

Senate Ways and Means Committee  
January 26, 2022  
Salary & Wages Hearing: Board of Indigents' Defense Services

Testimony of  
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Kansas State Board of Indigents' Defense Services

Chairman Billinger, Members of the Committee and Legislative Staff,

Thank you for the opportunity to present on the Board of Indigents' Defense Services' salary and wage issues to the subcommittee.

**The Impact of Salary and Wage Issues on Public Defense In Kansas**

As you heard during last year's legislative session, the simple truth is that our public defense system is in crisis. There is no way to sugar coat the fact that we, as a state, have to invest more money in our defense system for Kansas to meet its constitutional obligations under the Sixth Amendment. While the important investments the legislature made last year in our agency have been vital to our continued efforts to meet our Sixth Amendment obligations, unfortunately that first significant effort at starting to address our defense system issues has helped, but not solved our problems.

More specifically, a lack of experienced public defenders, continuing high turnover rates among our public defense employees, and severe difficulties recruiting and then retaining high quality public defense counsel in our public defender offices continues to significantly impact the administration of justice in our Kansas criminal courts.

We don't make these statements lightly. Approximately eighty-five percent (85%) of criminal adult felony cases in the state of Kansas require appointed counsel. The Board of Indigents' Defense Services (BIDS) provides all of those appointed counsel through its public defense systems: either through the Kansas public defender offices or through the BIDS assigned counsel program. As a result, BIDS' problems are not just BIDS' problems. They have an outsized impact on our entire criminal legal system.

## **Salary and Wage Issues Are Driving Turnover**

As we explained more extensively in our 2020 Report on the Status of Public Defense In Kansas<sup>1</sup>, chronically high employee turnover and low pay for public defenders has negatively affected our recruitment and retention efforts at BIDS. This, in turn, contributes to ethically concerning caseloads as fewer defenders are left to handle increasingly heavy numbers of cases. Those high caseloads then perpetuate employee turnover as employees leave for better paying positions, often in neighboring prosecutor's offices, with consistent raises and better controlled caseloads.

**In FY 2021, out of 15 experienced public defenders that left BIDS, 7 public defenders (or 47% of the total turnover) left to join local Kansas prosecutor's offices for similar positions that paid significantly higher salaries for their experience levels.**

Those 15 attorneys that left BIDS in FY 2021 resulted in a 12% turnover rate. This alone may not seem that significant when compared to other agency turnover rates. However in FY 2019 1 in 4 public defenders were leaving the agency, and in FY 2020, we had a 15% turnover rate. We are simply losing experienced attorneys and support staff faster than we can replace them and retrain new hires back up to the same experience levels.

To help illustrate this point, consider what it takes to replace the experience that we are losing. It takes BIDS approximately two years to sufficiently train up a brand new public defender to the point where they are both likely to be competent at defense representation on low level cases and able to work those cases primarily independently.

**That means that every time we lose an experienced defender, it costs BIDS two years of training and approximately \$112,000.00 in base salary just to get a new public defender up to speed on low level cases.**<sup>2</sup>

Similarly, it takes BIDS approximately five years of training and around \$280,000.00 in base salary (at starting salary levels) per attorney lost just to get a new attorney trained up to become an experienced level defender capable of handling higher severity level cases. Out of the 15 public defenders that we lost in FY 2021, only one had less than two years of public defense experience. The rest were all well-experienced defenders. That means that in order to replace all 15 of those defenders with minimally

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<sup>1</sup> <http://www.sbids.org/forms/Report%209-30-2020.pdf>

<sup>2</sup> Based on a current starting salary of around \$56,000 a year.

experienced attorneys to handle just lower level cases, it will cost BIDS approximately two years and \$1,680,000.00 in base salary.

**To replace the 14 significantly experienced defenders BIDS lost in FY 2021 with attorneys competently trained to handle high level felonies, it will take BIDS five years and cost around \$3,920,000.00 in base salary.<sup>3</sup>**

Since the start of the 2022 fiscal year to date, BIDS has lost 8 additional experienced public defenders, 4 of which left their public defender offices to join local prosecutor's offices for higher salaries.

While this ongoing high rate of resignation is very concerning, it is not surprising. In the last ten years, there have been a handful of state employee pay raises and a few minor attempts to address our public defense employee pay issues. However, none of those have sufficiently adjusted for or kept pace with other comparable government salaries such as those in our state's prosecutor's offices. That has not gone unnoticed by our employees.

