

National Center

STATE OF KANSAS
SYSTEMS DEVELOPMENT STUDY
PRELIMINARY REPORT

MARCH, 1978

For Defense W

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STATE OF KANSAS
SYSTEMS DEVELOPMENT STUDY
PRELIMINARY REPORT

MARCH, 1978

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FOREWORD

The National Center for Defense Management was founded in 1974 through a grant to National Legal Aid and Defender Association from the Law Enforcement Assistance Administration. The primary objective of the Center is to improve the efficiency and professional quality of defense delivery systems through the provision of technical assistance to organizations, communities, states or other agencies responsible for providing criminal defense services to the indigent accused.

The activities of the Center involve the planning, development and organization of new criminal defense delivery systems, at both the state and local level, the evaluation of existing defender and assigned counsel systems, the provision of management assistance to defender offices, the development of management training programs and the publication of monographs and other materials concerning the provision of high quality, cost-effective defense services.

This project is in furtherance of these goals.

I

INTRODUCTION

A legal defense system for the State of Kansas. That is the goal of this technical assistance project and it has three dimensions: Determining whether there is, in fact, a need to improve on the present mechanisms for providing counsel to indigents accused of felonies; Designing one or more systems to provide improved representation; and Analyzing current and projected costs. The first phases of the task are now complete and preliminary findings have been made. They comprise the substance of this initial report.

Nature of the Request

Negotiations for this study accelerated when the Kansas Legislature approved a resolution calling for a study of constitutionally-required appointments of counsel. The Kansas Judicial Council, the principal research agency for the state's judicial system, subsequently established a special Advisory Committee on Counsel for Indigent Defendants.

The National Center for Defense Management (the Center) informed Committee Chairman, Mr. Jack Dalton, that a previously-approved request for technical assistance was developed with Committee member Gerald Goodell, Esq. of Topeka. Action on this request had been tabled by the Center pending passage of this resolution. The Center thereafter worked

with both the Kansas Judicial Council and its Advisory Committee on Counsel for Indigent Defendants to finalize the parameters of this study. These are incorporated in the Statement of Work and in the Letter of Understanding (Appendix A) between the Kansas Judicial Council and the Center. The final report will address not only these dimensions of the study but will also present data collection procedures to facilitate analysis of the state's entire criminal caseload.

Methodology

The Center developed six questionnaires to survey key persons in the Kansas Criminal Justice System concerning indigent defense services. These instruments were designed respectively for judges, assigned counsel administrators, clerks of court, county or district attorneys, county auditors, and public defenders. Cover letters for each category were also prepared. The survey instruments were sent to the Judicial Council in October, 1977 for distribution. A copy of the questionnaire sent to each Judicial District by the Council is attached as Appendix B.

A consultant team the Center recruited for the study included: James Gramenos of Chicago, Illinois; John Young of Columbia, South Carolina; and Rollie Rogers and James Ayers, both of Denver, Colorado. David Rapoport, a Staff Attorney with the Center served as team coordinator. Consultant team resumes are provided in Appendix C. A consultant handbook was prepared by the Center which included caseload and cost data, criminal justice system information, statutory reference materials, and national standards for defense services.

The site work for this study was scheduled for the week of November 14-18, 1977. Over fifty interviews were set-up in the nine jurisdictions visited by the team. Persons interviewed included judges, attorneys, public defenders, prosecutors, AID administrators and statisticians, budget specialists, probation personnel, and a journalist. A list of interviewees is attached at Appendix D. At the specific request of the Advisory Committee of the Kansas Judicial Council, the team members conducted interviews in Johnson, Wyandotte, and Sedgwick counties and in the 28th and 15th Judicial Districts.

II

SUMMARY OF PRELIMINARY FINDINGS

1. There is a need for an organized defense system in Kansas. Recent statistics indicate that 70-75 per cent of all defendants in felony cases are indigent. For fiscal year 1979, the consulting team estimates there will be approximately 7,000 indigents indicted for felonies statewide.

