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# Kansas Legislator Briefing Book 2018

## State and Local Government

### H-2 Board of 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 and the Kansas 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 is also 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:

- 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 Kansas Regional Public Defender (Garden City)<sup>1</sup>;
- 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. That caseload is now handled by assigned counsel.

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 that 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, and for FY 2017 the rate was increased to \$70 per hour. The rate for FY 2018 is maintained at \$70 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 is "exceptional" and requires 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 (at that time) \$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 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 1988 legislation 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 the expansion of what is effective assistance of defense counsel and defense services.

#### ***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 [G-3 Death Penalty in Kansas](#) in 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, however, 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."

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 for the costs first 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.

### **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 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 and is located in Wichita.

**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 a *writ of 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.

1 The Western Regional Public Defender Office closed a satellite branch in Liberal on September 1, 2009, after determining it was no longer cost-effective. That caseload is now handled by assigned counsel.

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