

Proposed

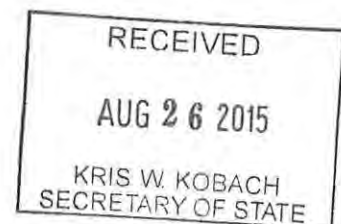
**Notice of Hearing on Proposed  
Administrative Regulation**

A public hearing will be conducted at 9 a.m. Tuesday, November 10, 2015 in Room 500, Jayhawk Tower, 700 S.W. Jackson, Topeka, to consider the adoption of proposed regulations of the State Board of Indigents' Defense Services on a permanent basis - K.A.R. 105-11-1, K.A.R. 105-5-2, K.A.R. 105-5-3, K.A.R. 105-5-6, K.A.R. 105-5-7 and K.A.R. 105-5-8.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to Patricia A. Scalia, Executive Director, State Board of Indigents' Defense Services, 700 S.W. Jackson, Room 500, Topeka, 66603, or at [pscalia@sbids.org](mailto:pscalia@sbids.org). All interested parties will be given a reasonable opportunity to present their views orally on the adoption of the proposed regulations during the hearing. This is the Board's effort to begin to restore the statutory rate to assigned counsel. The cost to BIS is anticipated to be \$200,000.00.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Patricia A. Scalia at [pscalia@sbids.org](mailto:pscalia@sbids.org) or at (785) 368-6295. The entrance to the Jayhawk Tower is accessible, and parking for persons with disabilities is in front of the building.

Copies of the proposed regulations and the economic impact statements may be obtained by contacting Patricia A. Scalia at [pscalia@sbids.org](mailto:pscalia@sbids.org) or (785) 368-6295 and are available electronically on our website [www.sbids.org](http://www.sbids.org). A summary of the proposed regulations follows:



## **SUMMARY OF PROPOSED REGULATION**

K.A.R. 105-11-1 provides for the adoption by reference of the “attorney cost reimbursement tables: assigned counsel and public defender.” This table is revised annually and is used by the Court to order defendants to pay some or all of the cost of their defense.

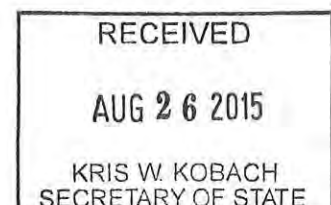
This regulation is not mandated by federal law. There is no cost to any state or federal agency created by this regulation. However, this regulation provides the table for an assessment of defense cost against private persons for the professional services of public defenders or assigned counsel.

There is no environmental impact.

## **SUMMARY OF PROPOSED REGULATION**

K.A.R. 105-5-2, K.A.R. 105-5-3, K.A.R. 105-5-6, K.A.R. 105-5-7, K.A.R. 105-5-8 establish the hourly rate to be paid to the private attorneys who accept court appointments to defend indigent persons in the absence of a public defender. The rate to be paid to assigned counsel is increased from \$62 per hour to \$65 per hour and each of the “caps” for the severity level of the charge is similarly increased from the “cap” at \$62 per hour to the “cap” at \$65 per hour. These amendments reflect action taken by the Board under its statutory authority to adjust the rate of compensation to more closely approach the rate set by statute of \$80 per hour.

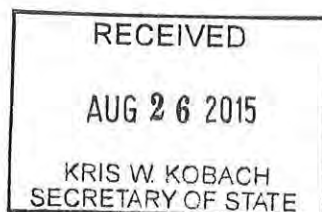
Patricia A. Scalia  
Executive Director



Proposed

**105-5-2. Rates of compensation.** (a) Each assigned counsel shall be compensated at the rate of \$62 \$65 per hour.

(b) Contract counsel shall be compensated at the rate or rates specified in the contract between the board and the assigned counsel. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective May 1, 1984; amended May 1, 1988; amended, T-105-6-13-88, July 1, 1988; amended Oct. 31, 1988; amended July 1, 1993; amended, T-105-6-15-93, July 1, 1993; amended Aug. 16, 1993; amended March 28, 1994; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010; amended P-\_\_\_\_\_.)



