

TESTIMONY

STATE BOARD OF INDIGENTS' DEFENSE SERVICES ON HOUSE BILL NUMBER 2413 TO COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE

January 18, 2012

Good afternoon Chairwoman Colloton, Members of the Committee and Staff:

My name is Patricia Scalia and I serve as state director for the Board of Indigents' Defense Services.

House Bill No. 2413 would amend the income taxpayer information confidentiality statute, K.S.A. 79-3234, to require the Department to provide information from tax returns to the Board of Indigents' Defense Services for purposes of determining whether an individual is eligible financially to receive appointed counsel to defend against an allegation that the individual committed a felony.

This proposed legislation is made by the Legislative Post Audit Committee to provide a tool for the Board of Indigents' Defense Services to review the financial status of the individual beyond their responses on the BIDS Financial Affidavit, which the individual usually completes on the spot in the courtroom without access to their records. A sample Application for Appointed Defense Services and Financial Affidavit is attached.

There will be approximately 26,000 cases with appointed counsel statewide. BIDS will establish by rule and regulation, that individuals who request appointed counsel are to supply their complete social security number and that this information be kept separately from any documents that become part of the court file, to comply with issues related to identity theft.

That information will then be forwarded to an auditor for BIDS who will compile the information and forward it to the Department of Revenue for a record search. If a hand search is required, there would be a charge of \$5.00 per search. The BIDS auditor would be a newly added position at a cost of \$47,824 annually. All information received by the auditor would be reported to the state director for appropriate action. BIDS has requested a budget enhancement to fund the auditor position.

In cases where the tax return lists assets that would disqualify an individual from receiving appointed counsel, a motion would be filed asking the court to reconsider the appointment of counsel and would list the assets discovered. If the court determines the individual does not qualify for appointed counsel, the defense attorney can move to withdraw from the case.

BIDS will collect data and report at the next legislative session regarding savings experienced through the use of the auditor, whose position will be called the indigency screener.

House Corrections and Juvenile Justice
Committee
2012 Session
Date 1-18-12
Attachment # 7-1

APPLICATION FOR APPOINTED DEFENSE SERVICES
(to accompany Financial Affidavit)

FOR COURT USE ONLY

_____ County District Court

STATE vs. _____ District Court Case No. _____

NOTICE TO APPLICANT:

A. *General Information*

1. The information on the attached affidavit is not confidential.
2. The judge or the Kansas Board of Indigents' Defense Services may verify any information contained on the attached affidavit.
3. False entries may lead to criminal prosecution and conviction.
4. If you do not understand a specific question or need help, ask for assistance.
5. The judge may place you under oath and inquire further about any information provided on this form.

B. *Eligibility for Defense Services*

1. You will receive an appointed attorney if you meet the standards for indigent status. You may be required to pay an application fee of \$100.00 (KSA 22-4529)
2. If the judge determines that you are able to pay a part of the costs of your defense, you will be found partially indigent and the court will order you to pay for a part of these costs.
3. If, after the date of the alleged offense, you transfer any of your property for less than it is worth, the State may sue to obtain repayment of the cost of your defense.
4. You must inform the court if there is a change in any of the financial information given on the affidavit.

C. *Repayment to the State*

The court shall take into account the financial resources and the nature of the burden that payment of such sum will impose. Any person who has been required to pay such sum and who is not willfully in default may petition the sentencing court to waive payment of any remaining balance or portion thereof.

I have read or have had read to me and understand the above notice. I hereby request that court-appointed counsel be provided to me and agree to repay the State for the costs of my defense if the court so orders.