2. The quality and effectiveness of the existing mechanisms for assigning defense counsel are uneven among the 29 judicial districts. Although the state criminal law is uniform, resources for the defense of indigents accused of violating it are not uniformly made available. Three judicial districts utilize a public defender system; the rest of the state depends on assigning private practitioners as needed.

3. Variations in rates of indigency throughout the state indicate that there are no statewide criteria to determine indigency or that they are not being applied.

4. With the exception of Shawnee County, defense counsel are not assigned early enough to meet minimum standards.

5. Even after appointment defense counsel, except in Shawnee County, do not routinely confer with clients in jail.

6. The diversity of size, character, and population spread among the 105 counties of Kansas are an obstacle to the formulation of a state-wide structure to improve the delivery of defense services.

7. The costs of assigned counsel (A.I.D.) per case are at least as great as the costs of a defender system. Available figures indicate that fees of assigned counsel are becoming more predictable and that transcripts, travel, and other defense-related costs are increasing faster than the counsel fees.

8. The cost per case expenditures for public defender representation in the three districts utilizing defenders is well below the statewide A.I.D. program's per case average.

9. There is widespread agreement on the need for an appellate defender system statewide. No less than 200 appeals could be expected in the caseload of a statewide appellate office in its first year.

10. Several alternatives exist for improving the representation of indigents at the trial level. These alternatives, now under review by the Center, include the extension of the public defender into heavy caseload judicial districts; strengthening the assigned counsel system in those districts where a staff person may be needed to coordinate the program; and creation of a statewide public defender office possibly to include an appellate unit.

III OVERVIEW

Demography

The population of the State of Kansas is just over 2 1/4 million, inhabiting an area of more than 82,000 square miles. The state is divided into 105 counties and 29 Judicial Districts. The western half of Kansas is predominantly rural in character while the eastern sector is more urbanized.

Caseload figures vary significantly between the rural and urban districts. In fiscal year 1974, only 36 criminal cases were commenced in the entire 15th Judicial District which covers five rural counties in northwestern Kansas. During that same period, in the 28th District in the northcentral region (Salina) the figure was 129 criminal cases commenced; in the 18th District (which includes Wichita) 1,193 such cases were opened. The 10th District (including the affluent suburbs of Kansas City) recorded 509 new criminal cases while the 29th District (urban Kansas City) opened 800. Available data appears to confirm that the relative volume and proportions of current criminal caseloads are consistent with the earlier figures.

Problem Areas

If there was one factor that would characterize the team's major concern as a result of its site work in Kansas, it is the absence of early representation. Interviews with key persons in the criminal

justice system and observations by the consultants confirmed that -- with the exception of Shawnee County serviced by a well-staffed public defender office -- the nationally-recognized standard* calling for early access to representation by counsel for indigent criminal defendants is honored primarily in the breach.

One judge indicated to the consultants, for example, that counsel is provided in felony cases only by affidavit after the first appearance by the defendant. No guidelines are utilized for such appointments and the affidavit alone is relied upon. Judges call either private attorneys or the public defender following the first appearance of defendants found to be indigent. Prompt jail visits following appointments do not seem to be routinely conducted, the team learned.

The demography of the state of Kansas clearly presents substantial obstacles to the formulation of a statewide structure to enhance the delivery of indigent defense services. The full range of population densities confronts any systematic effort to allocate defense resources evenhandedly between large rural counties with sparse populations and miniscule caseloads and their urban counterparts with medium-sized to large scale populations and correspondingly substantial caseloads.

In order to address the problem areas identified, it is important to understand the organization of the Kansas Judicial System.

*See National Advisory Commission on Criminal Justice Standards and Goals Courts 13.1; ABA Standards Defense Services V 5.1. See also Kan. Stat. Sec. 22-4502.

