

Board of Indigents' Defense Services

Notice on Proposed Administrative Regulations

A public hearing will be conducted on Tuesday, October 4, 2016, at 9 a.m. in the meeting room of BIDS, Suite 500, 700 Jackson, Topeka, Kansas. The hearing is scheduled to last for 30 minutes. The hearing is to consider the adoption of proposed regulations by the Board of Indigents' Defense Service on a permanent basis.

This 60-day notice of the public hearing shall constitute a public comment period for the proposed regulations noted below. All interested parties may submit written comments prior to the hearing to BIDS, Suite 500, 700 SW Jackson, Topeka, KS 66603 or by email to Pscalia@sbids.org. All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed regulations during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to an appropriate timeframe.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made *at least one week* in advance of the hearing by contacting Beth Child at 785-296-8416. The Jayhawk Hotel building is accessible for disabled persons and accessible parking is located in front of the building. A summary of the proposed regulations and their Economic Impact follow.

Copies of the full proposed regulations and the Economic Impact Statement for the proposed regulations can be obtained at BIDS, Suite 500, 700 SW Jackson, Topeka, KS 66603

K.A.R. 105-5-2, K.A.R. 105-5-3, K.A.R. 105-5-6, K.A.R. 105-5-7, K.A.R. 105-5-8 establish the hourly rate to be paid to the private attorneys who accept court appointments to defend indigent persons in the absence of a public defender. The rate to be paid to assigned counsel is increased from \$65 per hour to \$70 per hour and each of the "caps" for the severity level of the charge is similarly increased from the "cap" at \$65 per hour to the "cap" at \$70 per hour. These amendments reflect action taken by the Board under its statutory authority to adjust the rate of compensation to more closely approach the rate set by statute of \$80 per hour.

K.A.R. 105-11-1, incorporates by reference the "Attorney Cost Reimbursement Tables: Assigned Counsel and Public Defender". This table lists the average actual cost to the agency for attorney costs on each level of felony.

Economic Impact.

The Board anticipates that the continued proration of the assigned counsel hourly rate down from \$80/hour to \$70/hour will save \$680,000 to the state general fund. (136,000 hours x \$5.00)

105-5-2. Rates of compensation. (a) Each assigned counsel shall be compensated at the rate of ~~\$65~~ \$70 per hour.

(b) Contract counsel shall be compensated at the rate or rates specified in the contract between the board and the assigned counsel. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective May 1, 1984; amended May 1, 1988; amended, T-105-6-13-88, July 1, 1988; amended Oct. 31, 1988; amended July 1, 1993; amended, T-105-6-15-93, July 1, 1993; amended Aug. 16, 1993; amended March 28, 1994; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010; amended Dec. 11, 2015; amended P-_____.)

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105-5-3. Appellate courts; compensation. (a) For authorized services performed in appealing a case to the court of appeals or the Kansas supreme court, compensation shall be paid at the rate prescribed in K.A.R. 105-5-2.

(b) Compensation for attorneys' services in cases appealed to the Kansas supreme court or the court of appeals shall not exceed ~~\$1,300~~ \$1,400. However, additional compensation may be approved by the board. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective May 1, 1984; amended May 1, 1985; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010; amended Dec. 11, 2015; amended P-_____.)

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105-5-6. Reasonable compensation; non-tried cases. (a) Each appointed and assigned attorney shall be compensated for time expended in representing indigent defendants and other indigent persons at the hourly rate prescribed in K.A.R. 105-5-2. Except as provided in K.A.R. 105-5-8, reasonable compensation shall not exceed ~~\$1,300~~ \$1,400 in the following cases:

(1) Those felony cases in the trial court that are classified as non-drug offenses of severity levels 1 through 5 that are not submitted to a judge or jury, including services at a preliminary hearing and sentencing, if applicable; and

(2) those felony cases in the trial court that are classified as drug offenses, that have not been submitted to a judge or jury, and in which there have been six hours or more spent in court in defense of the indigent defendant, including services at a preliminary hearing and sentencing, if applicable.

(b) Except as provided in K.A.R. 105-5-8 and K.A.R. 105-5-6(a), reasonable compensation shall not exceed ~~\$975~~ \$1,050 in the following cases:

(1) Those felony cases in the trial court that are not submitted to a judge or jury, including services at a preliminary hearing and sentencing, if applicable, and are classified as severity levels 6 through 10 non-drug offenses; and

(2) those felony cases in the trial court that are not submitted to a judge or jury, that are classified as drug offenses, and in which there have been fewer than six hours spent in court in defense of the indigent defendant, including services at a preliminary hearing and sentencing, if applicable.