In 2021, the legislature did not pass any state employee raises or grant public defenders our enhancement request for a pay parity with prosecutors pay scale adjustment during the session. Last summer, after the session ended, we happened to conduct our annual employee well-being survey. That survey from July 2021, indicated that while 81% of our employees came to work in public defense because they believe in the work we do, 62% of those same employees reported that they have considered leaving their public defender offices within the past year.<sup>4</sup> That was an increase of 7% from the same question in our July 2020 employee survey.

The primary issue our employees listed in that survey as having a negative impact on their work was poor pay and lack of raises.<sup>5</sup> In short, at this point we are losing mission-driven employees primarily because of compensation issues.

Replacing the eight additional attorneys that BIDS has lost since the start of FY 2022 will cost us five more years of training and approximately an additional

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<sup>3</sup> Based on entry level salaries.

<sup>4</sup> <http://www.sbids.org/forms/BIDS%20Well-Being%20Committee%20Report%202021.pdf>, pg. 18.

<sup>5</sup> <http://www.sbids.org/forms/BIDS%20Well-Being%20Committee%20Report%202021.pdf> pgs. 15-16.

\$2,240,000.00.<sup>6</sup> We cannot continue to afford to wait to address our compensation issues.

**In short, we are continuing to lose highly experienced public defenders in larger numbers and at a faster pace than we can hire and train to replace them.**

This is costing the State of Kansas taxpayers far more money to replace these employees than it would to simply retain them once hired with appropriate compensation that provides pay parity with competing prosecutor's offices and a commitment to give regular cost of living and appropriate merit raises over future years.

### **Employee Turnover is Driving Public Defender Office Case Refusals**

This turnover rate not only is detrimental to our mission of providing the constitutionally required assistance of counsel, it also has a real world impact on the day to day operations of our district courts. Even at full staffing, we are estimating that we need an approximately 190 additional public defenders above our FY 2020 staffing of 123.5 public defenders (and an appropriate ratio of support staff positions) in order to meet our non-pandemic yearly anticipated caseloads.<sup>7</sup> Even if the legislature continues to fund our ongoing requests for additional staffing over the next few years, we still need to keep our current staff positions filled to meet these caseload obligations.

Non-competitive wages result in turnover and turnover results in fewer attorneys left to handle our caseloads. When we do not have enough attorneys and support staff to handle the number of cases coming into our public defender offices, we have a professional, ethical duty to control our caseloads.<sup>8</sup>

Even with the pandemic-suppressed caseloads in FY 2021, five of our 11 trial public defender offices substantially exceeded the nationally accepted NAC and NAPD

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<sup>6</sup> Based on hiring inexperienced attorneys in at starting salary and training them into five year experienced defenders.

<sup>7</sup> See page 85, Report on the Status of Public Defense in Kansas (2020). <http://www.sbids.org/forms/Report%209-30-2020.pdf>

<sup>8</sup> See KPRC 1.3 Rule on Diligence, comment 1 ("A lawyer's workload should be controlled so that each matter can be handled adequately.").

absolute maximum caseloads standards of no more than 150 felonies per attorney, per year.<sup>9</sup>

**Of the six trial level public defender offices that did not exceed those national workload standards, three of those were only able to stay under that workload cap by refusing cases for over 50% of the entire fiscal year.<sup>10</sup>**

Employee turnover exacerbates our staffing problems and results in a lack of sufficient staffing to handle our public defender caseloads. This, in turn, results in our public defender offices having to refuse cases. Those cases, in turn, end up with our assigned counsel panel attorneys.

Our assigned counsel panel attorneys are currently also so overwhelmed with cases across the state that many are refusing to accept more cases in many of our busiest jurisdictions because of their own caseload problems. As a result, the impending assigned counsel panel crisis we explicitly warned about in September 2020 in our Report on the Status of Public Defense in Kansas is now in full swing.<sup>11</sup> BIDS and Criminal District Courts across the state are struggling to find enough qualified defense counsel to take all of the cases that need defending.

Our options to address this crisis are already very limited. The decision regarding the number of cases charged in criminal courts across Kansas is entirely left to the discretion of prosecutor's offices. We have no legal authority to force qualified lawyers to take criminal cases non-voluntarily. We cannot ethically have attorneys who are not qualified to handle criminal defense cases to step in alleviate the crisis. And if a client is left charged with a crime and without reasonably effective counsel, then we, as a State, have failed our clear constitutional obligations under the Sixth Amendment. That will have very real and costly financial litigation impacts on the state and potentially result in a significant number of cases dismissed as a result of those constitutional failings.

