



**Q-1  
Indigents' Defense  
Services**

**Q-2  
Kansas Open  
Meetings Act**

**Q-3  
Kansas Open Records  
Act**

**Q-4  
Legalization  
of Medical and  
Recreational  
Marijuana**

**Q-5  
State Employee  
Issues**

**Q-6  
Veterans and Military  
Personnel Benefits**

Jennifer Ouellette  
Fiscal Analyst  
785-296-3181  
Jennifer.Ouellette@klrd.ks.gov

# Kansas Legislator Briefing Book 2016

## State Government

### Q-1 Indigents' Defense Services

The *U.S. Constitution* grants certain rights and protections to criminal defendants, including the right to be represented by an attorney. This right has been interpreted by the U.S. Supreme Court to require the state to pay for attorneys to represent indigent defendants at most key stages in the criminal justice process. In Kansas, this requirement is met by the Board of Indigents' Defense Services (BIDS). BIDS provides criminal defense services through:

- Public defender offices in certain parts of the state;
- Contract attorneys (attorneys in private practice contracted by BIDS); and
- Assigned counsel (court-appointed attorneys compensated by BIDS).

In addition to providing trial-level public defenders and assigned counsel, BIDS operates offices tasked with handling defense of capital cases, cases in which conflicts of interest prevent local public defenders from representing a particular defendant, and post-conviction appeals. BIDS also is responsible for paying the other costs associated with criminal defense, such as expert witness and transcription fees.

Finally, 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.

### Public Defender Offices

BIDS operates nine trial-level public defender offices throughout the state:

- 3<sup>rd</sup> Judicial District Public Defender (Topeka);
- Junction City Public Defender;
- Sedgwick County Regional Public Defender;
- Reno County Regional Public Defender;
- Salina Public Defender;
- 10<sup>th</sup> Judicial District Public Defender (Olathe);
- Western Kansas Regional Public Defender (Garden City)\*;
- Southeast Kansas Public Defender (Chanute); and
- Southeast Kansas Public Defender Satellite Office (Independence).

\*The Western Regional Public Defender Office closed a satellite branch in Liberal on September 1, 2009 after determining it was no longer cost-effective. Most of that caseload is now handled by contract attorneys.

BIDS also operates the following offices in Topeka:

- Appellate Defender;
- Death Penalty Defense Unit;
- Capital Appeals;
- Capital Appeals and Conflicts;
- Northeast Kansas Conflict Office; and
- State Habeas Office.

Finally, BIDS operates two other special offices outside of Topeka:

- Wichita Conflicts Office; and
- Death Penalty Defense Unit – Sedgwick County Satellite Office.

BIDS' officials report it monitors cost per case for each of its offices quarterly to determine the most cost-effective system to deliver constitutionally-required defense services and makes changes as needed to maintain its cost-effectiveness.

### **Assigned and Contract Counsel**

It is not possible for state public defender offices to represent all criminal defendants who need services. For example, if two individuals are co-defendants in a particular matter, it would present a conflict of interest for a single public defender's office to represent both individuals. Additionally, BIDS has determined it is not cost-effective to operate public defender offices in all parts of the state, based on factors such as cost per case and caseload in these particular areas. Instead, BIDS contracts with private attorneys in those areas to provide these services and compensates willing attorneys appointed as assigned counsel by local judges.

BIDS has been directed to monitor assigned counsel expenditures and to open additional public defender offices where it would be cost-effective to do so.

Effective January 18, 2010, assigned counsel were compensated at a rate of \$62 per hour as the result of a BIDS effort to reduce costs and respond to budget cuts. For FY 2016, the rate was increased to \$65 per hour.

Total fees for defense in felony cases are capped at various levels depending on the classification of the felony and the disposition of the case. However, if there is a judicial finding that a case was "exceptional" and required the assigned attorney to work more hours than the cap allows, BIDS is required to exceed these caps. These exceptional fees are included in BIDS' overall budget for assigned counsel payments.

The 2007 Legislature changed the language of the assigned counsel compensation statute to allow BIDS to negotiate rates below the mandated \$80 per hour rate as an alternative cost savings strategy. BIDS conducted public hearings in 11 counties where it was determined that it was not cost-effective to utilize assigned counsel at \$80 per hour. BIDS responded to local requests to maintain the assigned counsel system in these counties by negotiating reduced compensation rates. The negotiation was successful and rates of \$62 and \$69 per hour were implemented. BIDS has determined these rates are more cost-effective than opening additional public defender offices.

The 2006 Legislature had approved an increase in compensation rates from \$50 to \$80 per hour for assigned counsel beginning in FY 2007. This rate had previously been raised from \$30 to \$50 by the 1988 Legislature in response to a Kansas Supreme Court ruling.

