



Legislative Post Audit Performance Audit Report Highlights

Highlights

Board of Indigents' Defense Services: A K-GOAL Audit Reviewing Payments Made for Indigents' Defense Services

Report Highlights

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Audit Concern

Recently, legislators have expressed several concerns regarding services provided in district courts and possible misuse of resources.

In particular, concerns were expressed about the sufficiency of the Board's financial affidavit, appointed counsel not providing full information to the court, and the recoupment process in general.

Other Relevant Facts for Question 1

Created in 1982, the Board of Indigents' Defense Services provides indigent felony defense services as required by the United States Constitution.

District court judges, not the Board, decide whether a defendant will receive court-appointed representation.

The application and approval process is as follows:

- The defendant completes a financial affidavit form (designed by the Board) to show he or she has limited financial resources. The form asks questions about issues such as employment, bank accounts, and dependents.
- The judge reviews the financial affidavit and decides whether to appoint counsel for the defendant.

AUDIT QUESTION 1: *Have the Board of Indigents' Defense Services and the courts taken appropriate actions to ensure that services are provided to indigent persons only?*

AUDIT ANSWERS and KEY FINDINGS:

Kansas' system for providing legal services to indigent persons is generally sufficient, but it has a few problems.

- The Board's financial affidavit doesn't fully comply with the Board's Regulations. It is missing three of seven required items and also asks for information about vehicles, which judges aren't supposed to consider.
- Judges may make decisions about appointing legal representation based on incomplete and unverified information.
 - For 31 of 71 cases we reviewed, the financial affidavit was missing or incomplete.
 - The information provided by defendants on the financial affidavit is rarely verified. Court officials told us they don't have the time or staff to verify that information.
- In 13 of 104 cases we reviewed, the defendant did not appear to be indigent. We used State income tax returns, payroll information from the Department of Labor, and benefits eligibility information from SRS and KHPA—information that is not normally available to district court judges—to make this assessment.
- Judges have significant discretion in deciding whether to appoint legal counsel, and differ as to which information they rely on to make this determination. Some consider income and employment status more relevant, while others consider assets and the cost of an attorney.

We also identified several other issues regarding district courts' use of the financial affidavit.

- Many of the financial affidavits contained the defendant's social security number. Because the affidavit is a public document, this creates a risk of identity theft.
- Most of the completed financial affidavits were submitted on outdated forms.
- At least one court uses its own different financial affidavit form, which has not been approved by the Board.

AUDIT QUESTION 2: Do the Board of Indigents' Defense Services and the courts have adequate procedures in place to ensure effective recoupment of fees and costs from indigent defendants?

AUDIT ANSWERS and KEY FINDINGS:

The Board spends far more to provide legal representation than it receives back from indigent defendants. In recent years, the Board has spent about \$20 million to provide defense services. In contrast, district courts collected less than \$2 million in fiscal year 2010 from convicted defendants to repay the cost of their legal representation.

- Kansas law limits a district court's ability to recoup the cost of legal representation. Defendants who are found not guilty or have their cases dismissed do not have to repay their legal fees.
- Further, judges can reduce or completely waive the repayment of legal representation. In about one-third of the cases we reviewed, the judge waived the cost of legal representation.
- The courts have not always collected the full amount owed by defendants. In the cases we reviewed, district courts collected only about one-fourth of the amount assessed by judges. Several factors make it difficult to collect legal fees from defendants:
 - Legal fees are the last item defendants have to repay (after court costs and restitution).
 - The Board isn't likely to be repaid until the end of the defendant's sentence or later.
 - Convicted felons may not have the resources to repay legal fees.
 - Defendants can petition the court to waive repayment.

We also noted that some district courts' practices for approving payments to private attorneys may violate State law. In two of the seven judicial districts we reviewed, attorneys did not submit their payment voucher at the time of sentencing, as required by law.

WE RECOMMENDED

- The Board address issues pertaining to the design and use of its financial affidavit and modifying its administrative regulations.
- The Kansas Supreme Court require districts courts to use the most updated version of the financial affidavit form issued or approved by the Board, and to ensure that claims submitted by private attorneys for reimbursement are submitted in accordance with the law, or propose amendments to the law.

Agency Response: In general, the Board and the Office of Judicial Administration agreed with the report's findings and recommendations.

HOW DO I GET AN AUDIT APPROVED?

By law, individual legislators, legislative committees, or the Governor may request an audit, but any audit work conducted by the Division must be approved by the Legislative Post Audit Committee, a 10-member committee that oversees the Division's work. Any legislator who would like to request an audit should contact the Division directly at (785) 296-3792.

Other Relevant Facts for Question 2

The Board provides legal representation through a system of public defenders and private attorneys. Public defenders are State employees while the Board enters into contractual agreements with private attorneys for their services.

Kansas law allows judges to order the defendant to repay the State for the cost of the legal representation if the defendant is convicted and found to be financially able to pay that amount.

The courts are responsible for collecting costs assessed by the judge.

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