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<sup>9</sup> See NLADA, NAC Workload Standard 13.12, <http://www.nlada.org/defender-standards/national-advisory-commission/black-letter> ; See Also NAPD Workload Position Paper [https://www.publicdefenders.us/files/NAPD\\_workload\\_statement.pdf](https://www.publicdefenders.us/files/NAPD_workload_statement.pdf) . In FY 2021, based on cases closed and active cases through June 30, 2021, our Salina office averaged 193.5 cases per defender; our Hutchinson office averaged 178.3 cases per defender; our Olathe office averaged 231.9 cases per defender; our Garden City office averaged 264.5 cases per defender, and our Chanute office averaged 177 cases per defender.

<sup>10</sup> Our main Topeka public defender office refused cases for 284 days, or 78% of FY 2021; our main Wichita public defender office refused cases for 182 days, or 50% of FY 2021; and our Topeka Conflicts public defender office refused cases for 201 days, or 55% of FY 2021.

<sup>11</sup> <http://www.sbids.org/forms/Report%209-30-2020.pdf> pg. 26.

## **The Solution:**

The good news is that we do have several options to address this crisis in a meaningful way:

- First, we need to pay our employees reasonable wages for the specialized, skilled, and constitutionally necessary work that they do.
- Second, we need to commit as a state employer to consistently addressing regular cost of living raises and our agency's request for merit raises as they are brought to the legislature in future budget requests.
- Third, we need to competitively compensate our assigned counsel program for their specialized, skilled, and constitutionally necessary work in a way that will help us entice additional experienced practitioners into accepting BIDS appointed cases.
- Finally, we need to continue adding additional staffing over the course of the next several years into our public defender system, both through additional FTEs and the expansion of public defenders offices across the state, in order to continue addressing our ethically concerning caseloads.

With these steps, we can proactively address our current public defense crisis.

The vast majority of our first priority enhancement request for our FY 2023 budget is a full-agency pay scale adjustment intended to provide closer pay parity with prosecutor's offices and other government salaries. We hope that by readjusting our baseline salaries in accordance with our BIDS Board preapproved adjusted pay scales, we will have a solid foundation upon which to build in future years with regular cost of living and merit raise requests.

The 3.9 million dollar BIDS pay scale adjustment is based on a proposed pay scale reviewed and passed by our Board in September 2020 and again in September 2021.<sup>12</sup> Our proposed pay scale would readjust all of our attorney salaries and our support staff salaries, based on years of experience, to provide better pay parity with prosecutor's offices and other comparable government salaries. This conversion scale was based upon a large amount of salary information gathered from prosecutor's offices across the state in 2020.

For comparison, here are the pay scale breakdowns of three of the major district attorney offices in Kansas compared to their corresponding public defender office's

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<sup>12</sup> This proposed pay scale is available upon request.

current salaries. You can see the difference in both the base salaries and the comparable experience levels of these otherwise similarly situated attorneys.

Here is what the difference in pay looks like between prosecutors and public defenders in Johnson County:

**Johnson County District Attorney Salary Comparison<sup>13</sup>**

<b>County</b>	<b>Position Description</b>	<b>Years in that Position</b>	<b>Salary</b>
Johnson	District Attorney	11 years	\$183,261.78
Johnson	Chief Deputy District Attorney	11 years	\$175,441.14
Johnson	Assistant District Attorney I	1-2 years	\$66,809.60 - \$71,000.01
Johnson	Assistant District Attorney I	11 years	\$109,556.72
Johnson	Assistant District Attorney II	3-5 years	\$76,858.08 - \$78,894.40
Johnson	Assistant District Attorney II	6-7 years	\$79,976 - \$82,975.15
Johnson	Assistant District Attorney III	3-4 years	\$94,494.40 - \$98,688.12
Johnson	Assistant District Attorney III	9 years	\$92,008.80 - \$96,856.76
Johnson	Assistant District Attorney III	10-11 years	\$94,494.40 - \$100,757.07
Johnson	Master District Attorney	9-11 years	\$105,493.44 - \$128,556.11
Johnson	Section Chief	5-7 years	\$111,696 - \$115,882.42
Johnson	Section Chief	9-11 years	\$111,183.80 - \$120,307.20
Johnson	Section Chief	12-13 years	\$108,472 - \$118,260.48
Johnson	Section Chief	18-27 years	\$135,142.59 - \$148,001.71

<sup>13</sup> This chart is composed of salary information provided by the Johnson County District Attorney's Office in August 2020 pursuant to a Kansas Open Records Act request by the Kansas Board of Indigents' Defense Services in May 2020.