Judicial System

Under Article 3 of the Kansas Constitution as amended in 1972 the Kansas Judicial System is the administrative responsibility of the Kansas Supreme Court, the state's highest court. Criminal appeals are a matter of right, except in judgments of conviction upon a nolo contendere or guilty plea. The District Courts are the highest general jurisdiction trial courts; they also hear appeals de novo from inferior courts. There are 29 judicial districts in the state (18 vary in size from 3 to 7 counties, 3 have only 2 counties, and 8 have only 1 county; almost half the districts have only one judge.). The districts are organized into six departments, each supervised by a justice of the Supreme Court.* Under the unified judicial system adopted by the Legislature, the functions previously handled by courts of limited and special jurisdiction have been incorporated into the District Courts.

The Kansas Judicial Council is the primary research agency for the judicial system. Its members appointed by the Chief Justice include two district judges, four practicing attorneys, and two legislators. The Council is recognized as a key contributor in the formulation of legislative proposals for judicial reform, including the development of the unified court system.

Any judicial district is authorized to establish a public defender office by court rule. To date, three defender offices have been opened. In the Third Judicial District, the Shawnee County Public Defender office serves the metropolitan area of Topeka (3rd Judicial District). An office in Junction City (8th Judicial District) services a four-county

*See Kansas Unified Court System Organizational Chart at Appendix E.

area and in Salina (28th District) a one attorney operation covers a two-county area.

The Aid to Indigent Defendants (A.I.D.) program finances defense services provided to poor persons charged with felonies. The Kansas legislature established a Board of Supervisors of Panels to Aid Indigent Defendants to meet the state's responsibility for publicly supported criminal defense services for indigents. The A.I.D. program includes compensation for appointed counsel and oversight of public defender funding; this program is administrated by the state Judicial Administrator appointed by the Supreme Court.

The Public Defender Committee of the Kansas Bar Association compiles data concerning the cost, operation, and effectiveness of the appointed counsel and public defender systems.

The Constitutional Right to Counsel

Wherever there are indigents accused of crimes, there is a need for an organized system to provide legal representation for poor people at public expense. Though mandated years ago, this edict has not resulted in the measurement of that need, nor has it facilitated determination of the most effective method of meeting this need.

The Sixth Amendment to the Constitution of the United States provides:

In all criminal prosecutions, the accused shall enjoy the right to...have the Assistance of Counsel for his defense.

It was not until 1932, in Powell v. Alabama (287 U.S. 45, 1932), that the United States Supreme Court first recognized the constitutional right of an accused person, financially unable to employ an attorney, to have counsel appointed by the court. This decision, although limited to

capital cases, was the first to apply the Sixth Amendment guarantee to state criminal proceedings.

In the landmark decision of Gideon v. Wainwright (372 U.S. 335, 1963), the Supreme Court held that the states were required to provide counsel for indigent defendants in all serious (felony) cases. The policy underlying the Court's decision in Gideon was clearly stated by Justice Black:

...in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.

In 1972, in Argersinger v. Hamlin (407 U.S. 25, 1972), this reasoning was extended to require the provision of counsel in any proceeding which resulted in a loss of liberty. The Supreme court held that:

...absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony unless he was represented by counsel...

Today, the scope of the right to counsel extends to virtually all stages of felony or misdemeanor prosecutions -- from advice during interrogation at arrest (Miranda v. Arizona, 384 U.S. 436, 1966) through appeal from conviction (Douglas v. California, 372 U.S. 353, 1963.) and hearings to revoke probation or parole (Gagnon v. Scarpelli, 411 U.S. 778, 1973.). The Supreme Court has also ruled that in order to satisfy the Constitution, "effective assistance of counsel" must be provided (Powell v. Alabama, 87 U.S. 45, 1932.). In addition, the court has mandated the assistance of counsel for juveniles (In re Gault, 387 U.S. 1, 1967.) and the mentally ill (Specht v. Patterson, 386 U.S. 606, 1967.), as well as those accused of criminal violations

In Gault, the court held that minors (and their parents) must be given notice of the charges against them and must be informed of their right to counsel at all stages of the proceedings. The court also held that minors have the right to confront and cross-examine prosecution witnesses as well as to exercise the privilege against self-incrimination.

