

Approved: March 18, 1994  
Date

## MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson August Bogina at 11:00 a.m. on March 17, 1994 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Alan Conroy, Legislative Research Department  
Scott Rothe, Legislative Research Department  
Kathy Porter, Legislative Research Department  
Norm Furse, Revisor of Statutes  
Judy Bromich, Administrative Assistant  
Ronda Miller, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

## HB 2652 -- APPROPRIATIONS FOR FY 95, JUDICIAL COUNCIL, STATE BRANCH OF INDIGENTS' DEFENSE SERVICES, JUDICIAL BRANCH

### Judicial Council

Senator Morris presented the FY 94 and FY 95 subcommittee reports (Attachment 1). It was moved by Senator Morris and seconded by Senator Kerr that the reports be adopted. The motion carried on a voice vote.

### Board of Indigents' Defense Services

The FY 94 and FY 95 subcommittee reports were reviewed by Senator Morris. Members discussed whether more specific language should be added to the House proviso recommended for FY 95 (Attachment 2-6) to prevent the relocation of the public defender office in Wichita.

In answer to Senator Salisbury, it was stated that the cost per case for assigned counsel in Wyandotte County is \$20. more than the cost for public defenders. Senator Kerr stated that the subcommittee would withdraw its attempt to push for contract counsel or a public defenders office in Wyandotte County if the cost per case is held down.

Senator Morris moved. Senator Kerr seconded. that the subcommittee reports be adopted. The motion carried on a voice vote.

### Judicial Branch

Senator Lawrence reviewed the FY 94 and FY 95 subcommittee report (Attachment 3). It was moved by Senator Lawrence and seconded by Senator Karr that the FY 95 subcommittee report be amended to include the Judicial Branch and the Legislature in the Reclassification and Job Rate Study. The motion carried on a voice vote.

There was discussion of the House subcommittee recommendations for FY 95. Senator Rock pointed out that the report recognizes the workload of the Judicial Branch, recognizes that the Judicial Branch cannot execute its responsibilities effectively, and, in effect, recommends that standards be reduced for the Judicial Branch in this state. He expressed his opinion that this agency has been treated so stringently over the years that it is in a state of emergency. In answer to a question, he stated that the 4 judges recommended were requested by the agency, but the subcommittee did not provide court reporters or other nonjudicial personnel as requested by the agency. He stated that the Senate subcommittee did not address the early closing of the Clerk of the Court Offices in some counties (item 8, Attachment 3-3). Senator Rock stated that the subcommittee did not address the House Committee recommendation to pursue approval of an interim study (item 1, Attachment 3-5).

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS, Room 123-S Statehouse, at 11:00 a.m. on March 17, 1994.

Senator Moran observed that this agency is one of many that have been impacted by the declining revenue from docket fees and noted that the Senate Judiciary Committee is recommending an interim study of docket fees.

It was moved by Senator Lawrence and seconded by Senator Rock that the FY 94 and FY 95 subcommittee reports be approved. The motion carried on a voice vote.

Senator Lawrence moved, Senator Rock seconded, that HB 2652 as amended be recommended favorable for passage. The motion carried on a roll call vote.

Senator Moran moved, Senator Rock seconded, that the minutes of March 9, 14, and 15 be approved. The motion carried on a voice vote.

The Chairman adjourned the meeting at 11:45 A.M.

The next meeting is scheduled for March 18, 1994.

## GUEST LIST

COMMITTEE: SENATE WAYS AND MEANS

DATE: March 17, 1994

[illegible]

## SUBCOMMITTEE REPORT

Agency: Judicial Council

Bill No. 2652

Bill Sec. 2

Analyst: Rothe

Analysis Pg. No. 83

Budget Page No. 356

| <u>Expenditure Summary</u> | <u>Agency<br/>Req. FY 95</u> | <u>Gov. Rec.<br/>FY 95</u> | <u>House<br/>Subcommittee<br/>Adjustments</u> |
|----------------------------|------------------------------|----------------------------|---|
| State Operations:          |                              |                            |   |
| State General Fund         | \$ 238,881                   | \$ 219,146                 | \$ --   |
| Publications Fee Fund      | 35,838                       | 48,383                     | --  |
| TOTAL                      | <u>\$ 274,719</u>            | <u>\$ 267,529</u>          | <u>\$ --</u>                                  |
| FTE Positions              | 4.0                          | 4.0                        | --  |

### Agency Request/Governor's Recommendation

The Judicial Council requests total FY 1995 expenditures of \$274,719, including \$238,881 from the State General Fund and \$35,838 from the Publications Fee Fund. The request is an increase of \$42,426 above the revised current year estimate. Most of the requested increase (\$30,077 from the Publications Fee Fund) is reflected in the agency's plan to publish and sell the supplement to *PIK-Criminal 3d, Kansas Municipal Court Manual*, and *Kansas Probate Forms*. Other increases include \$6,051 to finance 45 Council meetings in FY 1995 compared to 39 in FY 1994, and \$5,943 for merit pay and fringe benefit increases.

The Governor's FY 1995 recommendation of \$267,529, a reduction of \$7,190 from the agency's request, includes a reduction in financing from the State General Fund of \$19,735 and an increase in financing from the Publications Fee Fund of \$12,545. The Governor recommends a reduction in the number of requested advisory committee meetings from 45 to 39. The Governor concurs with the full publishing request of the agency.

### House Subcommittee Recommendation

**FY 1994.** The Subcommittee concurs with the recommendations of the Governor for FY 1994.

**FY 1995.** The Subcommittee concurs with the Governor's recommendation with the following comments:

1. It is refreshing to encounter a knowledgeable state agency director who works well within the ongoing restraints of tight state financing by running an efficient agency, being creative, and being willing to pursue performance-based budgeting.