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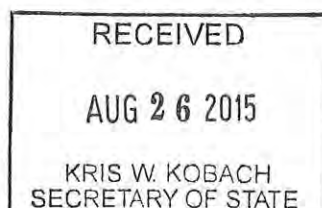
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**Proposed**

**105-5-3. Appellate courts; compensation.** (a) For services performed in appealing a case to the court of appeals or the Kansas supreme court, compensation shall be paid at the rate prescribed in K.A.R. 105-5-2.

(b) Compensation for attorneys' services in cases appealed to the Kansas supreme court or the court of appeals shall not exceed ~~\$1,240~~ \$1,300. However, additional compensation may be approved by the board. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective May 1, 1984; amended May 1, 1985; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010; amended P-\_\_\_\_\_.)



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**105-5-6. Reasonable compensation; non-tried cases.** (a) Each appointed and assigned attorney shall be compensated for time expended in representing indigent defendants and other indigent persons at the hourly rate prescribed in K.A.R. 105-5-2. Except as provided in K.A.R. 105-5-8, reasonable compensation shall not exceed ~~\$1,240~~ \$1,300 in the following cases:

(1) Those felony cases in the trial court that are classified as non-drug offenses of severity levels 1 through 5 that are not submitted to a judge or jury, including services at a preliminary hearing and sentencing, if applicable; and

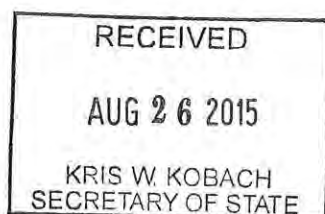
(2) those felony cases in the trial court that are classified as drug offenses, that have not been submitted to a judge or jury, and in which there have been six hours or more spent in court in defense of the indigent defendant, including services at a preliminary hearing and sentencing, if applicable.

(b) Except as provided in K.A.R. 105-5-8 and K.A.R. 105-5-6(a), reasonable compensation shall not exceed ~~\$930~~ \$975 in the following cases:

(1) Those felony cases in the trial court that are not submitted to a judge or jury, including services at a preliminary hearing and sentencing, if applicable, and are classified as severity levels 6 through 10 non-drug offenses; and

(2) those felony cases in the trial court that are not submitted to a judge or jury, that are classified as drug offenses, and in which there have been fewer than six hours spent in court in defense of the indigent defendant, including services at a preliminary hearing and sentencing, if applicable.

(c) Except as provided in K.A.R. 105-5-8, K.A.R. 105-5-6(a), and K.A.R. 105-5-6(b), reasonable compensation shall not exceed ~~\$620~~ \$650 in the following types of cases:



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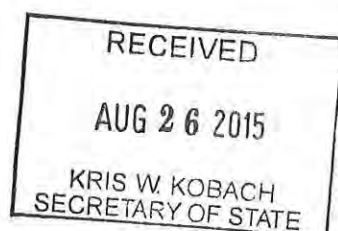
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- (1) Habeas corpus cases as authorized by K.S.A. 22-4503 and K.S.A. 22-4506 and amendments thereto;
  - (2) cases filed pursuant to K.S.A. 60-1507 and K.S.A. 22-4506 and amendments thereto;
  - (3) habeas corpus cases as authorized by K.S.A. 22-2710 and amendments thereto;
  - (4) habeas corpus cases as authorized by K.S.A. 22-3428 and K.S.A. 22-3428a and amendments thereto; and
  - (5) habeas corpus cases as authorized by K.S.A. 59-2965 and amendments thereto.
- (d) Except as provided in K.A.R. 105-5-8, reasonable compensation shall not exceed \$248 \$260 in the following types of cases:
- (1) Representation of grand jury witnesses determined to be indigent and called to testify pursuant to K.S.A. 22-3009 and amendments thereto;
  - (2) representation of indigent persons committed to custody as material witnesses pursuant to K.S.A. 22-2805 and amendments thereto;
  - (3) probation revocation hearings; and
  - (4) motions to modify sentence pursuant to K.S.A. ~~21-4603~~ 2014 Supp. 21-6702 and amendments thereto. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended, T-105-6-13-88, July 1, 1988; amended Nov. 1, 1988; amended Oct. 30, 1989; amended July 1, 1993; amended, T-105-6-15-93, July 1, 1993; amended Aug. 16, 1993; amended Aug. 20, 1999;



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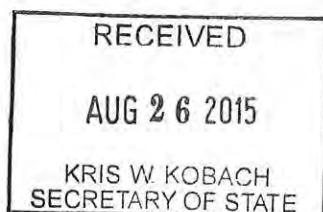
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**Proposed**

105-5-6  
Page 3

amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-8-16-10, Aug.  
16, 2010; amended Nov. 5, 2010; amended P-\_\_\_\_\_.)



