

Testimony Regarding HB 2413

March 1, 2012

Chairman Owens and members of the Senate Judiciary Committee, thank you for the opportunity to appear before you today and provide testify in **support of HB 2413**.

HB 2413 is one of the bills introduced by the Legislative Post Audit Committee to address a problem regarding who receives attorney services paid for by taxpayers.

During the 2011 Session I received a call from the Montgomery County Attorney about a concern he had regarding taxpayer funding of legal counsel for indigent defendants. He stated that he was of the opinion that we (taxpayers) were providing attorneys for individuals that could and should pay their own attorney fees. He cited examples of defendants whom, during the course of their trial or pre-trial discovery process, it was discovered had sufficient, and sometimes more than sufficient, incomes and/or assets to pay for their own attorney. He further stated he believed it was not just a Montgomery County problem, but that he had had conversations with other attorneys in Kansas who indicated they too had seen cases where the defendant should be paying for their attorney, rather than the State.

Initially, I was convinced that the Board of Indigent Defense Services (BIDS) was not properly doing their job. I was wrong. There is a problem, but it does not lie with the BIDS

I requested our Post Auditors develop a scope statement to present to the Legislative Post Audit Committee for possible committee approval of an audit; which would show if there was indeed a problem. The scope statement received bipartisan support for approval of an audit.

When the audit, *"Reviewing Payments Made for Indigent Defense Services"* was presented to the Post Audit Committee last July, it revealed there is a problem.

Attached to my testimony is the *"Highlights"* of the Audit Report. As you can see, there are several issues that need or needed to be addressed. The Highlighted Report says, *"In 13 of 104 cases we reviewed, the defendant did not appear to be indigent."* I might point out 13 of 104 is twelve and a half percent (12.5%). On page eight of the full report it says, *"Overall, we identified 13 defendants who didn't appear to be indigent. In most cases, this determination was easy to make. For example, in four cases the*

defendants' total income was more than \$55,000 for the years in which they were found indigent. This included one defendant who earned more than \$90,000." Those figures do not indicate indigence to me.

The BIDS provides defense services for 25,000 to 26,000 cases per year, and has an annual budget of \$23 million. If the 104 cases our Post Auditors reviewed are an indication, than we (taxpayers) are paying for legal representation for some 2,000 cases per year that don't meet the qualifications.

Although there is much more contained in the Post Audit Report that I believe the Legislature needs to address, and I would encourage you to read the report, they are not at issue in **HB 2413**.

HB 2413 is designed to protect taxpayer money and make certain that every attempt is made to ensure that the State is only providing attorneys for those who are truly indigent.

HB 2413 allows the BIDS to obtain tax information from the Department of Revenue to assist in determining if a defendant is indeed indigent

I am of the opinion that the courts have not done all they should to obtain the necessary documentation from defendants regarding their eligibility for taxpayer provided legal defense prior to ordering the BIDS to provide such a service. Passage of **HB 2413** would provide the BIDS with information they could use to assist the court with their decision regarding indigence of those charged with a crime.

Thank you for your time and I will be happy to answer questions at the appropriate time.