**Johnson County Public Defender Office Salary Comparison<sup>14</sup>**

<b>County</b>	<b>Position Description</b>	<b>Years With BIDS</b>	<b>Salary</b>
Johnson	Chief Public Defender (PD V)	24 years	\$84,272.74
Johnson	Deputy Public Defender (PD IV)	8-16 years	\$70,816.98 - \$77,275.73
Johnson	Assistant Public Defender (PD I)	1-2 years	\$55,683
Johnson	Assistant Public Defender (PD I)	3-5 Years	\$55,683
Johnson	Assistant Public Defender (PD I)	5-10 Years	\$57,086.38 - \$66,780.25
Johnson	Senior Assistant Trial Public Defender (PD II)	6-7 years	\$64,500.02
Johnson	Lead Assistant Trial Public Defender (PD III)	5 years	\$67,499.90

Here is what the difference in pay looks like between prosecutors and public defenders in Sedgwick County:

**Sedgwick County District Attorney Salary Comparison<sup>15</sup>**

<b>County</b>	<b>Positions Description</b>	<b>Years Experience</b>	<b>Salary</b>
Sedgwick	Sedgwick County District Attorney	24 Years	\$161,983.00
Sedgwick	Sedgwick County Deputy District Attorney	30-38 Years	\$128,833.00 - \$135,279.00
Sedgwick	Sedgwick County Chief Attorney	27-33 Years	\$101,426.00 - \$112,195.00
Sedgwick	Sedgwick County Chief Attorney	17-21 Years	\$100,378.00 - \$101,426.00
Sedgwick	Sedgwick County Chief Attorney	14-16 Years	\$92,025.00
Sedgwick	Sedgwick Senior Attorney	21-32 Years	\$92,855.00 - \$98,754.00
Sedgwick	Sedgwick Senior Attorney	18-19 Years	\$81,800.00 - \$95,000.00

<sup>14</sup> Internal data provided by the Kansas Board of Indigents' Defense Services in November 2021.

<sup>15</sup> BIDS has compiled this chart from data provided by the Sedgwick County District Attorney in May 2020 in response to a Kansas Open Records Act Request from the Kansas State Board of Indigents' Defense Services.



Sedgwick	Sedgwick Senior Attorney	11-12 Years	\$75,665.00 - \$91,260.00
Sedgwick	Sedgwick Staff Attorney III	20-21 years	\$76,543.00 - \$79,765.00
Sedgwick	Sedgwick Staff Attorney III	10-14 Years	\$72,086.00 - \$79,244.00
Sedgwick	Sedgwick Staff Attorney III	7-8 Years	\$72,500.00 - \$74,642.00
Sedgwick	Sedgwick Staff Attorney II	10-16 Years	\$64,800.00 - \$73,320.00
Sedgwick	Sedgwick Staff Attorney II	6-9 Years	\$65,800.00 - \$70,647.00
Sedgwick	Sedgwick Staff Attorney II	4-5 Years	\$63,906.00 - \$65,951.00
Sedgwick	Sedgwick Staff Attorney I	3-4 Years	\$60,000.00 - \$61,350.00
Sedgwick	Sedgwick Staff Attorney I	1-2 Years	\$58,282.00 - \$61,350.00
Sedgwick	Sedgwick Staff Attorney I	Less than 1 year	\$57,260.00

**Sedgwick County Area Public Defender Office Salary Comparison<sup>16</sup>**

<b>County</b>	<b>Position Description</b>	<b>Years With BIDS</b>	<b>Salary</b>
Sedgwick	Chief Public Defender (PD V)	8-13 years	\$83,734.49 - \$87,000.00
Sedgwick	Deputy Public Defender (PD IV)	3-6 Years	\$72,355.75 - \$78,000.00
Sedgwick	Assistant Public Defender (PD I)	1-2 years	\$55,683
Sedgwick	Assistant Public Defender (PD I)	3-5 Years	\$55,683
Sedgwick	Assistant Public Defender (PD I)	5-10 years	\$61,882.68 - \$77,500.00
Sedgwick	Assistant Public Defender (PD I)	11-15 Years	\$63,461.00
Sedgwick	Assistant Public Defender (PD I)	27 years	\$83,604.32

<sup>16</sup> Internal data provided by the Kansas Board of Indigents' Defense Services in November 2021. Our Sedgwick County Public Defender Offices do have some PD II and PD III positions but they are currently vacant and in process for hiring.