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2. The creation of the no-limit Publications Fee Fund by the 1992 Legislature has successfully resolved the Council's long-term financial inability to publish new and supplemental legal publications. The Subcommittee compliments the Judicial Council's employment of the new fund to publish needed materials at a reasonable cost for members of the Bar. (Publication activities are detailed in a table on page 85 of the Judicial Council analysis.)
3. The Subcommittee encourages the Director to continue to pursue an alternative method of publishing *PIK-Civil 2d* (pattern jury instruction). Lawyer's Cooperative Publishing maintains a copyright on the publication, selling approximately 1,200 supplements each year of which the Judicial Council retains a 15 percent royalty. With the creation of the Publications Fee Fund the Judicial Council would like to have complete control over this publication in order to bring the book up to the standards of other agency publications. The Subcommittee concurs with the agency's goal and urges the Subcommittee assigned to this budget during the 1995 Legislative Session to review the status of the ongoing negotiations.
4. The Subcommittee learned that one of the agency's 4 FTE positions will be on maternity leave for approximately six weeks in early FY 1995. The Subcommittee assigned to this agency during the 1995 Legislative Session may need to address a possible supplemental funding request from the State General Fund for temporary salaries if the agency is unable to find alternative financing.

#### House Committee Recommendation

The Committee concurs with the recommendation of the Subcommittee.

#### House Committee of the Whole Recommendation

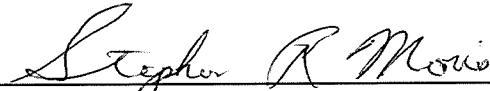
The House concurs with the recommendation of the Committee.

| <u>Expenditure Summary</u> | <u>House<br/>Adj. FY 95</u> | <u>House<br/>Rec. FY 95</u> | <u>Senate<br/>Subcommittee<br/>Adjustments</u> |
|----------------------------|-----------------------------|-----------------------------|--|
| State Operations:          |                             |                             |  |
| State General Fund         | \$ --                       | \$ 219,146                  | \$ --  |
| Publications Fee Fund      | --                          | 48,383                      | --   |
| <b>TOTAL</b>               | <u>\$ --</u>                | <u>\$ 267,529</u>           | <u>\$ --</u>                                   |
| <br>FTE Positions          | <br>--                      | <br>4.0                     | <br>--   |

**Senate Subcommittee Recommendation**

**FY 1994.** The Subcommittee concurs with the recommendation of the House which concurred with the Governor's recommendation.

**FY 1995.** The Subcommittee concurs with the recommendation of the House which concurred with the Governor's recommendation.



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Senator Stephen R. Morris  
Subcommittee Chair



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Senator Dave Kerr

## SUBCOMMITTEE REPORT

Agency: Board of Indigents' Defense Services Bill No. 2752

Bill Sec. 5

Analyst: Rothe

Analysis Pg. No. 87

Budget Page No. 332

| Expenditure Summary   | Agency<br>Est. FY 94 | Gov. Rec.<br>FY 94 | House<br>Committee<br>Adjustments |
|-----------------------|----------------------|--------------------|-----------------------------------|
| State Operations:     |                      |                    |                                   |
| State General Fund    | \$ 9,029,833         | \$ 8,682,571       | \$ --                             |
| Special Revenue Funds | 185,818              | 185,818            | --                                |
| Subtotal              | \$ 9,215,651         | \$ 8,868,389       | \$ --                             |
| Other Assistance      |                      |                    |                                   |
| State General Fund:   | 404,075              | 404,075            | --                                |
| TOTAL                 | \$ 9,619,726         | \$ 9,272,464       | \$ --                             |
| FTE Positions         | 89.5                 | 89.5               | --                                |

### Agency Estimate/Governor's Recommendation

The Legislature approved total expenditures of \$8,001,243 for FY 1994 to provide legal services to indigent criminal felony defendants by public defenders, assigned counsel, and Legal Services for Prisoners, Inc. Of the total approved, \$7,831,243 is from the State General Fund and \$170,000 is from the Indigents' Defense Services Fund. The Board's revised estimate of expenditures for FY 1994 of \$9,619,726 includes \$9,433,908 from the State General Fund, an increase of \$1,602,665 above the amount approved (\$1,396,367 for assigned counsel, and \$206,298 for the salaries and OOE of 10.0 FTE new positions). The revised estimate also includes \$170,000 from the Indigents' Defense Services Fund as approved and a request to spend the remaining balance of \$15,818 from a federal drug defense grant for assigned counsel.

The Governor recommends total expenditures of \$9,272,464 for FY 1994, a reduction of \$347,262 from the Board's revised estimate. A supplemental appropriation from the State General Fund totaling \$1,255,403 is recommended, and includes financing for the 10.0 FTE requested new positions and for approximately 94 percent of the assigned counsel request. The Governor concurs with the request for 10.0 FTE new positions in FY 1994. The Governor recommends assigned counsel expenditures of \$5,349,759 in FY 1994 (a reduction of \$328,843).

### House Subcommittee Recommendation

**FY 1994.** The Subcommittee concurs with the Governor's recommendation with the following adjustments:

1. The Board of Indigents' Defense Services has chosen to utilize the flexibility provided by the 1993 Legislature by adopting and initiating a Regional Defense Delivery System. The single line item appropriation and the elimination of the

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position limitation has enabled the agency to utilize assigned counsel funds to hire six additional public defenders and four new support staff in the current year to extend public defense services to high-cost cases throughout Kansas while beginning to focus the use of assigned counsel expenditures to less costly cases. The Subcommittee believes the Board has taken a very positive step forward in the implementation of a much more cost effective and efficient manner of providing public defense and encourages the Board to move forward.