_____ Date

_____ Defendant

FOR COURT USE ONLY

FINANCIAL AFFIDAVIT

For Court Appointed Attorney, Expert or other Services
(K.A.R. 105-4-3)

County _____

District Court Case No. _____

Name _____ Age _____ Birth Year _____ Phone _____ S.S.# xxx-xx-_____

Address _____ City _____ State _____ Zip Code _____

Spouse (If married – including common-law) _____

1. Are you Self-Employed Employed Unemployed

If self-employed, what line of work? _____

If employed, who do you work for? _____

If unemployed, for how long? _____

Are you receiving unemployment benefits? Amount per week \$ _____ If not, state reason _____

2. List the places you have worked in the last six months:

1. Name _____ Address _____

2. Name _____ Address _____

3. If employed, what do you earn each month? _____

4. Is your spouse (include common law) Self-Employed Employed Unemployed

If self-employed, what line of work? _____

If employed, who does he/she work for? _____

If employed, give an approximate monthly rate of pay _____

If unemployed, for how long? _____

Is he/she receiving unemployment benefits? Amount \$ _____ If, not, state reason _____

5. Does anyone else live with you, other than your dependants? Yes _____ No _____

If yes, list their name, relationship to you, and their income:

	Name	Relationship	Income
1			
2			
3			

6. Do you own a car, truck, or motorcycle? Yes No If yes,

	Year	Make	Model	Value	Amount Owing
1					
2					
3					

7. Do you receive, or have you received in the past six months, income from rental property, public assistance, support, alimony, maintenance, or other sources, including from a business? Yes No

If yes, give source and monthly income: _____

8. Do you have money or cash in savings, checking accounts or other funds? Yes No

If yes, list amount of money available to you _____

9. Do you own a home, land, or other property? Yes No If yes, give value(s) _____

10. Can you afford to pay anything toward the costs of your defense at this time? Yes No

If yes, how much _____

11. Do you currently have any other court cases pending?

Yes No

If yes, give attorney's name _____

STATUS:

(Check One)

Single

Married(include common law)

Widowed

Separated/ Divorced

Dependants:

Total Number of _____

List names, ages, and relationship to you

Monthly Bills:

Rent/House Payment _____

Food/Clothing _____

Utilities _____

Alimony/Maintenance _____

Child Support _____

Installment Payments _____

Other Payments _____

Total Payments _____

I certify under the penalty of perjury that the foregoing is true and correct. By signing below, I authorize the STATE OF KANSAS to verify my past and present employment earnings, records, bank accounts, stock holdings, and any other asset balances that are needed to process this affidavit with the district court. I further authorize the STATE OF KANSAS to order a consumer credit report and verify other credit information, including past and present mortgage and landlord references. Executed this _____ day of _____, 20____.

Signature of Applicant

See page three for Judge's use

FOR JUDGE'S USE ONLY

DETERMINATION OF ELIGIBILITY – K.A.R. 105-4-1(b) and (c): "An eligible indigent defendant is a person whose combined household income and liquid assets equal less than the most current federal poverty guidelines, as published by the U.S. Department of Health and Human Services, for the defendant's family unit. The court may also consider any special circumstances affecting the defendant's eligibility for legal representation at state expense."

TO BE COLLECTED PURSUANT TO K.S.A. 22-4529:

APPLICATION FEE OF \$100 effective 7/1/04

DETERMINATION OF ELIGIBILITY FOR APPOINTED COUNSEL

APPLICABLE POVERTY GUIDELINE FOR DEFENDANT'S FAMILY UNIT: _____

THE COURT FINDS THE FOLLOWING SPECIAL CIRCUMSTANCES PURSUANT TO K.A.R. 105-4-1(c):

- APPOINTMENT DENIED
- PARTIALLY INDIGENT, ABLE TO PAY \$ _____
- PUBLIC DEFENDER APPOINTED
- _____ ATTORNEY APPOINTED

 Judge

2011 Poverty Guidelines for the 48 Contiguous States and the District of Columbia

Size of family unit	Poverty Guideline
1.....	\$10,830
2.....	\$14,570
3.....	\$18,310
4.....	\$22,050
5.....	\$25,790
6.....	\$29,530
7.....	\$33,270
8.....	\$37,010

For family units with more than 8 members, add \$3,740 for each additional person. (The same increment applies to the smaller family sizes also, as can be seen in the figures above.)