Decisions of the United States Supreme Court have firmly established the right of incarcerated criminal offenders to petition the courts with respect to their convictions or grievances that may arise during or as a result of their imprisonment.* In addition, these decisions demonstrate that the states have the corollary obligation of ensuring that persons incarcerated actually have the means of effectively exercising this right.

Correctional authorities and other state officials have the important task of assuring that inmates within their state's institutions receive adequate legal assistance. Such varied matters as appeals, collateral and other post-conviction proceedings, sentencing issues, some or all parole board hearings, parole revocation hearings, and institutional administrative hearings which may impose serious disciplinary sanctions all require attention.

In all but three of the state's judicial districts, private counsel exclusively are appointed to provide representation to indigent defendants. Lists of available attorneys are maintained by judges in each district with varying degrees of concern for their experience in handling criminal cases. A sequential system of attorney selection is the norm, with some exceptions.

*See Ex parte Hall, 312 U.S. 546 (1941); Johnson v. Avery 393 U.S. 483 (1969); Novak v. Beto, 453 F. 2d 661 (5th Cir. 1971) and Williams v. Department of Justice 433 F. 2d 958 (5th Circuit, 1970).

Court appointed counsel and three existing public defender offices represent between 70 and 75 per cent of the defendants in felony cases in Kansas. The indigency rate seems to vary from about 9 out of 10 cases in some judicial districts to about 3 out of 10 cases in other districts. Although generally comparable to the national average of 65 per cent,* either rate is sufficient to establish that there is a need for an organized legal defense system in Kansas.

Table I (See Appendix F) shows the general pattern of AID representation among the twenty-nine judicial districts. Although not precise, the data indicate the variations in rates of indigency (determined by the per cent that AID cases are of District Court felony terminations). One possible explanation for these variations is that there are no statewide criteria for determining the eligibility of defendants for the service. Some eligible defendants receive services from public defenders while others are represented by court appointed counsel.

The defender programs operate in three of the judicial districts as a result of decisions by the judges in those districts to use public defenders as an alternative to appointed counsel. Even in those districts, however, private counsel appointments occur if there are conflicts of interest among multiple defendants.** Such appointments are to be expected in any judicial district with public defenders, so continued private bar involvement is essential both for effective representation and for continuing education of the bar in the problems of indigents in American society.

*See The Other Face of Justice, a report of the National Defender Survey, NLADA, 1973 p. 83.

**See ABA Standards Relating to the Prosecution Function and the Defense Function (Approved Draft, 1971) Standard 3.5.

The three defender offices, mentioned above, provide representation to defendants in about 11 per cent of the felonies filed. Public Defender representation combined with court appointed counsel cases (AID) for the last two completed fiscal years as compiled by the team is displayed in Table II.

Table II.

Public Defender and Assigned Counsel
Cases in Three Districts FY1976 and 1977

<u>DISTRICT</u>	<u>CASES IN FY 1976</u>			<u>CASES IN FY 1977</u>		
	<u>PD</u>	<u>AID</u>	<u>TOTAL</u>	<u>PD</u>	<u>AID</u>	<u>TOTAL</u>
THIRD	565	49	614	470	85	555
EIGHTH	207	34	241	273	54	327
TWENTY-EIGHTH	<u>100*</u>	<u>22</u>	<u>122</u>	<u>100</u>	<u>33</u>	<u>133</u>
TOTAL	872	105	977	843	172	1015
PER CENT	89.2	10.8	100.0	83.0	17.0	100.0
COST PER CASE	\$233	\$298	\$243	\$277	\$252	\$273

*Consultant estimate in absence of hard data.

These figures show public defender costs are not greater than costs of an assigned counsel system and defenders have the advantage of affording experienced criminal practitioners. This data also reveals that the cost of representation provided by public defenders is well below the statewide A.I.D. program per case average (See Table V, Appendix I).