Prior to FY 2006, BIDS paid assigned counsel expenditures from the operating expenditures account in its State General Fund appropriation. All professional services were treated as assigned counsel costs, including attorney fees, transcription fees, and expert witness fees. The FY 2006 budget added a separate line item for these other expenditures to more accurately account for assigned counsel costs.

## Other Costs Affecting the Agency

### **Expert Witness and Transcription Fees**

BIDS is required to pay the fees for expert witnesses and transcription. Most experts utilized by the agency have agreements to work at a reduced rate. However, the agency reported these costs have risen steadily since FY 2008 due to higher transcription costs mandated by the Kansas Supreme Court, new legal requirements for expert testimony, and an increasing appellate caseload.

### **Death Penalty Cases**

Kansas reinstated the death penalty in 1994, following the end of a national moratorium imposed by the U.S. Supreme Court. More information about the death penalty in Kansas is available in the [M-2 Death Penalty in Kansas](#) article of this briefing book.

The Death Penalty Defense Unit was established to handle the defense of cases in which the death penalty could be sought. As with all cases handled by public defenders, though, conflicts of interest and other circumstances raise the possibility that outside counsel will have to be contracted to represent defendants.

Capital cases are more costly than other matters handled by BIDS. Not only do these cases take more time for trial, but also they require defense counsel to be qualified to handle the complexities and special rules of death penalty litigation. A report issued by the Judicial Council in 2004 found: "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 Death Penalty Advisory Committee, p. 17, January 29, 2004.

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

- BIDS usually bore the cost of defending capital murder cases;
- Contracted attorneys for such cases were paid \$100 per hour, with no fee cap; and
- It recommended BIDS ensure it had qualified attorneys in its Death Penalty Defense Unit and consider establishing a conflicts office (which it later did).

A follow-up study, also conducted by the Kansas Judicial Council Death Penalty Advisory Committee, was released on February 13, 2014 and updated cost data reported in LPA's 2003 report. The Advisory Committee found BIDS spent an average of \$395,762 on capital cases that went to trial and where prosecutors sought the death penalty, compared to an average of \$98,963 on other death penalty eligible cases that went to trial without the prosecutor seeking the death penalty. Kansas Judicial Council Death Penalty Advisory Committee, p. 7, February 13, 2014.

## Other Offices Operated by the Agency

### **Appellate Defender Office**

The Appellate Defender Office is located in Topeka and provides representation to indigent felony defendants with cases 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 Lyon County. This office is budgeted with the 3rd District Public Defender Office and also is located in Topeka.

### **Sedgwick County Conflict Office**

This office was established to defend conflict cases that cannot be handled by the Sedgwick County Public Defender Office.

**Death Penalty Defense Unit**

The Death Penalty Defense Unit was established after the reinstatement of the death penalty. BIDS determined it was more cost-effective to establish an office with attorneys specially qualified to handle defense in capital cases rather than relying on contract or assigned counsel.

**Capital Appeals and Conflicts Office**

The primary function of this office is to handle representation throughout the long and complex appellate process that follows the imposition of a death sentence. The office also handles some cases from the Appellate Defenders Office as time allows.

**Capital Appeals Office**

This office was established in 2003 to handle additional capital appeals. Specifically, the office was created to handle the appeals of Reginald and Jonathan Carr, who were both convicted of murder in Sedgwick County and sentenced to death. Due to conflict of interest rules, the existing Capital

Appeals and Conflicts Office could only represent one of the two men. The establishment of the Capital Appeals Office resolved that conflict and doubled BIDS' capacity for handling death penalty appeals.

**State Habeas Office**

This office was established in FY 2015 to handle death penalty defense after a death sentence is upheld by the Kansas Supreme Court and petition for *certiorari* has been unsuccessful for the defense.

**Legal Services for Prisoners**

Legal Services for Prisoners, Inc. provides legal services to inmates in Kansas correctional facilities. The goal of the program is to ensure that prisoners' right to access the courts and pursue non-frivolous claims is met. Legal Services for Prisoners submits its annual budget to BIDS. Although Legal Services for Prisoners is not a state agency, its funding is administered through BIDS.

For more information, please contact:

Jennifer Ouellette, Fiscal Analyst  
[Jennifer.Ouellette@klrd.ks.gov](mailto:Jennifer.Ouellette@klrd.ks.gov)

Robert Gallimore, Principal Research Analyst  
[Robert.Gallimore@klrd.ks.gov](mailto:Robert.Gallimore@klrd.ks.gov)

Kansas Legislative Research Department  
300 SW 10th Ave., Room 68-West, Statehouse  
Topeka, KS 66612  
Phone: (785) 296-3181  
Fax: (785) 296-3824