

## TESTIMONY

STATE BOARD OF INDIGENTS' DEFENSE SERVICES  
BEFORE THE  
HOUSE APPROPRIATIONS TRANSPORTATION AND PUBLIC SAFETY  
SUBCOMMITTEE  
February 13, 2019

Chairman Francis, Members of the Subcommittee and Members of the Legislative Staff:

Thank you for the opportunity to appear today and to offer testimony in support of the budget request of the State Board of Indigents' Defense Services. My name is Pat Scalia and I serve as the state director for the Board, a position I have held since 1998.

The Board of Indigents' Defense provides the constitutional right to counsel to poor people through two delivery systems, public defenders and assigned counsel.

In my 21 years of service, the agency has had to address many issues and none have been as serious as the issues the agency faces today. In FY 2018, the resignation rate among public defenders hit a staggering 24%. Almost 1 in every 4 public defenders resigned their positions for better pay and less stress.

The agency is in crisis. We are unable to retain the dedicated attorneys who serve as public defenders, nor are we able to hire public defenders. There are two reasons that are beyond our control – the first being the general lack of persons who are interested in public service, and the second being that law schools are not admitting as many students. However, the main reason is within our control, and that is the low pay. Providing an adequate wage for this very difficult and demanding job – serving as a state public defender will allow persons graduating law school with student debt, persons who would like to have a home, and persons who would like to start a family, to accept and hold positions as state public defenders.

Because of the inability to recruit and retain public defenders, the court must use the more costly method of providing the right to counsel. The court must turn to assigned counsel to represent persons who are without the funds to hire their own attorney.

Each and every year since I began working for the Board, in 1998, public defender services cost less, per case than assigned counsel. The table of the comparative cost is attached.

But now, the agency is in crisis. There are no public defenders to appoint - they have resigned for better paying positions as prosecutors and even for positions with other state agencies. Public defender offices have had to advise the court that they cannot be appointed to new cases because they are already defending the maximum number of cases that they possibly can and still provide effective assistance of counsel, as required by the Constitution.

The result, is that in just the first half of this fiscal year – the current fiscal year, public defenders have completed 508 fewer cases than they otherwise could have, if they were adequately staffed.

The assigned counsel cases cost on average \$256 more per case than a case defended by the public defenders. The cost for just the first half of the fiscal year is \$130,048 because there were no public defenders to appoint. The total added cost for the fiscal year will be more than double that amount - \$260,096 because the public defender offices remain unable to accept new cases. The offices suffering “shut-down” due to lack of public defenders are the Olathe office, the Topeka office, the Topeka Conflicts office, the Junction City office, the Wichita office, and the Garden City office.

The cost will continue and will grow higher each year unless public defender salaries are adjusted. We request funds to match the salaries of our sister state-Missouri.

The State of Missouri suffered a similar resignation rate primarily due to low defender salaries as compared to other public sector jobs. In response to the resignation rate and the otherwise unnecessary use of funds to hire and train new, inexperienced attorneys, Missouri adopted a new pay plan in 2018 for public defenders which has already proven to be money well spent. Experienced, highly capable attorneys are remaining in their positions. The pay plan reflects both years of experience as well as reaching an increasing level of competency required to defend high severity level cases. (Advice received from Missouri Executive Director of Indigents’ Defense Services, Michael Barrett)

Missouri defenders begin at a lower salary but after two years, the salary surpasses that of Kansas defenders with up to 10 years of experience. The salary for Missouri at two years experience is \$60,084 and increases each year with the associated level of competency demonstrated by defending high severity level felonies by \$8,000 for each of the next two years. With five years of experience and with handling the highest severity level cases, defenders achieve the status of senior litigation counsel and are paid \$77,472.00.

Each year, public defenders demonstrate their cost effectiveness. Paying defenders a salary to match an immediately adjacent state will allow for a reduction in the reliance upon and the commensurate cost of assigned counsel. The 93 defenders valiantly providing for the defense of indigent persons should be adequately paid for their work, thereby maintaining their positions and eliminating overuse of assigned counsel due to office “shut-down” when defenders resign, and eliminating the otherwise unnecessary cost of training new attorneys who are not qualified to defend high severity level felonies.

This salary plan meets the objectives of performance based budgeting and is provided in the BIDS budget bill:

... expenditures may be made ... from the state general funds... to classify public defenders based on the level of cases such public defenders are assigned.”

The figures presented to you are hard data. They are not estimates or exaggeration. We ask you to fund the requested enhancement of \$498,547 to allow Kansas public defenders to be paid similarly to defenders across the state line.

Thank you for your very kind attention to this important matter.