2. The 1993 Legislature recommended that "the agency open its doors wide for a complete post audit of agency operations and financing" to be performed by the Legislative Division of Post Audit. In addition the Legislature appropriated \$29,700 from the State General Fund to enable the agency to contract with a university or with a private consultant for an agencywide management analysis to be performed in cooperation with the Division of Post Audit. In light of the Legislative Post Audit Committee's interest in focusing the Division's attention on other even more recently requested audits rather than on a BIDS audit that was recommended by both the House and Senate Committees, the Subcommittee encourages the agency to go forward with the production of a strategic plan including a management analysis and the implementation of a Regional Public Defender System and to forward the results to the Legislature.
3. The Subcommittee notes that the agency's decision to hire an administrative counsel position in the Administrative Office has had a very positive effect in increasing communication between agency administrators and the field offices. The position has already developed statewide surveys of defense needs, promulgated rules and regulations, and initiated public defender office reviews resulting in reorganization and increased efficiency and accountability.
4. The Subcommittee learned that the agency has proceeded to fully implement a public defender office in Finney County in FY 1994 with the addition of 7 FTE positions. Although the agency's budget submission (and the Governor's recommendation) was based on phased implementation of 2 FTE positions in FY 1994 and the remaining 5 FTE in FY 1995, the agency has decided that an accelerated implementation would generate more immediate assigned counsel savings. As a result, the agency has reduced its appeal for an increase in FY 1994 to \$130,000 rather than the \$347,262 reduction recommended by the Governor.

#### **House Committee Recommendation**

The House Committee concurs with the recommendations of the Subcommittee.

#### **House Committee of the Whole Recommendation**

The House concurs with the recommendation of the Committee.

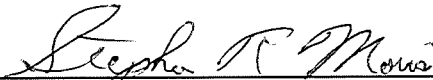


| Expenditure Summary   | House<br>Adj. FY 94 | House<br>Rec. FY 94 | Senate Sub.<br>Adjustments |
|-----------------------|---------------------|---------------------|----------------------------|
| State Operations:     |                     |                     |                            |
| State General Fund    | \$ --               | \$ 8,682,571        | \$ (29,700)                |
| Special Revenue Funds | --                  | 185,818             | --                         |
| Subtotal              | \$ --               | \$ 8,868,389        | \$ (29,700)                |
| Other Assistance      |                     |                     |                            |
| State General Fund:   | --                  | 404,075             | --                         |
| TOTAL                 | \$ --               | \$ 9,272,464        | \$ (29,700)                |
| FTE Positions         | --                  | 89.5                | --                         |

### Senate Subcommittee Recommendation

**FY 1994.** The Senate Subcommittee concurs with the recommendation of the House with the following adjustments:

1. The Senate Subcommittee concurs with the comments in Item Numbers 1 and 3 in the House Subcommittee Report. The agency has made progress in the past year in its initiation of a Regional Defense Delivery System and has taken several other steps in providing defense in a more cost-effective manner. The hiring of an Administrative Counsel position has apparently had a positive effect in furthering communications throughout the agency.
2. Lapse the \$29,700 appropriated from the State General Fund for FY 1994 by the 1993 Legislature for a contract with a university or a private consultant for a management study of BIDS. The Subcommittee concurs with the House (House Subcommittee Recommendation No. 2) that the study needs to go forward. However, a concurrent 12-week Legislative Division of Post Audit study of agency operations and financing was not approved until early March and may not get underway until April, 1994. The Subcommittee believes it is too late in the fiscal year to contract for the completion of a management study, but feels the study should instead be conducted in FY 1995 (see the FY 1995 Subcommittee Report where the Senate Subcommittee recommends an appropriation of \$40,000 from budget stabilization funds for the contracted study.)



Senator Steve Morris  
Subcommittee Chair



Senator Dave Kerr

# SUBCOMMITTEE REPORT

Agency: Board of Indigents' Defense Services Bill No. 2652

Bill Sec. 3

Analyst: Rothe

Analysis Pg. No. 87

Budget Page No. 332

| Expenditure Summary   | Agency<br>Req. FY 95 | Gov. Rec.<br>FY 95 | House<br>Committee<br>Adjustments |
|-----------------------|----------------------|--------------------|-----------------------------------|
| State Operations:     |                      |                    |                                   |
| State General Fund    | \$ 8,953,608         | \$ 8,757,815       | \$ --                             |
| Special Revenue Funds | 173,000              | 173,000            | --                                |
| Subtotal              | \$ 9,126,608         | \$ 8,930,815       | \$ --                             |
| Other Assistance      |                      |                    |                                   |
| State General Fund:   | 605,183              | 428,564            | --                                |
| TOTAL                 | \$ 9,731,791         | \$ 9,359,379       | \$ --                             |
| FTE Positions         | 122.75               | 94.5               | --                                |

## Agency Request/Governor's Recommendation

The Board's request for FY 1995 totals \$9,731,791, including \$9,126,608 for agency operations and \$605,183 for a grant to Legal Services for Prisoners, Inc. Requested expenditures from the Indigents' Defense Services Fund of \$173,000 are \$3,000 more than the current year estimate. The FY 1995 request reflects a total increase of \$112,065 and 33.25 FTE positions above the revised FY 1994 estimate. The 10.0 FTE positions hired part-way through FY 1994 to augment the coverage of a burgeoning caseload in the public defender offices would be continued in FY 1995. The agency intends to proceed with the implementation of the Regional Defense Delivery System whereby new offices are established or services extended initially to the more urban counties while voucher review and the assumption of some high cost cases are offered in rural counties. An FY 1995 salary request of \$1,429,857 for 27 new attorneys and 16.25 support staff to implement the regional system would be met with a coinciding reduction in assigned counsel costs of \$1,654,127 in FY 1995.