Colorado has the same system on a statewide basis that Kansas operates in three judicial districts.* Public Defenders represent all eligible defendants in felony cases that do not involve conflicts. Public Defenders in Colorado closed 7,897 felony cases in 1977 and court appointed counsel closed 1,384 felony conflict cases. During the same year, 11,998 cases were terminated in the district courts. These figures indicate that the Colorado indigency rate was about 77 per cent in that year. The conflict of interest rate was about 15 per cent of the total cases represented at public expense. In fiscal year 1977 in Colorado the cost per case for Public Defender cases was \$235; for appointed counsel in that same period the per case cost was \$341 (see Table III, Appendix G). The Kansas and Colorado rates of indigency do not appear to be significantly different even though Colorado uses a formal procedure, including specific criteria, for determining defendant eligibility for representation.

Defense System Proposals

Both methods of providing legal defense services (public defenders and appointed counsel) are used in three Kansas judicial districts. Court appointed counsel are provided in conflict-of-interest cases. Expansion of this approach to some or perhaps most of the Kansas judicial districts is currently under consideration by the consultant team. A principal consideration for the expansion of public defender services is to ensure competent representation. Many Kansas counties have neither

*Colorado is one of the states identified by the Advisory Committee to be compared with Kansas in the course of this study. Two of the members of the consultant team have had direct defense services experience in that jurisdiction.

the population nor the caseload necessary to attract competent criminal defense specialists. To be sure, the continued use of appointed counsel does tend to develop lawyers' expertise for representing defendants in criminal matters, but this often occurs at the expense of indigent defendants. Public defender systems can minimize that problem.

Fiscal considerations are also important to the expansion of the mixed system of representation. The Colorado experience provides some perspective on the relative costs of a statewide defender service. Table III (See Appendix G) shows the felony cases closed in six of the 22 judicial districts in Colorado by public defenders and by appointed counsel; it also includes the statewide totals. The six judicial districts were selected to provide comparability with the Kansas situation.

Table IV (See Appendix H) shows all the Colorado judicial districts and the counties comprising them. It is particularly informative because the relationship between population and cases is demonstrated. Many parts of Colorado -- as is much of Kansas -- are rural and consequently the comparability of the two states is demonstrable.

Current Cost Analyses

Kansas statutes adequately authorize necessary expenditures for the competent defense of indigents. Principal among these costs are the counsel fees, but also included are authorizations for investigations, expert witnesses and analyses, transcripts, and miscellaneous expenses. These costs have increased dramatically since 1970 (see Table V, Appendix I); the data for the last two fiscal years indicates that even though the number of AID cases continues to increase, the average cost per case has

not changed appreciably. This may well be due in part to the practice of some district judges of routinely approving lower compensation amounts for assigned counsel than is submitted by these attorneys.

Table V (See Appendix I) is arranged to show the total AID program expenditures for the four major expense categories in FY 1973, 1974, 1976, 1977. The table, provided by the Judicial Administrator's Office, also displays the cost per case according to these categories and the percentage of the total costs. Even though the same fee rates were in effect in all four years, the counsel fee portion of the total costs of each case increased 27.3 per cent during these five years. This change suggests that, on the average, the time billed for out-of-court work on cases increased during the period. A change in the number of appeals could also account for this rise. The overall cost per case increased 30.6 per cent over the five year period, indicating that other categories of expense increased at a higher rate than that of fees. The consultants assessed impact of these expenses as follows:

- 1) Transcript costs increased by more than 114.8 per cent. This could be attributable to a relatively larger number of appeals and to an increase in the rates paid for transcripts.
- 2) Expense reimbursements increased 46.5 per cent; since there are no established rates for these costs, it appears that there was an increase in the number of allowable items for which reimbursement is authorized. There is no reason to attribute this change to larger amounts of expenses per case.
- 3) Costs for investigations and experts also increased at a rate higher than that for counsel fees. An increased number of pleas by reason of insanity could account for this change.

In summary, the costs per case -- while much greater in 1977 than in 1973 -- exhibit a trend towards becoming more predictable. A continued rise in AID program costs would most likely be the result of an increasing number of cases requiring court appointed counsel.

