



Administrative Office
700 SW Jackson St, Suite 500
Topeka, KS 66603-3758

KANSAS STATE BOARD OF INDIGENTS' DEFENSE SERVICES

Phone: 785-296-6631
Fax: 785-291-3082
www.sbids.org

Heather Cessna, Director

Laura Kelly, Governor

House Judiciary Committee
February 13, 2022

HB 2351

Testimony of
Heather Cessna, Executive Director
Kansas State Board of Indigents' Defense Services

Chairman Patton, Vice Chairman Schreiber, Ranking Minority Member Carmichael,
Members of the Committee and Legislative Staff,

The Board of Indigents' Defense Services is tasked with providing constitutionally effective and fiscally efficient legal representation to all indigent persons in Kansas accused of state felony crimes. As such, maintaining robust assigned counsel panels with experienced attorneys serving our indigent clients is essential to our state mandate to appropriately administer these services to the people of Kansas.

Since 2006, K.S.A. 22-4507(c) has set the assigned counsel rate BIDS pays its appointed, private counsel at \$80 per hour, except under very limited circumstances. However, at this point, when BIDS wants to pursue additional funding and pay an assigned counsel rate higher than \$80 per hour, that statutory language prevents BIDS from doing so unless a higher rate is included in a special budget proviso or a specialty contract rate under K.S.A. 22-4507(c)(2).

Why HB 2351 is Necessary

BIDS' current \$80 per hour statutory rate under K.S.A. 22-4507(c) was set seventeen (17) years ago. A recent KBA study from 2017 determined that the average

hourly market rate in Kansas for legal services is around \$225 per hour.¹ This means that at \$80 per hour, BIDS' assigned counsel rate is roughly 64% below the going market value of private legal services in Kansas.

Low hourly rates for assigned counsel deter counsel from joining or staying on our assigned counsel panels because they are not paid sufficiently for the time they are ethically required to spend on their cases. Low hourly rates can also unintentionally incentivize attorneys to take more cases than they should in order to make ends meet. Low hourly rates can also unintentionally incentive attorneys to go to trial less often, potentially because pleas are paid better for the comparable time spent on them than jury trials.²

Because our public defender offices have had to refuse new cases more and more often due to staffing and caseload concerns, those refused public defender cases have to go somewhere. They end up being distributed to our assigned counsel more frequently and in much larger numbers than they used to be even just five years ago.³ The added pressures of more cases going to our assigned counsel, combined with this crushingly low hourly rate, and our caseload caps based in part upon that rate, has caused many of our assigned counsel to leave our panels in recent years. These issues can also deterring other attorneys from joining those assigned counsel panels. This is impacting our district courts' ability to retain qualified assigned counsel on their lists for all of our impoverished clients that need an attorney.

However, over the past two years, the legislature has funded and provided authority under special budget provisos so that we can pay above that \$80 per hour statutory rate, first at \$100 per hour in FY 2022 and now at \$120 in FY 2023. Those increased temporary rates have provided BIDS the ability to maintain many of our panel attorneys on our appointed panels. Now, the main reason attorneys tend to leave our appointed panels is due to caseload overload and not due to pay. Furthermore, once their caseloads are more manageable, those attorneys are more likely to return to the appointed panels thanks to these higher temporary rates.

¹ A Flash Report on the 2017 Economics of Law Practice Survey in Kansas, By Kansas Bar Association, September 2017, pg. 7. <https://cdn.ymaws.com/www.ksbar.org/resource/collection/D6AEF056-5088-4555-B207-2685976B9173/2017EconomicSurvey.pdf>

² Agan et al., Is Your Lawyer a Lemon? Incentives and Selection in the Public Provision of Criminal Defense, Review of Economics and Statistics (2019).

³ See BIDS Report on the Status of Public Defense in Kansas, September 2020, pgs 15-26 for greater detailed explanation of the relationship between caseloads and staffing in our public defender offices and increasing assigned counsel caseloads. <http://www.sbids.org/forms/Report%209-30-2020.pdf>

We believe HB 2351 is needed so that BIDS has the ability to continue to respond to the pressures of current appointed counsel panel needs and continue proactively addressing the Sixth Amendment assigned panel crisis that we are currently weathering. Amending our statutory rate with HB 2351 would ensure that, with appropriate ongoing funding to support that rate, BIDS may continue to pay out our current temporary assigned counsel rate and maintain as many private attorneys on our appointed panels as possible.

What HB 2351 Does

As written, HB 2351 would insert a language change into K.S.A. 22-4507(c). This change would amend language indicating that the BIDS assigned counsel rate is \$80 per hour, to instead indicate that the BIDS assigned counsel rate may be paid out at a rate not to exceed \$120 per hour on and after July 1, 2024, except for some specific circumstances contained in the subsections of section (c). Essentially, this language clarification would make it clear that BIDS is no longer capped at the hopelessly outdated and unconscionably low \$80 per hour assigned counsel rate.

Suggested Amended Language for HB 2351

The current bill language contained in HB 2351 is the same language as originally appeared in HB 2363 from the 2021-2022 Legislative session. At the time, we were paying an assigned counsel rate of \$100 an hour under a special budget proviso, so there is language in HB 2351 indicating that the \$100 an hour rate would be paid through June 30, 2024. Since we are already paying, under a special budget proviso, \$120 rate right now and the Governor's budget recommendations for FY 2024 for BIDS (which have been recommended by both Senate Ways and Means and House Appropriations) includes funding to support \$120 an hour for FY 2024, we'd suggest removing the limiting language regarding the \$100 an hour and simply indicating that the BIDS statutory rate going forward is \$120 an hour under subsection (c).

If the committee is interested in this amendment to that suggested language in the proposed bill, we are certainly open to a discussion about potential changes to the proposed language and do plan to testify at the hearing on this bill in person to answer any questions the members might have about that language.

HB 2351 Solves Our Present-Day Concerns and Allows Time to Plan for the Future

This amendment gives BIDS the authority to continue paying our current assigned counsel rate into the future in order to address the ongoing needs of our Board and the needs of our assigned counsel panels.

I'm always happy to provide any other information that the committee may find helpful. Thank you for your consideration.

Heather Cessna
Executive Director
Kansas State Board of Indigents' Defense Services
hcessna@sbids.org
785-296-6631

