



## Senate Ways and Means

March 6, 2025

Budget Hearing: Board of Indigents' Defense Services

Testimony of  
Heather Cessna, Executive Director

Chairman Billinger, Vice-Chair Claeys, Members of the Committee and Legislative Staff,

Thank you for the opportunity to present the budget priorities for the Kansas State Board of Indigents' Defense Services to this committee.

**Kansas Public Defense is Constitutionally Required** under the Sixth Amendment to the United States Constitution and under Sections 5 and 10 of the Kansas Constitution Bill of Rights, as well as a statutory obligation under K.S.A. 22-4503(a), to provide effective assistance of counsel to every impoverished Kansan accused of a felony crime.<sup>1</sup>

The Kansas State Board of Indigents' Defense Services (BIDS) exists to provide that constitutionally required counsel to every felony defendant who qualifies for appointed counsel in every court across the state. Eighty-four percent (84%) of all criminal felony cases in Kansas require appointed counsel. BIDS provides all of those appointed counsel through two related but separate public defense systems: (1) our public defender offices, and (2) our assigned counsel program of appointed private attorneys.

**Kansas's public defense system is operating in violation of the Sixth Amendment of the United States Constitution**

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<sup>1</sup> See *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Strickland v. Washington*, 466 U.S. 668 (1984).

While the additional funding our system has received over the last several years has had a measurable impact, those investments have not solved our public defense crisis in Kansas. Recently published research by national public defense experts in the **National Public Defense Workload Study**, which included specific public defender workload recommendations, has officially put all public defense systems across the United States, including ours here in Kansas, on notice that there is a national consensus on what constitutes constitutionally appropriate public defender workloads.<sup>2</sup>

Consistent, continued investments in statewide public defense are imperative to meet our constitutional mandate and avoid the types of statewide lawsuits that are currently being seen in public defense systems in Oregon, Wisconsin, and Maine, and many others.<sup>3</sup>

**Kansas does not currently have enough criminal defense attorneys participating in the public defense system to meet the volume of cases currently being charged by local prosecutors across the state.**

This lack of attorneys results in occasional delays in the appointment of counsel while BIDS staff and local judges struggle to find attorneys available and willing to accept appointments. Local public defenders' offices are put in positions of regularly refusing new case appointments due to insufficient staffing for their caseloads. BIDS' assigned counsel costs continue to climb due to counsel being asked to frequently travel greater and greater distances across the state to help us meet our basic constitutional obligations to provide effective criminal counsel for all impoverished and criminally charged adults who qualify.

## **Current Budget Proposals Threaten to Derail Recent Progress**

Substitute for HB 2007 includes dangerous cuts to the BIDS budget in FY 2025 and FY 2026. The first concerning cut is a \$6 Million Lapse in BIDS' FY 25 Reappropriation. While our agency is making every effort to identify potential savings and delay expenditures to minimize spending over the next four months, BIDS will need \$1.4 Million to pay our bills through June 2025.

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<sup>2</sup> National Public Defender Workload Study: [https://www.rand.org/pubs/research\\_reports/RR2559-1.html](https://www.rand.org/pubs/research_reports/RR2559-1.html)

<sup>3</sup> <https://www.usnews.com/news/best-states/main/articles/2022-07-18/class-status-granted-to-lawsuit-over-public-defender-system> ; <https://www.opb.org/article/2022/10/19/oregon-public-defence-failures-civil-rights-lawsuit/> ; <https://www.wpr.org/class-action-lawsuit-calls-out-lack-state-public-defenders>

- **Request #1: Reduce Lapse in Sub for HB 2007 from \$6.0 Million to \$4.6 Million in BIDS' FY 2025 Reappropriation**

If reinstated, the restoration of \$1.4 Million of our reappropriation funds will cover costs for assigned counsel, expert fees, death penalty litigation costs, committed expenditures, payroll, and several necessary IT security related items that are in progress.

BIDS' next concern regarding Sub for HB 2007 is a late-added proviso to remove funding for vacant positions in FY 2026:

“(a) During fiscal year 2025, on or before June 30, 2025, the director of personnel services of the department of administration, in consultation with the director of the budget and the director of legislative research, shall identify vacant positions and the funding associated with such vacant positions in each state agency that are paid from appropriations from the state general fund and shall present such information to the state finance council: Provided, however, That provisions of this section shall not apply to vacant positions in a state hospital or a correctional facility.

(b) During fiscal year 2026, on or before July 14, 2025, a state agency may make an appeal to the state finance council to retain the funding associated with such vacant positions in such state agency and the state finance council may review and approve such appeals: And provided further, That the state finance council acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in K.S.A. 75-3711c(c), and amendments thereto, is hereby authorized to approve such appeals to retain the funding associated with such vacant positions during fiscal year 2026 for each state agency that successfully appeals: And provided further, That on July 15, 2025, of the amount of funding associated with such vacant positions in each state agency that are paid from appropriations from the state general fund and such appeals were denied or no action was taken, such amounts are hereby lapsed.”