(c) Except as provided in K.A.R. 105-5-8, K.A.R. 105-5-6(a), and K.A.R. 105-5-6(b), reasonable compensation shall not exceed ~~\$650~~ \$700 in the following types of cases:

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- (1) Habeas corpus cases as authorized by K.S.A. 22-4503 and K.S.A. 22-4506 and amendments thereto;
 - (2) cases filed pursuant to K.S.A. 60-1507 and K.S.A. 22-4506 and amendments thereto;
 - (3) habeas corpus cases as authorized by K.S.A. 22-2710 and amendments thereto;
 - (4) habeas corpus cases as authorized by K.S.A. 22-3428 and K.S.A. 22-3428a and amendments thereto; and
 - (5) habeas corpus cases as authorized by K.S.A. 59-2965 and amendments thereto.
- (d) Except as provided in K.A.R. 105-5-8, reasonable compensation shall not exceed \$260 \$280 in the following types of cases:

- (1) Representation of grand jury witnesses determined to be indigent and called to testify pursuant to K.S.A. 22-3009 and amendments thereto;
- (2) representation of indigent persons committed to custody as material witnesses pursuant to K.S.A. 22-2805 and amendments thereto;
- (3) probation revocation hearings; and
- (4) motions to modify sentence pursuant to K.S.A. 2014 2015 Supp. 21-6702 and amendments thereto. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended, T-105-6-13-88, July 1, 1988; amended Nov. 1, 1988; amended Oct. 30, 1989; amended July 1, 1993; amended, T-105-6-15-93, July 1, 1993; amended Aug. 16, 1993; amended Aug. 20, 1999;

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amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-8-16-10, Aug.
16, 2010; amended Nov. 5, 2010; amended Dec. 11, 2015; amended P-_____.)

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105-5-7. Reasonable compensation; tried cases. Each appointed and assigned attorney shall be compensated for time expended in representing indigent defendants at the hourly rate prescribed in K.A.R. 105-5-2. Except as provided in K.A.R. 105-5-8, reasonable compensation for felony cases tried on pleas of not guilty and submitted to a judge or jury for adjudication, including compensation for services at the preliminary hearing, sentencing, and motions to modify the sentence, shall not exceed the following:

(a) ~~\$1,950~~ \$2,100 for felonies classified as non-drug offenses of severity levels 5 through 10;

(b) ~~\$2,600~~ \$2,800 for felonies classified as non-drug offenses of severity level 4 and felonies classified as drug offenses of severity levels 2 through 5; and

(c) ~~\$6,500~~ \$7,000 for felonies classified as non-drug offenses of severity levels 1 through 3, off-grid felonies, and felonies classified as drug offenses of severity level 1. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective May 1, 1984; amended, T-105-6-13-88, July 1, 1988; amended Nov. 1, 1988; amended Oct. 30, 1989; amended July 1, 1993; amended, T-105-6-15-93, July 1, 1993; amended Aug. 16, 1993; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010; amended Dec. 11, 2015; amended P-_____.)

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105-5-8. Compensation; exceptional cases. (a) Any compensation for attorneys' services in excess of the amounts specified in K.A.R. 105-5-6 and K.A.R. 105-5-7 may be approved only in exceptional cases. A finding by the court that a case is exceptional shall be subject to final approval by the board. An exceptional case shall mean any of the following:

- (1) Any case involving a felony charge in the trial court that does not appear on the sentencing range grid;
- (2) any felony case tried on a not guilty plea in which there have been 25 or more hours spent in court in defense of the indigent defendant;
- (3) any felony case not submitted to a judge or jury in which there have been 10 hours or more of in-court time spent in defense of the indigent defendant; or
- (4) any case that has been declared an exceptional case by the court due to its complexity or other significant characteristics.

(b) Each claim for compensation in an exceptional case shall be accompanied by a specific finding in a court order specifying the basis for the declaration that the case is exceptional.