The Governor recommends total expenditures of \$9,359,379 in FY 1995, including \$8,930,815 for agency operations and \$428,564 for the grant to Legal Services for Prisoners, Inc. The Governor recommends expenditures of \$173,000 from the Indigents' Defense Services Fund, as requested, and \$9,186,379 from the State General Fund, a reduction of \$372,412 from the amount requested. The recommendation include \$309,969 to finance the 10.0 FTE positions added part-way through FY 1994, and \$173,221 for 5.0 FTE new positions for the Finney County Office in FY 1995. The recommendation includes full financing for the new public defender office in Finney County (\$299,249 and 7.0 FTE positions) in addition to 5.0 FTE new attorneys and 3.0 FTE support staff for the remaining offices. Because the Governor's recommendation falls short of the request to establish a Regional Defense Delivery System, assigned counsel expenditures of \$5,079,000 are recommended (\$1,054,525 more than requested).

### House Subcommittee Recommendation

**FY 1995.** The Subcommittee concurs with the Governor's recommendation with the following adjustments:

1. The Subcommittee reviewed the agency's efforts associated with performance-based budgeting and discussed how such measurements might be provided to the Legislature in 1995. The Subcommittee is satisfied with the agency's efforts.
2. The Subcommittee recommends that the Board monitor the workload of the Appellate Defenders Office and shift resources internally to provide for its needs. If the number of appellate cases shifted to assigned counsel continues increasing due to the impact of sentencing guidelines, it makes sense to shift attorney positions to this office, at least until the number of appeals on retroactivity levels off.
3. The Subcommittee is concerned that the Public Defender Office in Sedgwick County is being told to move from their offices across the street from the courthouse to the new state office building, one mile from the courthouse while at the same time they are being told to be more efficient. The very efficiency of the public defender's office depends on its ready accessibility to the courthouse. The same can be said for the district courts, for they too depend on the ready availability of the public defenders. Of the 22 state agencies located in Wichita, the BIDS Office is one of 11 slated to move to the state office building in September, 1994. The Subcommittee recommends further review of why the public defender office was chosen to move over the 11 remaining state agencies.
4. In addition to monitoring the significant restructuring taking place throughout the agency, a number of other issues should be addressed by the Subcommittees in future Sessions. For example, the salaries paid to the contracted attorneys and support staff employed by Legal Services for Prisoners, Inc. average \$4,000 to \$5,000 less per position than parallel state positions. Additionally the adequacy of the \$50 per hour assigned counsel fee should be reviewed. The urgency of this review may be lessened as more state public defenders are assigned to the more costly A, B and C felony cases.
5. The Subcommittee encourages the public defender offices to follow the example of the Sedgwick County Office in hiring a social worker position. The new position has been responsible for encouraging sentencing alternatives, especially boot camps, and facilitating the admission of defendants into various treatment programs. The Sedgwick County Office reclassified a legal assistant who performed some social work duties to a social worker position at a lower salary. This is an example of a cost-effective and innovative approach being utilized by the agency in its provision of public defense.
6. The Subcommittee notes that the agency has not had a good predictive history in submitting its assigned counsel requests for succeeding fiscal years. The Subcommittee discussed whether the formation of a "caseload estimating group" might be formed in the future to provide caseload estimates for the judicial branch and for BIDS, including representatives of the agencies as well as from Legislative Research and the Budget Division.

7. The Subcommittee strongly recommends that the Board of Indigents' Defense Services and the Judicial Branch be included with other public safety agencies as exceptions to any across-the-board budget cuts. The work of these agencies does not diminish in times of budget crisis. In fact a strong case could be made that the workload increases in hard times. Both of these agencies have tight budgets heavily reliant on salaries. Financially and philosophically there is ample justification for their exclusion from across-the-board cuts.

Additionally, anything and everything that may eventually pass of the many bills that propose to get tough on crime will increase the workload for both of these agencies. Across-the-board cuts in the face of at least some and maybe much new legislation adding to the workload seems fundamentally wrong. Passage of bills that get tough on crime will require review in the Omnibus Bill because current funding does not allow for significantly expanded duties that those measures would require.

8. In reaction to the increasing amount of legislation aimed at reducing and punishing crime, the Subcommittee recommends that such legislation include fiscal notes so that informed decisions on the impact on agency budgets can be made as such legislation proceeds. Agency strategies and missions will need to change if legislation is implemented without sufficient financing for personnel in the appellate and district courts.

#### **House Committee Recommendation**

The House Committee concurs with the recommendations of the Subcommittee with the following adjustment:

1. Add a proviso to the FY 1995 appropriation bill for BIDS (H.B. 2652) to ensure that no expenditures are to be made from the State General Fund for moving costs or any other expenses associated with relocating the offices of the public defender office in Sedgwick County from their existing location.

#### **House Committee of the Whole Recommendation**

The House concurs with the recommendation of the Committee.

| Expenditure Summary       | House<br>Adj. FY 95 | House<br>Rec. FY 95 | Senate Sub.<br>Adjustments |
|---------------------------|---------------------|---------------------|----------------------------|
| State Operations:         |                     |                     |                            |
| State General Fund        | \$ --               | \$ 8,757,815        | \$ --                      |
| Budget Stabilization Fund | --                  | --                  | 65,000                     |
| Special Revenue Funds     | --                  | 173,000             | --                         |
| Subtotal                  | \$ --               | \$ 8,930,815        | \$ 65,000                  |
| Other Assistance          |                     |                     |                            |
| State General Fund:       | --                  | 428,564             | --                         |
| TOTAL                     | \$ --               | \$ 9,359,379        | \$ 65,000                  |
| FTE Positions             | --                  | 94.5                | --                         |

