



## State Government

### U-3 Indigents' Defense Services

### Other State Government reports available

### U-1 Veterans and Military Personnel Issues

### U-2 State Employee Issues

### U-4 Joint Committee on Special Claims Against the State

### U-5 Elected Officials' Compensation

### U-6 Public Employees in Kansas

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# Kansas Legislator Briefing Book 2008

## State Government

### U-3 - Indigents' Defense Services

#### Board of Indigents' Defense Services (Public Defender Offices)

*The United States Constitution* bestows rights upon criminal defendants, including the right to be represented by an attorney. The Board of Indigents' Defense Services (BIDS) provides criminal defense services through:

- Public defender offices in various parts of the state;
- Contract attorneys (private attorneys who contract with BIDS); and
- Assigned counsel (private attorneys who are appointed by the court to serve as counsel for a defendant)

The agency also has the responsibility of covering other costs associated with the defense of the criminal case. Costs such as expert witnesses and transcripts must be covered. Death penalty defense cases cost the agency even more to defend than other crimes.

Legal Services for Prisoners, Inc., a non-profit corporation, is statutorily authorized to submit its annual operating budget to BIDS. Legal Services for Prisoners provides legal assistance to indigent inmates in Kansas correctional institutions.

In addition to the trial level public defender offices and trial level assigned counsel, BIDS operates offices to handle the defense of capital crimes and conflicts, as well as offices that can handle the appeals of both capital and non-capital convictions.

#### ***Public Defender Offices***

The agency operates eight trial level public defender offices throughout the state and two satellite offices.

- 3rd Judicial District Public Defender (Topeka);

- Junction City Public Defender;
- Sedgwick County Regional Public Defender;
- Reno County Regional Public Defender;
- Salina Public Defender;
- 10th Judicial District Public Defender (Olathe)\*;
- Western Regional Public Defender (Garden City) and Satellite Office (Liberal);
- Southeast Kansas Public Defender (Chanute) and Satellite Office (Independence).

\* The 10th Judicial District Office opened a satellite office in Miami county in 1996, however, effective FY 2005 Miami County is under contract with assigned counsel.

The agency also operates the following offices in Topeka:

- Appellate Defender;
- Death Penalty Defense Unit and Satellite Office (Wichita);
- Capital Appeals;
- Capital Appeals and Conflicts; and
- Northeast Kansas Conflict Office.

The agency reports that it monitors the cost per case quarterly to determine the most cost effective system to deliver the right to defense services, and makes changes to maintain cost of living.

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## **Assigned Counsel**

It is not possible for all criminal defendants who need services to be represented by the State operated public defender offices. If two individuals are co-defendants in a particular matter, it would present a conflict of interest for the public defender's office to represent both individuals. Additionally, in some areas of the state, officials from the agency believe it is not cost effective to operate a public defender office. Such considerations include the cost per case and the number of criminal cases in that particular area. The agency has been able to contract with private attorneys in some parts of the state to provide defense services at reduced rates. In addition, local judges appoint private attorneys willing to accept appointments for defense cases as assigned counsel.

Assigned counsel are compensated at a rate of less than \$80 per hour for their work. The rate of compensation for assigned counsel was raised from \$30 per hour to \$50 per hour in 1988 in response to a Kansas Supreme Court case. The 2006 Legislature approved an increase in compensation from \$50 per hour to \$80 per hour starting in FY 2007. The agency was directed to monitor assigned counsel expenditures and open public defender offices where it is cost effective to do so.

Accordingly, the agency conducted public hearings for eleven counties that would no longer be cost effective using assigned counsel at \$80 per hour. The agency responded to the local request to maintain the assigned counsel delivery system by offering a reduced hourly rate. This was accepted and rates of \$62 per hour and \$69 per hour are paid which is more cost effective than opening public defender offices in those counties. The 2007 Legislature changed the language of the assigned counsel compensation statute to allow the agency to negotiate a rate of compensation less than the previously mandated \$80 per hour.

The agency's board currently reviews exceptional claims for fees submitted by assigned counsel. Fees for felony cases are capped at \$1,600 for cases that are not tried, \$8,000 for cases that go to trial.

Additional amounts can be paid by the Board if the judge approves the fees for extraordinary cases.

Prior to FY 2006, the agency paid assigned counsel expenditures from the operating expenditures account under its State General Fund appropriation. The expenses that were considered as assigned counsel costs included all professional services. These expenditures included not only fees to attorneys appointed as assigned counsel, but expert witness fees and transcript fees. The FY 2006 budget recommended by the Governor and approved by the 2005 Legislature included a separate line item appropriation for assigned counsel expenditures to more accurately account for expenditures made to assigned counsel.