(c) Reasonable compensation for attorneys' services in exceptional cases shall not exceed ~~\$6,500~~ \$7,000 per case. However, additional compensation may be approved by the board if warranted by the extreme complexity of the case. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective May 1, 1984; amended, T-105-6-13-88, July 1, 1988; amended Nov. 1, 1988; amended Oct. 30, 1989; amended July 1, 1993; amended, T-105-6-15-93, July 1, 1993; amended Aug. 16, 1993; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010; amended Dec. 11, 2015; amended P- _____.)

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105-11-1. Defendant reimbursement of attorney fees. The document titled “attorney cost reimbursement tables: assigned counsel and public defender,” as revised by the state board of indigents’ defense services on ~~June 2, 2015~~ May 23, 2016, is hereby adopted by reference. (Authorized by K.S.A. 22-4504; implementing K.S.A. 22-4522; effective, T-105-10-3-05, Oct. 3, 2005; effective Feb. 17, 2006; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-7-26-07, July 26, 2007; amended Nov. 26, 2007; amended, T-105-8-12-08, Aug. 12, 2008; amended Dec. 29, 2008; amended, T-105-6-26-09, June 26, 2009; amended Oct. 16, 2009; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010; amended, T-105-7-22-11, July 22, 2011; amended Nov. 14, 2011; amended Dec. 14, 2012; amended Dec. 29, 2014; amended Dec. 11, 2015; amended P-_____.)

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**BOARD OF INDIGENTS' DEFENSE SERVICES
ATTORNEY COST REIMBURSEMENT TABLES
ASSIGNED COUNSEL AND PUBLIC DEFENDER
Revised May 23, 2016**

NON DRUG

SEVERITY LEVEL	TRIED	NON-TRIED
1	\$8,625	\$2,300
2	\$8,000	\$1,600
3	\$5,480	\$1,410
4	\$4,500	\$1,085
5	\$4,000	\$975
6	\$2,800	\$775
7	\$2,775	\$700
8	\$2,700	\$650
9	\$2,250	\$600
10	\$2,250	\$600

DRUG

SEVERITY LEVEL	TRIED	NON-TRIED
1	\$5,565	\$1,585
2	\$3,900	\$1,050
3	\$3,200	\$ 900
4	\$2,800	\$ 800
5	\$2,600	\$ 650

HEARINGS

TYPE	AMOUNT
Habeas Corpus & 60-1507	\$1,000
PV and DV	\$245

APPEALS

TYPE	AMOUNT
Criminal-Direct	\$1,800
Sentencing	\$1,800
K.S.A. 60-1507 Habeas Corpus	\$1,300
Petition for Review	\$225

OFF-GRID

TRIED 2 weeks or less	NON-TRIED
\$9,500	\$4,325
Add \$4,000 for each additional week of trial	

Reimbursement tables are to be used in determining amount defendant is obligated to repay the State – as ordered by the discretion of the court.

Economic Impact Statement

K.A.R. 105-5-2, K.A.R. 105-5-3, K.A.R. 105-5-6, K.A.R. 105-5-7, K.A.R. 105-5-8 establish the hourly rate to be paid to assigned counsel and the maximum amount to be paid based on the severity of the charge. The amendments adjust the hourly rate from \$65 per hour to \$70 per hour, a slight increase toward restoring the statutory rate of \$80 per hour and proportionately increases the maximum amount that will be paid for each severity level, unless the court determines that the case is exceptional.

These regulations are proposed on a permanent basis. These changes will affect an increase of \$680,000 in state general funds compared to the cost of the statutory rate.

There is a cost to BIDS budget associated with these amendments. There is no increase to any other Government entity. These regulations will effect a slight increase in income to private attorneys who accept court appointments to defend indigent persons.

These regulations are available for review by the public at the Board's administration office and are available electronically.

Patricia A. Scalia
Executive Director

Economic Impact Statement

This regulation update, of K.A.R. 105-11-1, incorporates by reference the “Attorney Cost Reimbursement Tables: Assigned Counsel and Public Defender” revised on June 3, 2016. This table lists the average actual cost to the agency for attorney costs on each level of felony. The court may order a defendant to repay this average cost or the actual attorney cost on the case, whichever is the lower cost.

This regulation update has no cost effect on the State Board of Indigents’ Defense Services or any other state or federal agency, nor does it have any cost on employers. This regulation update does increase the cost of reimbursement of attorney services on those defendants who both receive this service, and are ordered by the court to make the reimbursement. These funds are paid to the state general fund.

There is no environmental impact.

This regulation is available for review by the public at the Board’s administration office and is available electronically.

Patricia A. Scalia
Executive Director