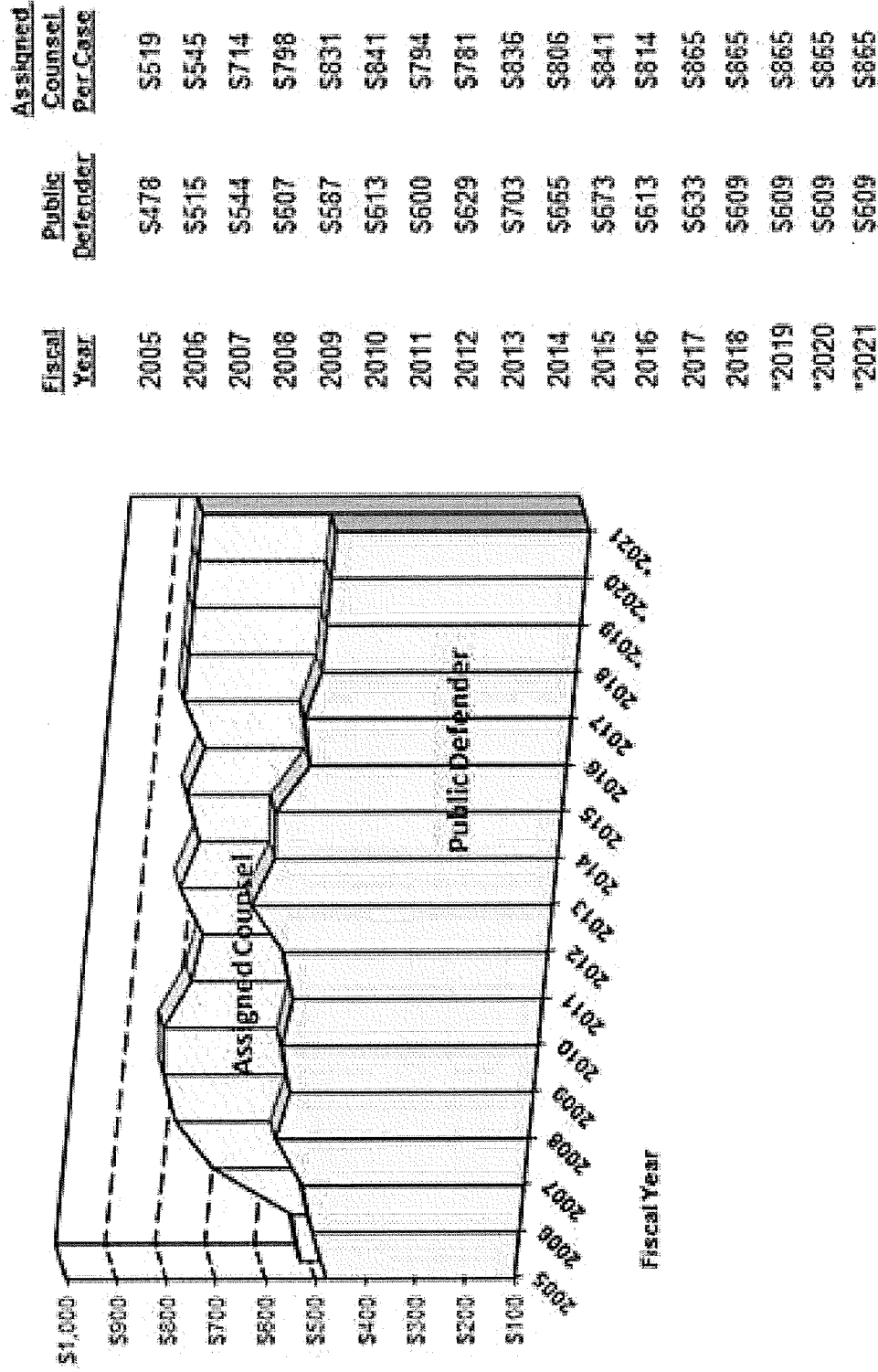
Respectfully submitted,



Patricia A. Scalia  
State Director

Attachments

# Public Defender and Assigned Counsel Cost Per Case



The administrative costs are included in both public defender and assigned counsel cost per case.  
 \* Estimated costs average based on a \$75/hour payment rate. Still \$5/hour lower than the statutory rate.

**Missouri Defender Salary Comparison**

	Kansas	Missouri
Up to 10 years of experience	\$59,850	At two years experience
Over 20 years of experience	\$68,665	At three years experience
Chief Defender	\$78,750	At four years experience
		At five years experience (Senior Litigation Counsel)
		At six year experience (Senior Litigation Counsel)
		At seven years experience (Senior Litigation Counsel)
		District Defender
		\$60,084
		\$68,052
		\$72,528
		\$77,492
		\$82,472
		\$87,000
		\$87,033

Additionally, the National Association for Law Placement provides these median salaries for public defenders:

	NALP
Entry Level Public Defenders	\$58,300
Five Years of Experience	\$68,000
Eleven – fifteen Years of Experience	\$96,400