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## **Other Costs Affecting the Agency**

### **EXPERT WITNESS AND TRANSCRIPT FEES**

The agency also pays the fees for expert witnesses and for transcripts on cases. Some experts have agreements with the agency to provide services at a reduced rate.

### **DEATH PENALTY CASES**

The constitutionality of the Kansas Death Penalty was upheld by the U.S. Supreme Court. More information about the Kansas Death Penalty is available in the Death Penalty section of this briefing book.

The Death Penalty Defense Unit was established to handle the defense of cases where the death penalty could be sought. However, as with other defense cases, circumstances such as conflicts of interest and availability could require that outside counsel be contracted to provide the defense services.

Capital offense cases cost more to defend. Not only do such cases take more time for trial, but the defense attorney must be qualified to defend a capital case. A report completed by the Judicial Council in 2004 found that, "The capital case requires more lawyers (on both prosecution and defense sides), more experts on both sides, more pre-trial motions, longer jury selection time, and a longer trial." Kansas Judicial Council, *Report of the Judicial Council Death Penalty Advisory Committee*, p. 17, January 29, 2004.

The Legislative Division of Post Audit issued a Performance Audit Report in December 2003, *Costs Incurred for Death Penalty Cases: A K-GOAL Audit of the Department of Corrections*. This report noted several findings related to the cost of death penalty cases in Kansas.

- The Board of Indigents' Defense Services usually bears the cost of defending a capital murder case.
- Contracted attorneys for such cases are paid \$100 per hour, with no fee cap. Post Audit found that some states impose fee caps and pay less per hour, or both to assigned defense counsel. Post Audit also noted that American Bar Association guidelines state limitations on fees in death penalty cases are improper.
- The Report recommended that the Board of Indigents' Defense Services make sure

that the Death Penalty Defense Unit has a sufficient number of qualified death penalty public defenders so future cases do not have to be contracted out because of workload, and it also recommended continuing to look at establishing a conflicts office.

The Board of Indigents' Defense Services has made arrangements for more of its public defenders to receive the necessary training to become qualified to defend death penalty cases. Funding to open a Conflicts Death Penalty Defense Office was not approved. The goal remains to reduce the need to use assigned counsel on capital cases.

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### ***Legal Services for Prisoners***

Legal Services for Prisoners, Inc., is a non-profit corporation that provides legal services to inmates in Kansas correctional facilities. The goal of this program is to ensure that prisoners' rights to the courts are met to pursue non-frivolous claims. The annual budget for Legal Services for Prisoners is submitted to the State Board of Indigents' Defense Services. Funding for Legal Services for Prisoners goes through the State Board of Indigents' Defense Services although the entity is not a state agency.

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### ***Other Offices Operated By the Board of Indigents' Defense Services***

#### ***Appellate Defender Office***

The Appellate Defender Office, located in Topeka, was established to represent indigent felony defendants on appeal.

#### ***Northeast Kansas Conflict Office***

The Northeast Kansas Conflict Office was established to deal with a large number of conflict cases in Shawnee County. The office also handles off-grid homicide cases in Douglas, Jackson, Jefferson, Pottawatomie, Wabaunsee, Osage and Lyon counties. This office is budgeted with the Trial Level Public Defender Offices. This office is located in Topeka.

#### ***Death Penalty Defense Unit***

The Death Penalty Defense Unit was established with the re-enactment of the death penalty in Kansas. Because of the complexity of capital cases, attorneys providing defense services in such cases must be specially qualified to handle such cases.

#### ***Capital Appeals and Conflicts Office***

The Capital Appeals and Conflicts Office is budgeted through the death penalty defense program. Appeals of capital cases are the office's first priority, although the office does handle some of the caseload burden of the Appellate Defender Office as time allows.

## **Capital Appeals Office**

The Capital Appeals Office was established in 2003 to handle additional capital appeals. Specifically, this office was created to handle the conflict of the Carr appeals. Reginald and Jonathan Carr were both convicted of murder in Sedgwick County and sentenced to death. While the Capital Appeals and Conflicts Office could handle the representation of one of these two men, it would create a conflict to represent both. The establishment of this office also allows the Board of Indigents' Defense Services to handle twice as many capital appeals. Funding for this office is budgeted through the Death Penalty Defense Unit.

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