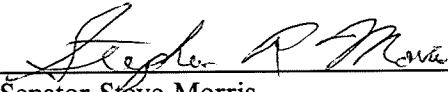
### Senate Subcommittee Recommendation

**FY 1995.** The Senate Subcommittee concurs with the recommendations of the House with the following adjustments:

1. Add \$40,000 from the Budget Stabilization Fund to enable the agency to contract with a university or a private consultant for a management analysis and the development of a strategic plan. In the FY 1994 Report the Subcommittee lapses the \$29,700 appropriated from the State General Fund for FY 1994 by the 1993 Legislature for such a contract because a concurrent 12-week Legislative Division of Post Audit study of agency operations and financing was not approved until early March and may not get underway until April, 1994. In addition, the agency was unable to find a contractor willing to conduct a management analysis for \$29,700. The Subcommittee agrees with the House that the studies should proceed. In its development of a strategic plan, the contractor should determine whether additional public defender offices should be opened, what the agency should look like five years from now, and the procedures used by judges for declaring indigency.
2. Add \$25,000 from the Budget Stabilization Fund in FY 1995 to enable the agency to hire a special project attorney (preferably with a CPA background) to audit the legitimacy of assigned counsel claims. The agency should have the flexibility to hire the position for six months or for 12 months at half time. The agency only has one clerical position hired to sift through over 10,000 assigned counsel claims submitted each year. The Subcommittee believes an audit of assigned counsel claims is a very cost-effective use of these one-time funds.
3. For several years the Legislature has urged the Board to pursue either establishing a public defender office in Wyandotte County or at least begin to contract with several local private attorneys in order to reduce burgeoning assigned counsel costs. While their efforts have not been successful, it appears that the threat of such efforts have caused the local bar to voluntarily offer their services in a more cost-effective manner. The average cost per assigned counsel claim in Wyandotte County has declined from \$555 in FY 1989 to \$485 estimated in FY 1994. This compares to

a statewide average of \$470 in FY 1989 and \$480 estimated in FY 1994. Given the efforts to reduce assigned counsel costs, the Subcommittee withholds a recommendation in FY 1995 to establish a public defender office in Wyandotte County.

4. The Subcommittee urges the agency to review the need for legislation to permit the recovery of the cost of indigent defense for persons sentenced to the community corrections system. Currently, judges order every defendant placed on probation to reimburse the cost of state defense unless it would create a financial hardship.
5. The Subcommittee informs the Committee that several crime bills are making their way through legislature with fiscal notes that will be reviewed in the Omnibus Bill. For example, if a death penalty becomes law, the Board of Indigents' Defense Services will need to establish a Capital Defender Office for preliminary hearings and defense. The passage of S.B. 513 would require the adjudication in certain situations of 16 and 17 year old juveniles as adults. Such juveniles would be eligible for state defense (at an estimated FY 1995 cost of \$817,000 for 1,267 new cases) where their defense is currently the responsibility of counties.

  
\_\_\_\_\_  
Senator Steve Morris  
Subcommittee Chair

  
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Senator Dave Kerr



# SUBCOMMITTEE REPORT

Agency: Judicial Branch

Bill No. 2652

Bill Sec. 4

Analyst: Rothe

Analysis Pg. No. 71

Budget Page No. 358

| Expenditure Summary               | Agency<br>Req. FY 95 | Gov. Rec.<br>FY 95   | House<br>Committee<br>Adjustments |
|-----------------------------------|----------------------|----------------------|-----------------------------------|
| State Operations:                 |                      |                      |                                   |
| State General Fund                | \$ 64,323,611        | \$ 61,113,283        | \$ 30,800                         |
| Jud. Technology Fund              | 586,653              | 639,718              | --                                |
| J.B. Education Fund               | 694,429              | 951,358              | --                                |
| Special Revenue Funds             | 1,690,706            | 1,693,335            | --                                |
| TOTAL                             | <u>\$ 67,295,399</u> | <u>\$ 64,397,694</u> | <u>\$ 30,800</u>                  |
| FTE Positions:                    |                      |                      |                                   |
| Appellate Court Judges & Justices | 17.0                 | 17.0                 | --                                |
| District Court Judges             | 222.0                | 218.0                | --                                |
| Nonjudicial Personnel             | 1,506.0              | 1,477.5              | --                                |
| TOTAL                             | <u>1,745.0</u>       | <u>1,712.5</u>       | <u>--</u>                         |

## Agency Request/Governor's Recommendation

The Judicial Branch requests \$67,295,399 for FY 1995, of which \$64,242,882 is for salaries (95.5 percent of the total request) and \$3,052,517 is for other operating expenditures. The FY 1995 salary request is an increase of \$3,907,100 (6.5 percent) above the current year estimate, and includes the continuation of the 5.5 FTE positions added by the Judicial Branch in FY 1994, and 30.0 FTE new positions (\$1,066,068) in FY 1995 (including 4.0 FTE new district court judges), and an FY 1995 turnover rate of 1.3 percent or a reduction in salaries of \$849,833. The FY 1995 request for other operating expenditures of \$3,052,517 includes travel and subsistence (\$915,031); books and materials for the law library (\$522,140); the second-year cost of replacing the Judicial Center computer system (\$455,432); communications (\$186,041); other commodities (\$95,622); other capital outlay (\$99,178) and all other expenditures (\$779,073).

The Governor recommends \$64,397,694 in FY 1995, a decrease of \$2,897,705 from the amount requested. The Governor's recommendation includes \$61,832,564 for salaries (a reduction of \$2,410,318) and \$2,565,130 for other operating expenditures (a reduction of \$487,387). The recommended reduction in salaries includes the deletion of all 30 FTE requested new positions (\$1,066,068), the elimination of 2.5 FTE positions also deleted in FY 1994 (\$82,000), an increase in salary turnover savings of \$1,086,866 (the turnover rate is increased from 1.3 percent to 3.0 percent), and a \$66,395 reduction in temporary nonjudicial salaries (from \$406,020 to \$339,625). The Governor concurs with the request for a 2.5 percent unclassified salary increase and classified step movement. Other operating expenditure reductions include \$377,933 from contractual services, \$12,759 from commodities, and \$96,695 from capital outlay.

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Recommended financing for FY 1995 includes reductions of \$3,210,328 from the State General Fund and \$29,235 from special revenue funds. Increased financing above the amount requested includes \$53,065 from the Judiciary Technology Fund, \$256,929 from the Judicial Branch Education Fund, and \$31,864 from other funds. The Governor's recommendation generally reduces or eliminates fee fund balances in order to offset financing from the State General Fund. Most significantly, however, the Governor recommends that the Judicial Branch's two State General Fund accounts (one for the appellate courts and one for the district courts) be merged in FY 1995.

