand, stocks and bonds, accounts at financial institutions, real property or homestead having a net value greater than \$50,000, and any other property that can be readily converted to cash, with the following exceptions:

(1) The defendant's car having a value of less than \$20,000, clothing, ~~and~~ household furnishings, and any personal property that is exempt from attachment or levy of execution by K.S.A. 60-2304, and amendments thereto; and

(2) any other property, except a homestead having a net value greater than \$50,000, ~~which that~~ is exempt from attachment or levy of execution by K.S.A. 60-2301, et seq., and amendments thereto.

The net value of the homestead shall be the fair market value less the mortgage, other encumbrances, and the reasonable cost of sale. The net value of any property transferred after the date of the alleged commission of the offense shall be included in the determination of the defendant's liquid assets.

(b) Household income. The defendant's household income shall be defined as the defendant's income and the income of all other persons related by birth, marriage, or adoption who reside with the defendant. Income shall include the total cash receipts before taxes from all resources, including money, wages, and the net receipts from nonfarm or farm self-employment. ~~Further,~~ Income shall include regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, annuities, and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts.



ATTORNEY GENERAL

JUL 18 2011

APPROVED BY

A handwritten signature in black ink, appearing to be "A. E. A." with a stylized flourish.

DEPT. OF ADMINISTRATION

JUL 01 2011

APPROVED

~~(c) The defendant's reasonable and necessary living expenses. A table shall be calculated by the board which establishes the amounts the board will allow as the defendant's reasonable and necessary expenses incurred to support the defendant and the defendant's household. The table of reasonable and necessary living expenses shall be revised by the board each time the federal poverty guidelines are revised and published in the federal register.~~

~~(d) Transfer of property.~~

(1) If the defendant has transferred property after the alleged commission of the offense, the court shall determine the reason for the transfer of property and whether adequate monetary consideration was received. If adequate monetary consideration was not received, the court shall presume that the transfer was made for the purpose of establishing eligibility unless the defendant furnishes clear and convincing evidence that the transfer was made exclusively for another purpose.

(2) If a transfer was made either for the purpose of establishing eligibility or without adequate monetary consideration, and the property is reconveyed to the defendant or an adjustment is made by which the defendant receives full value, the defendant shall, if otherwise qualified, be eligible to receive legal representation at state expense. (Authorized by K.S.A. 22-4504 and 22-4522; implementing K.S.A. 22-4504; effective May 1, 1984; amended Nov. 1, 1996; amended, T-_____, _____; amended P-_____.)

ATTORNEY GENERAL

DEPT. OF ADMINISTRATION

JUL 18 2011

JUL 01 2011

APPROVED BY

APPROVED

AGP



Proposed

105-4-3. Affidavit of indigency. A standard format for an affidavit of indigency shall include the following information: (a) The defendant's liquid assets and household income;

(b) the defendant's household expenses;

(c) any extraordinary financial obligations of the defendant;

(d) the size of the defendant's household; and

(e) any transfer of property by the defendant after the date of the alleged commission of the offense;

~~(f) the board's table of reasonable and necessary living expenses; and~~

~~(g) the anticipated cost of private legal representation.~~

If the information provided by the defendant on the affidavit is unclear, incomplete, contradictory, or questionable, further inquiry may be conducted by the board, the court, the county or district attorney, or other officer assigned by the court. The affidavit of indigency forms shall be published and distributed annually to the judicial administrator and to the administrative judge of each district. (Authorized by K.S.A. ~~1983 Supp.~~ 22-4522; implementing K.S.A. ~~1983 Supp.~~ 22-4504; effective May 1, 1984; amended May 1, 1985; amended, T-_____, _____; amended P-_____.)



ATTORNEY GENERAL

JUL 18.2011

APPROVED BY

JE A

DEPT. OF ADMINISTRATION

JUL 01 2011

APPROVED

105-11-1. Defendant reimbursement of attorney fees. The document titled “attorney cost reimbursement tables: assigned counsel and public defender,” as revised by the state board of indigents’ defense services on June ~~11, 2010~~ 10, 2011, is hereby adopted by reference. (Authorized by K.S.A. 22-4504; implementing K.S.A. 22-4522 (e); effective, T-105-10-3-05, Oct. 3, 2005; effective Feb. 17, 2006; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-7-26-07, July 26, 2007; amended Nov. 26, 2007; amended, T-105-8-12-08, Aug. 12, 2008; amended Dec. 29, 2008; amended, T-105-6-26-09, June 26, 2009; amended Oct. 16, 2009; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010; amended, T-_____, _____; amended P-_____.)

RECEIVED
JUL 19 2011
SECRETARY OF STATE

ATTORNEY GENERAL

JUL 18 2011

APPROVED BY



DEPT. OF ADMINISTRATION

JUL 01 2011

APPROVED

**BOARD OF INDIGENTS' DEFENSE SERVICES
ATTORNEY COST REIMBURSEMENT TABLES
ASSIGNED COUNSEL AND PUBLIC DEFENDER**

Revised June 10, 2011

The Reimbursement Tables are the average cost of cases including all cases paid as exceptional. The Court will order repayment of the lower of the actual cost to BIDS or the Reimbursement Table. Repayment by the client to BIDS is ordered at the discretion of the Court.

NON DRUG

SEVERITY LEVEL	TRIED	NON-TRIED
1	\$8,625	\$1,900
2	\$7,400	\$1,600
3	\$4,675	\$1,200
4	\$3,650	\$1,025
5	\$3,450	\$ 875
6	\$2,800	\$ 775
7	\$2,775	\$ 650
8	\$2,300	\$ 600
9	\$2,250	\$ 600
10	\$1,925	\$ 600

DRUG

SEVERITY LEVEL	TRIED	NON-TRIED
1	\$4,000	\$1,250
2	\$3,900	\$ 870
3	\$2,600	\$ 775
4	\$2,200	\$ 675

HEARINGS

TYPE	AMOUNT
Habeas Corpus & 60-1507	\$700
Post-sentencingPV and DV	\$245

APPEALS

TYPE	AMOUNT
Criminal-Direct	\$1,800
Sentencing	\$1,800
K.S.A. 60-1507 Habeas Corpus	\$1,100
Petition for Review	\$ 225

OFF-GRID

TRIED 2 weeks or less	NON-TRIED
\$6,125	\$4,200
Add \$4,000 for each additional week of trial	



Updated Economic Impact Statement

The amendments to K.A.R. 105-4-2 and 105-4-3 will limit the number of persons who are eligible to receive indigent defense services. Eligibility is determined by the court after reviewing the defendant's affidavit listing his or her income and any assets as well as their living expenses and their dependents and comparing that information to the current federal poverty guidelines. Defendants whose income and liquid assets exceed the federal poverty guideline for their household size are ineligible for indigent defense services unless the court finds a special circumstance to allow eligibility.

The amendment to K.A.R. 105-11-1 is the annual update of the amount defendants must repay for their defense services. Overall, there is a slight increase in cost.

These regulation changes are proposed on both a temporary and permanent basis.

There is no cost associated with these amendments to this agency or any other government entity. There may be a cost to the consumers of this service – the defendants applying for eligibility, in terms of limiting eligibility. However, since the court may find special circumstances to allow eligibility, the proposing agency is unable to determine the cost of private attorney fees for those persons determined to be ineligible for services.

These regulations are available for review by the public at the Board's administrative office and are available electronically.



Patricia A. Scalia
Executive Director