The consultants found that many of the judicial districts in Kansas have a very low incidence of AID costs, particularly in relation to the total. In fact, five districts (the 1st, 10th, 11th, 18th, and 29th) accounted for 64.4 per cent of the AID cost in 1976 and 53.2 per cent of the cases. In 1977, the same five districts decreased to 59.0 per cent of the program cost and 51.6 per cent of the cases. The case decrease was due to the fact that the total for the five districts in 1977 was only 1.3 per cent greater than in 1976, while the statewide case increase was 5.8 per cent.

The 1976 cost per case in the five districts was almost \$403; it decreased to \$390 in 1977. The 18th district, for example, had a 7.4 per cent increase in cases and a 5.1 per cent decrease in associated costs. The 18th district also had a 7.3 per cent decrease in terminations of cases that were represented by court appointed counsel. Because over half of the AID program costs are in these same five districts, it is important to examine each district according to the types of expenses comprising the total expenditures. The following table contains each district's percentage of the respective totals according to the expense categories and the five district's in relation to the statewide totals for the last two fiscal years.

Table VI
Fiscal Year 1976

DISTRICTS	<u>1</u>	<u>10</u>	<u>11</u>	<u>18</u>	<u>29</u>	District Average	State Average
EXPENSE CATEGORY							
<u>Counsel Fees</u>							
Out of Court	61.4%	47.3%	64.0%	36.2%	48.6%	43.6%	49.3%
In Court	<u>31.5</u>	<u>48.1</u>	<u>31.2</u>	<u>54.2</u>	<u>37.1</u>	<u>47.6</u>	<u>42.6</u>
SUB TOTAL	<u>92.9</u>	<u>95.4</u>	<u>95.2</u>	<u>90.4</u>	<u>86.7</u>	<u>91.2</u>	<u>91.9</u>
<u>Expense Reimb.</u>	3.7	2.3	2.6	3.8	5.3	3.6	3.6
<u>Transcripts</u>	3.4	1.3	2.2	4.9	8.2	4.4	3.6
<u>Invest. & Experts</u>	-	1.0	-	.9	.8	.8	.9
TOTAL	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Fiscal Year 1977

EXPENSE CATEGORY							
<u>Counsel Fees</u>							
Out of Court	59.2%	48.3%	61.6%	39.7%	47.5%	45.3%	51.3%
In Court	<u>34.3</u>	<u>45.6</u>	<u>30.9</u>	<u>51.0</u>	<u>39.5</u>	<u>46.0</u>	<u>40.0</u>
SUB TOTAL	<u>93.5</u>	<u>93.9</u>	<u>92.5</u>	<u>90.7</u>	<u>87.0</u>	<u>91.3</u>	<u>91.3</u>
<u>Expense Reimb.</u>	2.1	2.4	3.9	3.6	5.8	3.5	3.4
<u>Transcripts</u>	3.8	2.4	2.3	5.4	6.5	4.5	4.5
<u>Invest. & Experts</u>	.6	1.3	1.3	.3	.7	.7	.8
TOTAL	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Among the five judicial districts:

- 1) The lowest rate of out-of-court counsel fees was in the 18th district for both years. This district also had the highest rate of in-court counsel fees. This suggests that a higher proportion of indigent cases are tried in Wichita

than in any of the other four districts. This is consistent with the team's findings on site.

2) Expense reimbursements are higher in the single county districts. The cost per case in the three one-county districts was an average of \$16 in each year, compared to \$9 for the other two multiple county districts.

3) Transcript expenses were much higher in the single county districts, although their average counsel costs were not as high as the average for the entire group.

Cost Factors for Proposed Alternative Systems

The consultants will examine several alternatives to continuing the present method of delivering defense services in Kansas. Recommendations for program improvements will be developed. The major recommendations under consideration are:

1) Trial court representation could be provided in a cost-effective manner through an expansion of the public defender system into some districts and the continued use of appointed counsel in others. The 2nd, 4th, 6th, 12th, part of the 13th, 15th, 17th, 22nd, 23rd, 24th, and 26th districts might use appointed counsel exclusively. Fifty-six counties in these districts would not be affected.