### House Subcommittee Recommendation

**FY 1994.** The Subcommittee concurs with the recommendations of the Governor for FY 1994.

**FY 1995.** The Subcommittee concurs with the Governor's recommendation with the following adjustments:

1. Concur with Governor's Budget Amendment No. 1 to reduce salaries by \$44,200 from the State General Fund to reflect the Governor's intent. In the process of deleting 1.5 FTE requested new nonjudicial positions, the FTEs were reduced but the financing was not eliminated.
2. Add \$75,000 from the State General Fund to improve the security of the Judicial Center. Currently, the Judicial Branch contracts with the Highway Patrol for 4.86 FTE Capitol Area Guards I for 24-hour security of the Judicial Center (the same number of guards as are provided to the Capitol Building. The Judicial Branch requested \$101,305 in FY 1995 to add one police officer (through the Highway Patrol, \$40,242) and \$61,063 for security equipment, including a metal detector, a security desk, bullet-proof panels, a panic button system, a security gate, deadbolt locks, and a handheld metal detector. The Governor did not recommend financing for the request. The Subcommittee notes that the Judicial Branch, with one line item appropriation and no FTE limitation, has the ability to utilize the \$75,000 and existing funds to improve the security as it sees fit. The recommendation is not prompted by any acts or threats of violence at the Judicial Center, but the Subcommittee is concerned following the incident at the federal courthouse in Topeka in mid-1994. The Subcommittee believes it is appropriate to take action to increase security measures before acts of violence occur.
3. In reaction to the increasing amount of legislation aimed at reducing and punishing crime, the Subcommittee recommends that such legislation include fiscal notes so that informed decisions on the impact on agency budgets can be made as such legislation proceeds. Agency strategies and missions will need to change if legislation is implemented without sufficient financing for personnel in the appellate and district courts.
4. The agency made a stab at providing performance measures to the Subcommittee. The Subcommittee observes that it will actually be easier for the Judicial Branch to comply with new performance measurement requirements than some agencies because an enormous amount of statistics are compiled on caseloads for each of the 31 judicial districts. Well-considered performance measurements presented by this

agency would help convince Legislators in future years of the need for additional staff and funding.

5. During FY 1994 and FY 1995 annual receipts of approximately \$600,000 to the Judiciary Technology Fund have been mostly earmarked for the five-year, \$1,850,000 replacement of the Judicial Center computer system. Expenditures of \$625,000 in FY 1994 and \$530,000 in FY 1995 will level off to approximately \$230,000 by FY 1996. The 1995 Legislature in its consideration of the FY 1996 budget may encounter a request to begin the computerization of the district courts following completion of a computer needs analysis. The Subcommittee notes that ample balances should be available in the Judiciary Technology Fund in FY 1996 to begin the multiyear computerization project. Those balances will only be available, however, if resources to the Fund are not diverted to non-technology operating expenditures.
6. The Subcommittee notes that the creation of the Judicial Branch Education Fund (beginning with FY 1993) with annual receipts of approximately \$550,000 has translated into a dramatic increase in the amount of education financed for judicial employees. Judicial Education Program expenditures of \$155,435 in FY 1992 increased to \$397,527 in FY 1993 and are recommended at \$453,047 in FY 1995. Because of tight State General Fund balances the 1993 Legislature recommended the utilization of \$125,000 from the Education Fund for the Law Library to supplant financing from the State General Fund. Presumably the Governor's FY 1995 recommendation continues to employ the Education Fund to supplant State General Fund expenditures because the recommended FY 1995 ending balance is just \$8,557. The Subcommittee is concerned about continuing diversions from the Education Fund in future years and reiterates that the first priority of the fund should be for the education of judges and the nonjudicial employees of the Judicial Branch rather than for other operating costs of the agency.
7. The Subcommittee strongly recommends that the Judicial Branch and the Board of Indigents' Defense Services be included with other public safety agencies as exceptions to any across-the-board budget cuts. The work of these agencies does not diminish in times of budget crisis. In fact a strong case could be made that the workload increases in hard times. Both of these agencies have tight budgets heavily reliant on salaries. Financially and philosophically there is ample justification for their exclusion from across-the-board cuts.

Additionally, anything and everything that may eventually pass of the many bills that propose to get tough on crime will increase the workload for both of these agencies. Across-the-board cuts in the face of at least some and maybe much new legislation adding to the workload seems fundamentally wrong. Passage of bills that get tough on crime will require review in the Omnibus Bill because current funding does not allow for significantly expanded duties that those measures would require.

8. The Judicial Branch budget recommended by the Governor is austere but adequate. Nothing presented to the Subcommittee orally or in writing indicated that any court was so hard-pressed that legal deadlines could not be met. Although Clerk of the Court Offices in some counties close to the public at 4:00 p.m. or 4:30 p.m. to permit the completion of paperwork by 5:00 p.m., all are able to complete the day's

work. The Judicial Branch has the authority to hire retired judges and to temporarily shift judges from one judicial district to another to handle fluctuating caseloads.

The Subcommittee recognizes that the Judicial Branch is a co-equal branch of government. They are not a superior branch of government. There is simply no justification for funding the Judicial Branch at a higher level than the rest of state government. Excluding the Judicial Branch from the same level of efficiency of operation as required of Executive Branch and Legislative Branch agencies is undefendable. In fact the Governor and Legislature have afforded a great deal of flexibility to the Judicial Branch, including the deletion of the FTE limitation, the designation of "no-limit" on all of the fee funds, and the merging of the State General Fund accounts into one line item totaling over \$61 million in FY 1995.

While we would like to provide more, the Subcommittee cannot do so in good conscience when there is no more for education, social programs or any other segment of state government.

