**BIDS Update:** Meeting the Constitutional Mandate for Criminal Defense Counsel in Kansas

HEATHER CESSNA, EXECUTIVE DIRECTOR KANSAS STATE BOARD OF INDIGENTS' DEFENSE SERVICES



## **BIDS** Timeline

1963: U.S. Supreme Court, in Gideon v. Wainwright,\* held that the U.S. Constitution's 6<sup>th</sup> Amendment Right to Counsel required states to provide attorneys to indigent individuals charged with felony-level crimes

1969: Kansas Legislature established the Board of Supervisors of Panels to Aid Indigent Defendants

1982: Kansas Legislature established the State Board of Indigents' Defense Services



Photo: Kahler v. Kansas argument, US Supreme Court, March 2022

\* 372 U.S. 335 (1963)

# **BIDS Background**

- 84% of all adult felony criminal cases in Kansas require appointed counsel from BIDS
  - Public Defender Offices
  - Private Appointed Counsel Panels (Assigned Counsel System)
- In FY 2024 BIDS handled 26,417 cases
  - > 33% handled by public defenders
  - 67% handled by assigned counsel



Appellate Defender Kai Tate Mann at the KS Court of Appeals

# Public Defender Offices

- Kansas attorneys are full-time BIDS' employees, working in one of our trial-level or appellate-level offices.
  - 289 full-time staff members (attorneys and support staff)
- 20 offices across the state
  - Central Administration
  - 14 Trial-level Offices
  - 1 Appellate Office
  - 4 Capital Offices for Death Penalty Cases



Group Photo of Public Defender Office Employees and Assigned Counsel in attendance at BIDS Annual Conference, June 2023.

# BIDS' Expenditures – FY 2024

	Full-Time Employees	Expenditures		
Trial Defense	195.6	\$	15,161,441	
Appellate Defense	27	\$	3,489,151	
Capital Defense*	36	\$	6,337,033	
Assigned Counsel and Litigation Support		\$	27,686,453	
Administration	30.6	\$	3,219,830	
Legal Services for Prisoners		\$	289,592	
Totals	289.2	\$	56,183,500	

\*Capital Defense costs for Death Penalty Cases accounted for 11% of BIDS' Budget but only 0.14% of BIDS' cases

# Assigned Counsel

BIDS works with over 300 private attorneys to provide counsel for individuals charged with felonies in cases our employees cannot accept

- Attorneys bill BIDS for their time, usually at a rate of \$120 per hour
- Almost all of these private counsel also take non-BIDS cases
- Chief judges coordinate panels of assigned attorneys
  - Each county/judicial district is different
    - Johnson County
    - Riley County
    - Sedgwick County
    - Shawnee County
    - Leavenworth County
    - Rural counties



Shaye L. Downing, Attorney at Law, member of BIDS Assigned Counsel panel

## Counties with Public Defender Office Coverage

- Allen
- Chautauqua
- ► Cherokee\*\*
- Clay
- Crawford\*\*
- **Dickinson**
- Douglas
- **Finney**
- Geary
- Johnson
- Labette\*\*
- Montgomery
- Morris
- Neosho
- Ottawa

- Reno
- Saline
- Sedgwick
- Shawnee
- ▶ Wilson
- Woodson
- Wyandotte\*
  - \* Office opened 2024
  - \*\* Office opening 2025



#### Number of Assigned Counsel Cases by County (FY 2024)

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6	49	17	24	501	21	73	84	1541		304	GREENWOO	73	272	BOURBON	8
STANTON	GRANT	HASKELI	GRAY	FORD	KIOWA	PRATT	KINGMAN	SEDGWIC	к вт	JTLER	25			507	
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11	22	253	52	9	7	22	73	155	1 4	<b>1</b> 17	11	3	021	212	
MORTON	STEVENS	SEWARI	MEADE	CLARK	COMANCHE	BARBER	HARPEI	R SUMNER		WLEY C	HAUTAUQ U.		ERY LABETTE	CHEROKE	c

### The Current Crisis

- Kansas does not have enough experienced, qualified, and available criminal defense counsel willing to take BIDS cases
- In FY 2024, trial-level public defenders had an average of 13 hours per attorney, per case to work their cases.
  - The National Public Defense Workload Recommendations call for an average of 35 hours per attorney, per case for just low-level felonies.
  - The National Public Defense Workload Recommendations call for an average of 248 hours per attorney, per case for high level felonies such as first degree murder cases.
- Based on the National Public Defense Workload recommendations, in December 2023, BIDS estimated that it needs:
  - Approximately 400 full-time public defenders to constitutionally cover caseloads in areas with public defender offices
  - Approximately 200 full-time private attorneys accepting nothing but BIDS appointments in areas not covered by public defender offices.

## Contributing Factors to this Crisis



- Volume of Cases
- Insufficient Full-time Positions in Offices
- Low Salaries for Public Defenders
- Aging Population of Kansas Attorneys
- Low Private Counsel Rates

### A Workable Solution To This Crisis

- Retain current experienced employees through careful caseload monitoring and advocacy for pay parity with prosecutors.
- Secure additional staffing we need to comply with national caseload standards.
- Establish new public defender offices in jurisdictions that are in need of additional indigent defense assistance.
- Advocate for better pay and better resources for our assigned counsel panel attorneys and contractors.
- Focus on criminal justice reforms and local policy and procedure changes where we can.

## BIDS' 2025-2026 Legislative Priorities

Retain much-needed reappropriations to cover shortfalls in funding

2 Budget Enhancement Requests

- \$6.67 Million to Support Pay Parity with Prosecutors
- \$4.29 Million for 29 FTEs to move toward Ethical Caseloads for Attorneys
- Statutory update to allow social workers to participate on legal teams in criminal and civil cases



### There Is No Justice Without Us

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