2) A statewide defender office responsible for handling appeals of indigent defendants' cases to the appellate courts could be established. Such an office, predicated on the Illinois experience, would also be a resource for trial counsel providing advice, access to briefbanks, training programs, and other technical assistance.

3) Post conviction services could be provided by the defender offices serving Districts 1 and 27 in which the state penal facilities are located. The separate Legal Services to Prisoners (LSP) corporation would then handle only civil matters.

4. An office of the state public defender could be created with the primary responsibility for establishing and operating a statewide system of defender services.

These alternative options will be refined through analyses of caseload data, the incidence of AID program costs and cases within and among the judicial districts, and the levels of quality service presently being provided. In some instances, where specific data is not available, estimates will be used. The assumptions on which cost estimates are to be based will be explained in some detail.

Trial Court Representation

The team's recommendations for trial court representation in felony cases will be based on the assumption that establishing public defender programs in some judicial districts would provide criminal defense specialists who could upgrade the caliber of defense representation without increasing public expenditures for such services. To maintain and strengthen assigned counsel programs, a panel coordinator may be needed.

Clearly, a public defender system could be implemented statewide in Kansas. Also, the team believes that the quality of service would thereby be improved in most districts, particularly with reference to reducing

the time between the arrest of the accused and the first contact with counsel. The interviews conducted by the study team indicated this to be a major weakness of the present system. This time lag could be reduced by close adherence to K.S.A. 1975 Supp. 22-4501 through 22-4504. This statute permits District Court Judges to issue orders for immediate entry by defense counsel. Establishing a statewide defender system to the exclusion of appointed counsel -- except in conflict cases -- may not be financially feasible in some parts of the state. Moreover, the recommendations to be considered will not in all cases reduce the cost of the existing AID program.

Defender System Criteria

The criteria to be utilized by the consultants in formulating recommendations for establishing or expanding public defender services include:

- 1) There should be an office in each judicial district in which there are a minimum of 115 indigent cases annually. Some proposed offices may serve more than one district, but no office would be responsible for appearing in the courts of more than six counties. Judicial districts whose low number of felony cases or large geographical area do not permit economical public defender representation would be excluded from consideration. The 15th, 17th, and 23rd districts had 111 AID cases in FY 1977. There are 17 counties in these three districts and the highest number of AID cases in any one of these counties was thirty-two in 1976.

2) For every 100 felony cases involving indigent defendants, 12-15 will likely require court appointed counsel because of conflicts. The study team recognizes that this rate may vary somewhat among jurisdictions but based on the experience in other states and the data obtained from interviews with Kansas court officials and attorneys, this seems to be a reasonable figure. This factor further reduces the possibility of defender offices being proposed in some districts where case totals, without conflicts, are marginal.

3) Court calendars, especially within a district, may need to be arranged to permit defender appearances in the several counties, when necessary. As the experience of the Colorado system indicates, this criteria can be met with proper planning.

4) District Defender offices would be located in the county with the largest indigent caseload if more than one county is to be served. An exception could be its location in the same county as that of the administrative judge, if that is a permanent designation.

5) A state public defender should have the authority to designate the counties to be served by defender offices.

6) Suggested Defender attorney staffing would be based on the guidelines of the National Advisory Commission (NAC) on Criminal Justice Standards and Goals, the Courts which states:

The case load of a public defender office should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors....not more than 400; juvenilenot more than 200; mental health act casesnot more than 200; and appealsnot more than 25.

Appropriately, this standard recognizes that specific conditions may require revisions of the maximum caseloads. For example, travel time involved in multi-county representation will require a lower caseload in these areas. Conditions in Kansas are such that the consultants will consider attorney staffing on the following basis:

1. Offices serving only one county would be staffed with one attorney for each 150 felonies.
2. Offices serving more than one but less than four counties would require one attorney for each 125 felonies.
3. Offices serving four counties or more would be staffed with one attorney for each 100 cases.
4. The maximum cases per attorney may be exceeded by 15 percent if no distinction is made between pre-trial, trial, and post-conviction matters.