9. The Subcommittee recommends the introduction of a bill to authorize the Supreme Court to transfer judges from judicial district to judicial district as caseloads dictate.
10. The Judicial Branch submitted its "General Principles and Guidelines for the District Court" and its "Time Standards" to the Subcommittee as its Agency Mission (Attached, pages 1 and 2). The Subcommittee cannot agree that the Mission as presented is achievable given the lack of resources to accomplish the Mission. Specifically:
  - the Legislative and Executive Branches have not provided the needed personnel and financing;
  - the appropriators have not provided sufficient financing to ensure justice is carried out by judges in sufficient numbers to carry the load;
  - The appropriators have not provided sufficient financing to ensure the operation is carried out in a businesslike manner with adequate staff, or with practical methods of equalizing the judicial workload; and
11. A change in strategies will be necessitated as a consequence of this recommended budget (Strategies attached, page 2, items 2 through 10). Specifically:
  - the definition of "reasonably possible" must change in that Judges may not be able to terminate litigation as quickly;
  - cases may be permitted to float in the system;
  - time standards for disposition of cases may of necessity be lengthened;
  - adoption and use of a case management system may be slowed:
    - a. judges may not have easily exerted control over the court calendar;

- b. judges may not have time to identify cases subject to alternative dispute resolution;
  - c. trial-setting policies may of necessity be changed, or be more ad hoc; and
  - d. judges may be unable to hold hearings on trial continuances or such hearings may be of a lower priority.
12. The Subcommittee specifically authorizes courts to change the time standards set out in the "Rules Enacted by the Supreme Court of the State of Kansas" and recognizes these time standards will need be lengthened to permit the court system to operate with personnel authorized by this budget recommendation.

### House Committee Recommendations

The Committee concurs with the recommendations of the Subcommittee with the following adjustment:

- 1. The Committee requests the Committee Chairman pursue the approval of an interim committee to study the partnership of the three branches of government, the need for more judges, the difference between district judges and magistrate judges, the cost of "loaning" judges to other districts as caseloads dictate, and the effect of current and anticipated technology on judicial efficiency.

### House Committee of the Whole Recommendation

The House concurs with the recommendations of the Committee.

| <u>Expenditure Summary</u>        | <u>House<br/>Adj. FY 95</u> | <u>House<br/>Rec. FY 95</u> | <u>Senate Sub.<br/>Adjustments</u> |
|-----------------------------------|-----------------------------|-----------------------------|------------------------------------|
| State Operations:                 |                             |                             |                                    |
| State General Fund                | \$ 30,800                   | \$ 61,144,083               | \$ 1,011,037                       |
| Jud. Technology Fund              | --                          | 639,718                     | --                                 |
| J.B. Education Fund               | --                          | 951,358                     | --                                 |
| Special Revenue Funds             | --                          | 1,693,335                   | --                                 |
| TOTAL                             | <u>\$ 30,800</u>            | <u>\$ 64,428,494</u>        | <u>\$ 1,011,037</u>                |
| FTE Positions:                    |                             |                             |                                    |
| Appellate Court Judges & Justices | --                          | 17.0                        | --                                 |
| District Court Judges             | --                          | 218.0                       | 4.0                                |
| Nonjudicial Personnel             | --                          | 1,477.5                     | 4.0                                |
| TOTAL                             | <u>--</u>                   | <u>1,712.5</u>              | <u>8.0</u>                         |

### Senate Subcommittee Recommendation

**FY 1994.** The Senate Subcommittee concurs with the recommendation of the House which concurred with the recommendation of the Governor.

**FY 1995.** The Senate Subcommittee concurs with the recommendations of the House with the following adjustments:

1. Add \$467,604 from the State General Fund for 4.0 FTE new District Court Judges and 4.0 FTE new Administrative Assistants to be assigned to the new judges, as follows:

|                       |                                 |                          |
|-----------------------|---------------------------------|--------------------------|
| Shawnee County        | 1 FTE District Court Judge      | \$ 92,056                |
|                       | 1 FTE Administrative Assistant  | <u>24,845</u>            |
|                       | Subtotal - Shawnee County       | \$ 116,901               |
| Douglas County        | 1 FTE District Court Judge      | \$ 92,056                |
|                       | 1 FTE Administrative Assistant  | <u>24,845</u>            |
|                       | Subtotal - Douglas County       | \$ 116,901               |
| Johnson County        | 2 FTE District Court Judges     | \$ 184,112               |
|                       | 2 FTE Administrative Assistants | <u>49,690</u>            |
|                       | Subtotal - Johnson County       | \$ <u>233,802</u>        |
| TOTAL - New Positions |                                 | \$ <u><u>467,604</u></u> |

The Subcommittee heard testimony from the Administrative Judges of the three Judicial Districts and reviewed caseloads in those districts since FY 1983 (shown in the following table). The Subcommittee believes the caseload increases in the three Judicial Districts compared to statewide caseloads justify the addition of the judges and associated staff.