This potential loss of funding would be disastrous to BIDS, as we have offered and received commitments for employment from thirteen (13) May 2025 law school graduates who will be taking the bar exam in July 2025 and joining BIDS soon after. With BIDS' below-average salaries in a very competitive legal market, BIDS must extend job offers in the fall of candidates' third year of law school to attract qualified new attorneys to help provide constitutionally mandated legal defense.

- **Request #2: Preserve funding for BIDS positions offered to 2025 law school graduates and other new hires**

Without funding in place, we cannot make job offers to law students who are preparing for a legal career in criminal defense. These students are coming out of school

with six-figure debt and expect to have employment lined up well ahead of graduating; other organizations will hire them if we are not able to.

Further, the current language in the proviso includes ANY vacancy, which will make replacing employees who resign in June nearly unworkable if funds are lapsed on July 1, 2025.

If the committee chooses to lapse funding for unfilled positions, BIDS would ask that the lapse occur at the *end* of the fiscal year – rather than the beginning – so BIDS and other agencies can continue the hiring processes for those positions knowing that funding will be available for each newly hired employee’s salary when they begin employment.

### **- Request #3: Except BIDS from the FY 2026 1.5% Operations Cut**

A loss of 1.5% in BIDS’ operating budget in FY 2026 amounts to an almost \$1M cut to constitutionally required services. By cutting these funds from our budget, the legislature is limiting our ability to provide cost-effective defense counsel to individuals charged with felonies in Kansas. BIDS is currently referring approximately 65% of appointed cases to private attorneys.

The greatest driver of expenses is assigned counsel, but if BIDS loses operations funds to pay for salaries, more cases will be referred to assigned counsel at \$120 per hour. In contrast, it costs around \$84 per hour for BIDS to pay salary, fringe and overhead for a BIDS-employed public defender.

### **Scaling Back Budget Requests Made in Fall 2024**

In the fall of 2024, BIDS submitted its agency requests to the Division of Budget. Since that time, the Special Committee on Legislative Budget and the House Appropriations Committee have not expressed support for those requests. BIDS recognizes that we have likely run out of time to secure additional appropriations during this 2025 Legislative Session, and we are modifying our budget priorities to those listed on pages 3 and 4 above.

However, we feel compelled to remind the committee that the Kansas Criminal Legal System will break down if the State of Kansas fails to adequately fund the basic necessary services of paying for our general agency operations, employee salaries, assigned counsel costs, death penalty litigation expenses, and expert services. Attorneys will leave the employment of our public defender offices, assigned counsel will refuse to accept appointments and the indigent accused will go unrepresented. Without defense counsel, criminal cases cannot proceed through the legal system.

**Without attorneys to represent indigent defendants, criminal cases will be dismissed due to Sixth Amendment violations.**

We at BIDS are not the only ones who are concerned about this crisis in public defense. The Deason Center for Criminal Justice Reform, which researches public defense issues in states across the country, recently released a policy paper highlighting the crisis in public defense in Kansas. The paper can be found online at <https://scholar.smu.edu/cgi/viewcontent.cgi?article=1012&context=deasoncenter>, and a printed copy is attached to today's testimony.

**BIDS' Original FY 2026 Budget Requests (Fall 2024):**

1. Recruitment and Retention Enhancement Request for Pay Parity with Prosecutors: \$6,668,972.
2. FY 2026 Ethical Caseloads Staffing & Support Enhancement Request: \$4,292,000 (29 FTEs).

To support our current and long-term goals of keeping experienced public defenders within the agency, BIDS had proposed staffing increases and compensation adjustments to move toward better pay parity between public defenders and their prosecutor counterparts and staffing increases. BIDS' Fall 2024 request included funding to hire 29 new full-time positions and to increase public defender salaries an average of 28% to be more competitive with local prosecutors' and the Attorney General's salaries. It also included funding to support a 10% increase for non-attorney staff to keep their salaries at more competitive rates with other comparable government salaries.

We appreciate Governor Kelly's recommendation (in January 2025) to appropriate \$1.6 million to partially fund BIDS' pay parity request to increase public defender salaries, which would have helped boost our efforts toward attorney recruitment and retention.

BIDS' Fall 2024 request for additional funds to hire attorneys and support staff as employees in the public defense system – rather than paying private attorney \$120+ per hour – would be a better investment of taxpayer dollars, and we hope to have ongoing discussions about commonsense approaches to BIDS' funding with the committee throughout 2025 and in future years. At this moment, however, our top priority is paying our bills in FY 2025 and maintaining funding for full-time employee positions and other necessary agency operations in FY 2026.

## Conclusion

BIDS understands and appreciates the difficulty of attempting to create a balanced budget given the many other priorities presented by every state agency during the budget process. The State of Kansas is constitutionally required to provide certain services to Kansans, and effective defense counsel for poor people accused of crimes is one of those fundamental constitutional responsibilities.

Our public defense system is the backbone of our entire Kansas criminal justice system. There is, quite literally, no justice in Kansas without us.

As always, if you have any further questions, please do not hesitate to contact us. Thank you for your time and consideration.

/s/ Heather Cessna

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