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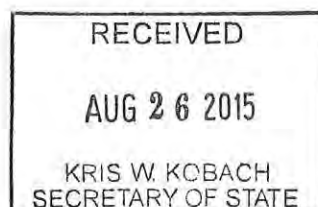


**105-5-7. Reasonable compensation; tried cases.** Each appointed and assigned attorney shall be compensated for time expended in representing indigent defendants at the hourly rate prescribed in K.A.R. 105-5-2. Except as provided in K.A.R. 105-5-8, reasonable compensation for felony cases tried on pleas of not guilty and submitted to a judge or jury for adjudication, including compensation for services at the preliminary hearing, sentencing, and motions to modify the sentence, shall not exceed the following:

(a) ~~\$1,860~~ \$1,950 for felonies classified as non-drug offenses of severity levels 5 through 10;

(b) ~~\$2,480~~ \$2,600 for felonies classified as non-drug offenses of severity level 4 and felonies classified as drug offenses of severity levels 2 through ~~4~~5; and

(c) ~~\$6,200~~ \$6,500 for felonies classified as non-drug offenses of severity levels 1 through 3, off-grid felonies, and felonies classified as drug offenses of severity level 1. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective May 1, 1984; amended, T-105-6-13-88, July 1, 1988; amended Nov. 1, 1988; amended Oct. 30, 1989; amended July 1, 1993; amended, T-105-6-15-93, July 1, 1993; amended Aug. 16, 1993; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010; amended P-\_\_\_\_\_.)



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**105-5-8. Compensation; exceptional cases.** (a) Any compensation for attorneys' services in excess of the amounts ~~set out~~ specified in K.A.R. 105-5-6 and K.A.R. 105-5-7 may be approved only in exceptional cases. A finding by the court that a case is exceptional shall be subject to final approval by the board. An exceptional case shall mean any of the following:

(1) Any case involving a felony charge in the trial court that ~~is off~~ does not appear on the sentencing range grid;

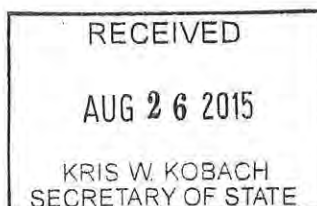
(2) any felony case tried on a not guilty plea in which there have been 25 or more hours spent in court in defense of the indigent defendant;

(3) any felony case not submitted to a judge or jury in which there have been 10 hours or more of in-court time spent in defense of the indigent defendant; or

(4) any case that has been declared an exceptional case by the court due to its complexity or other significant characteristics.

(b) Each claim for compensation in an exceptional case shall be accompanied by a specific finding in a court order ~~setting forth~~ specifying the basis for the declaration that the case is exceptional.

(c) Reasonable compensation for attorneys' services in exceptional cases shall not exceed \$6,200 \$6,500 per case. However, additional compensation may be approved by the board if warranted by the extreme complexity of the case. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective May 1, 1984; amended, T-105-6-13-88, July 1, 1988; amended Nov. 1, 1988; amended Oct. 30, 1989; amended July 1, 1993; amended, T-105-6-15-93, July 1, 1993; amended Aug. 16, 1993; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010; amended P- \_\_\_\_\_.)



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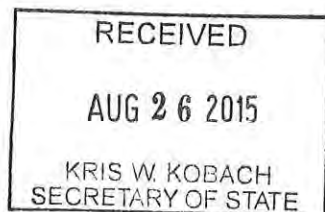
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**Proposed**

**105-11-1. Defendant reimbursement of attorney fees.** The document titled "attorney cost reimbursement tables: assigned counsel and public defender," as revised by the state board of indigents' defense services on June 6, ~~2014~~ 2. 2015, is hereby adopted by reference. (Authorized by K.S.A. 22-4504; implementing K.S.A. 22-4522; effective, T-105-10-3-05, Oct. 3, 2005; effective Feb. 17, 2006; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-7-26-07, July 26, 2007; amended Nov. 26, 2007; amended, T-105-8-12-08, Aug. 12, 2008; amended Dec. 29, 2008; amended, T-105-6-26-09, June 26, 2009; amended Oct. 16, 2009; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010; amended, T-105-7-22-11, July 22, 2011; amended Nov. 14, 2011; amended Dec. 14, 2012; amended Dec. 29, 2014; amended P-\_\_\_\_\_.)