**DISTRICT COURT CASELOADS - STATEWIDE AND BY SELECTED DISTRICTS**


|  | Filings                    | FY 1983 | FY 1986 | FY 1989 | FY 1992 | FY 1993 | % Change<br>FY 83-93 |
|--|----------------------------|---------|---------|---------|---------|---------|----------------------|
| <b>Statewide</b>                                   | Criminal - Felonies        | 12,006  | 11,111  | 12,631  | 13,412  | 13,229  | 10.2%                |
|  | Criminal - Misdemeanors    | 11,365  | 12,604  | 14,171  | 16,986  | 16,386  | 44.2                 |
|  | Civil - Regular            | 19,695  | 25,117  | 24,041  | 23,735  | 22,347  | 13.5                 |
|  | Civil - Domestic Relations | 23,138  | 23,128  | 26,404  | 30,717  | 33,124  | 43.2                 |
|  | Civil - Limited Actions*   | 41,923  | 53,396  | 62,051  | 84,514  | 80,404  | 91.8                 |
| <b>3rd Judicial District<br/>(Shawnee County)</b>  | Criminal - Felonies        | 861     | 833     | 1,170   | 1,001   | 1,266   | 47.0                 |
|  | Criminal - Misdemeanors    | 798     | 1,215   | 1,648   | 1,868   | 1,720   | 115.5                |
|  | Civil - Regular            | 1,359   | 2,199   | 2,365   | 2,621   | 2,647   | 94.8                 |
|  | Civil - Domestic Relations | 1,697   | 1,730   | 2,225   | 2,375   | 2,737   | 61.3                 |
|  | Civil - Limited Actions    | 5,005   | 6,667   | 8,267   | 11,714  | 13,074  | 161.2                |
| <b>7th Judicial District<br/>(Douglas County)</b>  | Criminal - Felonies        | 373     | 333     | 344     | 342     | 396     | 6.2                  |
|  | Criminal - Misdemeanors    | 427     | 421     | 542     | 781     | 841     | 97.0                 |
|  | Civil - Regular            | 394     | 435     | 435     | 408     | 520     | 32.0                 |
|  | Civil - Domestic Relations | 541     | 546     | 642     | 761     | 931     | 72.1                 |
|  | Civil - Limited Actions    | 1,061   | 1,050   | 1,436   | 1,732   | 1,703   | 60.5                 |
| <b>10th Judicial District<br/>(Johnson County)</b> | Criminal - Felonies        | 1,114   | 1,149   | 1,546   | 1,481   | 1,463   | 31.3                 |
|  | Criminal - Misdemeanors    | 482     | 701     | 1,394   | 1,832   | 1,899   | 294.0                |
|  | Civil - Regular            | 2,533   | 2,960   | 3,895   | 3,877   | 3,579   | 41.3                 |
|  | Civil - Domestic Relations | 2,342   | 2,515   | 3,079   | 3,594   | 3,737   | 59.6                 |
|  | Civil - Limited Actions    | 4,170   | 6,284   | 7,012   | 7,557   | 7,173   | 72.0                 |

\* "Civil - Limited Action" cases are those involving claims of \$10,000 or less, or seeking judgment for an unsecured debt not sounding in tort arising out of a contract for the provision of goods, services, or money.

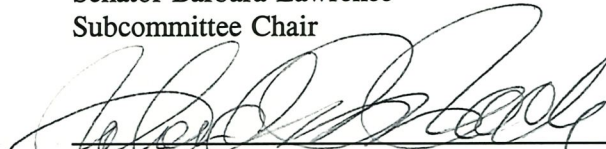
**Note:** The Third Judicial District was assigned seven district court judges and five associate judges in FY 1983 and was assigned 13 district court judges in FY 1993. The Seventh Judicial District was assigned two district court judges and two associate judges in FY 1983 and was assigned four district court judges in FY 1993. The Tenth Judicial District was assigned six district court judges and eight associate judges in FY 1983 and was assigned 16 district court judges in FY 1993.

2. Add \$543,433 from the State General Fund in FY 1995 to reduce the Judicial Branch salary shrinkage rate from the 3.0 percent rate recommended by the Governor (for total salary savings of \$1,915,592) to a rate of 2.2 percent (for total salary savings of \$1,371,723). The actual salary shrinkage rate was 2.3 percent in FY 1992 and 1.8 percent in FY 1993. The agency testified that the 3.0 percent rate recommended by the Governor in both FY 1994 and FY 1995 has resulted in a statewide freeze on hiring of 60 days for every vacant position. The Senate Subcommittee recommendation would result in an FY 1995 hiring delay of 30 days, which is not optimal but, given fiscal restraints, is the best compromise the Subcommittee can offer.
3. The Subcommittee reminds the Committee that if the final phase of the Reclassification and Job Rate Study is approved by the 1994 Legislature, the Judicial Branch will request \$133,081 to maintain parity with the Executive Branch of government for accountants, attorneys and other management positions. The Subcommittee agrees that such equity needs to be maintained.

4. The Senate Subcommittee reviewed House Subcommittee Recommendation No. 6 concerning the Judicial Branch Education Fund. 1992 House Bill No. 2832 which established the Fund states that "All money credited to the fund shall be used for the purpose of educating and training judicial branch officers and employees; for administering the training, testing and education of municipal judges; for educating and training municipal judges and municipal court support staff; and for the planning and implementation of a family court system . . ." The Subcommittee is concerned that if docket fee receipts continue to decline and if the Fund continues to be used to offset expenditures from the State General Fund (as recommended by the Governor) for purposes other than those set out in state law, the Judicial Branch may not be able to train all new district court judges and magistrate judges, and some district court accounting training may need to be eliminated.
5. Although the Senate Subcommittee concurs with House Subcommittee Recommendation No. One (a Governor's Budget Amendment to reduce salaries by \$44,200), the Subcommittee believes the situation should be clarified in this Report. Prior to FY 1994 the state financed two law librarian position in the Johnson County District Court. The Judicial Branch decided to eliminate those positions as of June 30, 1993 and required that the positions be funded locally. When the Judicial Branch submitted its FY 1994 request to the 1993 Legislature, its FTE position count was reduced by 1.5. Later in the year the Judicial Branch (which does not have an FTE limitation) decided to utilize the vacant 1.5 FTE slots for other nonjudicial positions for FY 1994 and FY 1995. The Governor's FY 1995 recommendation deleted the 1.5 FTE positions, but did not reduce the associated salaries by \$44,200. GBA No. 1, which reduces the salaries, may not be a technical adjustment as portrayed in the House Subcommittee Recommendation No. 1. Instead it appears to be a policy issue -- the Governor deleted the salaries for two positions.



Senator Barbara Lawrence  
Subcommittee Chair

  
Senator Richard Rock