

March 10, 2020
HB 2449

Testimony of
Heather Cessna, Executive Director
Kansas State Board of Indigents' Defense Services
Proponent

Dear Chairman Wilborn and Members of the Committee,

The Board of Indigents' Defense Services is tasked with providing constitutionally effective and fiscally efficient legal representation to all indigent persons in Kansas accused of state felony crimes. In fact, 85% of adults charged with criminal felony cases in the state of Kansas are represented by appointed attorneys, either through a public defender office or through locally appointed attorneys.¹

The Board of Indigents' Defense Services provides each and every one of those appointed counsel either directly through the oversight of our public defender offices or through the administration of our assigned counsel program. As such, a fully filled and functioning Board is essential to our state mandate to appropriately administer these services to the people of Kansas.

The Current Statute

The make-up of our Board is set out in K.S.A. 22-4519, which has not be amended since 1995. Currently, K.S.A. 22-4519 requires the Board to have nine members: four members of the public who are not attorneys, and five registered Kansas attorneys. From that group, the First Congressional District must have a public member plus an attorney member, while the other three congressional districts must have at least one member (either a public or an attorney member).

Additionally, each county with a population over 100,000 must have an attorney member. In the past 25 years, enough counties have surpassed the current 100,000 population mark that the appointing authority (the Governor, with Senate confirmation) will not be able to finish appointing members to our Board without also violating the other provisions of our statute. The changes proposed in HB 2449 are aimed at solving this statutory conundrum.

¹ Statistic provided by the Kansas Sentencing Commission for FY 2019.

Why HB 2449 is Necessary

We currently have three public members— from the First, Third, and Fourth Congressional Districts— actively appointed to our Board. The required First Congressional District attorney member is from Saline County. The Board has the required attorney members for four of the five counties with populations over 100,000: Johnson, Sedgwick, Shawnee, and Wyandotte. But Douglas County surpassed the 100,000 population mark and has qualified for an attorney position on our Board. However, appointing a Douglas County attorney member as required by K.S.A. 21-4519(c)(2) would simultaneously violate subsection (c)(3), which sets the total limit of attorney members at five.

What HB 2449 Does

HB 2449 would change the proportion of Board members from four public members to three, and five attorney members to six. It would also raise the population trigger for new attorney members up from 100,000 to 115,000. These proposed changes would allow for the appointment of an additional attorney member in compliance with the population trigger portion of the statute without having to increase the number of Board members or run afoul of the attorney and public member limits. Based on population projections, it would also buy us as many as ten years before we might encounter a situation like the one we are currently in, i.e. when an additional county might qualify for an additional attorney member under the statute.

HB 2449 Solves Our Present-Day Concerns and Allows Time to Plan for the Future

1). Our Board operates the largest provider of criminal defense services in the State of Kansas. It would be helpful and appropriate for the presently unfilled Board seat to be filled by an additional attorney member. This is because an additional attorney member could assist in that unique and somewhat specialized mandate of conducting oversight of how we provide counsel to Kansans in poverty accused of state felony crimes. We regularly tackle some of the most difficult questions of how to continue providing competent, ethical, and zealous representation to our clients in a fiscally efficient manner. Having an additional Board member with relevant legal training and experience to provide appropriate input on those weighty questions will be vital going forward.

2). These changes allow us to continue to have a sizeable public member presence on our Board. These public members will therefore continue to be able to provide their unique experience and fresh opinions to our discussions. We value their input and under these amendments will continue to benefit from such input going forward.

3). These amendments retain an important part of our Board statute, the population triggers. It is particularly helpful to continue adding attorney members to our Board as their individual county populations increase because the demand for our services in that jurisdiction and how to best provide those services becomes a much more pressing issue as populations in an area continue to rise. Therefore, having the input of local attorneys in those jurisdictions aids us in tackling those issues head on. And setting the population trigger at 115,000 buys us some much needed time. Last June, our Board authorized a comprehensive review of our statutes and regulations. These amendments will allow us to have a fully staffed Board as we go through that in-depth extensive process and think, long term, about what kind of additional amendments to our statutes might be necessary down the road.

I'm always happy to provide any other information that the committee may find helpful. Thank you for your consideration.

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