Here is what the difference in pay looks like between prosecutors and public defenders in Shawnee County:

**Shawnee County District Attorney Salary Comparison<sup>17</sup>**

County	Position Description	Years of Experience	Salary
Shawnee	Shawnee County District Attorney	8 years	\$141,831.04
Shawnee	Shawnee County Chief Deputy District Attorney	27 years	\$124,800.00
Shawnee	Shawnee County Deputy District Attorney	14-15 Years	\$104,000.00 - \$119,600.00
Shawnee	Shawnee County Deputy District Attorney	9-12 years	\$92,560.00 - \$93,600.00
Shawnee	Shawnee County Deputy District Attorney	5 years	\$87,360.00
Shawnee	Assistant Deputy District Attorney	3-6 Years	\$72,800.00 - \$76,960.00
Shawnee	Assistant District Attorney	6-9 Years	\$64,480 - \$67,600.00
Shawnee	Assistant District Attorney	1-2 years	\$62,400.00
Shawnee	Assistant District Attorney	Less than 1 year	\$57,200.00

<sup>17</sup> This chart is a breakdown of Shawnee County District Attorney salaries based upon data provided in May 2020 by the Shawnee County District Attorney's Office in response to a request for salary information from the Kansas State Board of Indigents' Defense Services.

**Shawnee County Area Public Defender Office Salary Comparison<sup>18</sup>**

<b>County</b>	<b>Position Description</b>	<b>Years With BIDS</b>	<b>Salary</b>
Shawnee	Chief Public Defender (PD V)	5-36 Years	\$79,875.00 - \$92,430.32
Shawnee	Deputy Public Defender (PD IV)	6-12 Years	\$69,125.00 - \$76,816.97.00
Shawnee	Assistant Public Defender (PD I)	1-2 years	\$55,683.00 - \$59,860.00
Shawnee	Assistant Public Defender (PD I)	3-5 Years	\$55,683.00 - \$57,683.00
Shawnee	Assistant Public Defender (PD I)	11-15 Years	\$63,120.00 - \$74,816.97
Shawnee	Assistant Public Defender (PD I)	24 years	\$75,951.31

What you will notice from these trends is that while our public defender offices may start out with somewhat comparable starting salaries, once an attorney gains some experience, prosecutors are able to significantly out earn their otherwise similarly experienced public defender colleagues. This is due to their salary structures being more well-funded and having better opportunities for advancement within their system as a result of that funding.

Parity of resources between the prosecution and the defense starts with pay parity for our public defenders with their prosecutor colleagues.

We are behind not just in comparison to in-state prosecutor's offices, but also compared nationally to public defenders and prosecutor's offices across the United States. A recent national survey of public defender starting salaries shows that of sixty-seven (67) public defender salaries surveyed (by city), seventy-five percent (75%) had higher starting salaries than our Kansas public defender system.<sup>19</sup> In other words, our Kansas public defender starting salary was in the bottom 25% of public defender salaries surveyed.

Similarly, a recent national study showed that of the seventy-three (73) district attorney starting salaries surveyed (by city), our Kansas public defender starting salaries were lower than 74% of those prosecutor salaries.<sup>20</sup>

<sup>18</sup> Internal data provided by the Kansas Board of Indigents' Defense Services in November 2021. Our Shawnee County Public Defender Offices do have some PD II and PD III positions but they are currently vacant and in process for hiring.

<sup>19</sup> <https://www.biglawinvestor.com/public-defender-salary/>

<sup>20</sup> <https://www.biglawinvestor.com/district-attorney-salary/>

Stopping our chronic turnover and solving our recruitment issues for new employees are both fundamental necessities to our agency in order to keep our public defender offices open, accepting cases, and providing good advocacy on behalf of our clients in accordance with the Sixth Amendment. As a result we very much hope that this year our request for our pay scale adjustment will be reviewed favorably.

### **Conclusion**

A strong public defense system is not just a constitutional necessity—it is also a value to the Kansas criminal legal system as a whole.

A strong public defense system not only protects our client's rights and satisfies the constitutional requirements of the Sixth Amendment, it also protects our Kansas citizens' liberties, increases the effectiveness of our court system, and is essential to maintaining the legitimacy of the judicial process.

We hope that this information will help you as you consider the salary and wage issues presented by our agency and review our enhancement request specifically aimed at addressing these issues.

As always, we are happy to provide any additional information that you need as you review this important issue.

I appreciate your time today and look forward to answering your questions about our current situation and proposed solutions.

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