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**Proposed**

**BOARD OF INDIGENTS' DEFENSE SERVICES  
ATTORNEY COST REIMBURSEMENT TABLES  
ASSIGNED COUNSEL AND PUBLIC DEFENDER  
Revised June 2, 2015**

**NON DRUG**

SEVERITY LEVEL	TRIED	NON- TRIED
1	\$8,625	\$2,300
2	\$8,000	\$2,300
3	\$5,075	\$1,410
4	\$4,500	\$1,085
5	\$4,000	\$ 975
6	\$2,800	\$ 775
7	\$2,775	\$ 700
8	\$2,700	\$ 600
9	\$2,250	\$ 600
10	\$2,250	\$ 600

**DRUG**

SEVERITY LEVEL	TRIED	NON- TRIED
1	\$5,565	\$1,585
2	\$3,900	\$ 1,050
3	\$3,200	\$ 900
4	\$2,800	\$ 750
5	\$2,600	\$650

**HEARINGS**

TYPE	AMOUNT
Habeas Corpus & 60-1507	\$1,070
PV and DV	\$245

**APPEALS**

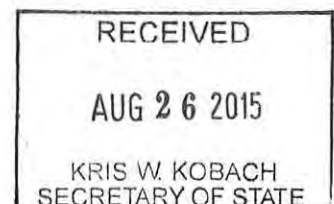
TYPE	AMOUNT
Criminal-Direct	\$1,800
Sentencing	\$1,800
K.S.A. 60-1507 Habeas Corpus	\$1,300
Petition for Review	\$225

**OFF-GRID**

TRIED 2 weeks or less	NON-TRIED
\$9,500	\$4,200
Add \$4,000 for each additional week of trial	

Reimbursement tables are to be used in determining amount defendant is obligated to repay the State – as ordered by the discretion of the court.

Revised 06/02/15





### Economic Impact Statement

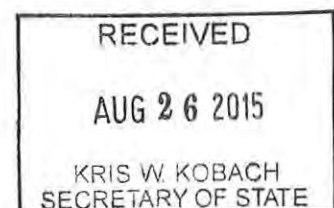
K.A.R. 105-5-2, K.A.R. 105-5-3, K.A.R. 105-5-6, K.A.R. 105-5-7, K.A.R. 105-5-8 establish the hourly rate to be paid to assigned counsel and the maximum amount to be paid based on the severity of the charge. The amendments adjust the hourly rate from \$62 per hour to \$65 per hour, a slight increase toward restoring the statutory rate of \$80 per hour and proportionately increases the maximum amount that will be paid for each severity level, unless the court determines that the case is exceptional.

These regulations are proposed on a permanent basis. These changes will affect an increase of \$200,000 in state general funds.

This is a cost to BIDS associated with these amendments. There is no increase to any other Government entity. These regulations will effect a slight increase in income to private attorneys who accept court appointments to defend indigent persons.

These regulations are available for review by the public at the Board's administration office and are available electronically.

Patricia A. Scalia  
Executive Director



## Economic Impact Statement

This regulation update, of K.A.R. 105-11-1, incorporates by reference the “Attorney Cost Reimbursement Tables: Assigned Counsel and Public Defender” revised on June 2, 2015. This table lists the average actual cost to the agency for attorney costs on each level of felony. The court may order a defendant to repay this average cost or the actual attorney cost on the case, whichever is the lower cost.

This regulation update has no cost effect on the State Board of Indigents’ Defense Services or any other state or federal agency, nor does it have any cost on employers. This regulation update does increase the cost of reimbursement of attorney services on those defendants who receive this service and are ordered by the court to make the reimbursement. These funds are paid to the state general fund.

There is no environmental impact.

This regulation is available for review by the public at the Board’s administration office and is available electronically.

Patricia A. Scalia  
Executive Director