The NAC definition of a case will be applied -- a single charge or set of charges concerning a defendant in one court in one proceeding.*

An attorney is assumed to have carried the case to a court decision before it is closed and becomes a part of the cases used to measure workload. Upon reaching the maximum case closing rate, the defender office would ask the courts to appoint private counsel in excess cases until such time as caseloads returned to the level that could be accepted by the office or more staff attorneys were added.

*NAC Courts Standard 13.12.

Public defender systems generally do not enjoy widespread acceptance and support, particularly from their funding authorities. The reasons are varied but usually shortsighted, to the extent that defender systems -- almost without exception -- are the most cost-effective method of providing indigent criminal defense services. The question is not whether there is a need for publicly financed representation, but rather the quantification of that need and selecting the most appropriate systems to meet that need.

One cause for the prevailing attitude toward the public defense function is that whatever methods are developed to deliver the service, the financing provided is frequently inadequate. The lack of adequate funding for public defense systems is most evident in shortages of personnel. Competent defense representation requires a skilled support staff, sufficient resources for experts, and attorneys who are not overburdened by excessive caseloads. The fact that the prosecution and law enforcement officials have much higher levels of funding (and public support) is not generally considered incongruous. The proposed plan under consideration for Kansas will not only improve services to several thousand indigent defendants but the cost will approximate the present legislative allocation to defense services in the state.

Assuming the above criteria to be operable in fiscal year 1979, the approximate caseloads that could be handled by public defenders and court appointed counsel in the 29 districts in Kansas are displayed in Table VII, below.

TABLE VII

PROJECTED FELONY CASELOAD FY 1979

JUDICIAL DISTRICT	COUNTIES	PUBLIC DEFENDER	COURT APPOINTED COUNSEL*	TOTAL
FIRST	2	600 ¹	35	635
SECOND	4	-	55	55
THIRD	1	500	70	570
FOURTH	6	-	80	80
FIFTH	2	90	15	105
SIXTH	3	-	75	75
SEVENTH	1	160	25	185
EIGHTH	4	255 ²	40	295
NINTH	2	130	20	150
TENTH	1	505	70	575
ELEVENTH	5	215	30	245
TWELFTH	6	-	45	45
THIRTEENTH	4	-	100	100
FOURTEENTH	1	120 ²	25	145
FIFTEENTH	5	-	35	35
SIXTEENTH	6	100	15	115
SEVENTEENTH	7	-	45	45
EIGHTEENTH ³	1	1230	150	1380
NINETEENTH	6	120 ⁴	30	150
TWENTIETH	5	115	15	130
TWENTY-FIRST	2	115 ²	15	130
TWENTY-SECOND	4	-	50	50
TWENTY-THIRD	5	-	50	50
TWENTY-FOURTH	6	-	75	75
TWENTY-FIFTH	6	115	15	130
TWENTY-SIXTH	6	-	105	105
TWENTY-SEVENTH	1	695 ^{1 4}	35	730
TWENTY-EIGHTH	2	130	15	145
TWENTY-NINTH	1	280	40	320
TOTAL	105	5,475	1,375	6,850

*Conflict cases only except in 13th district, if district has public defender.

1. Includes 400 cases each as service to prisoners, currently provided by Legal Services to Prisoners program at a state wide cost of \$222,435.
2. Maximum cases by NAC staffing standard; appointed counsel should handle any additional (estimated to be about 100 cases).
3. Includes Butler County, now part of the 13th Judicial District.
4. Pratt County would be served by 27th judicial district office.

The inclusion of 800 cases involving prisoners increases projected total cases in 1979 to a much higher level than would otherwise be expected. However, the offices that might be proposed to provide representation to prisoners would be staffed accordingly. Some of these 800 prisoner matters probably will involve contacts that do not result in court proceedings but would otherwise meet the definition of a case. In any event, the provision of appropriate prisoner legal services through defender offices would permit a continuum of services. Further discussion of this issue can be found in the section on appellate representation, below.

Defender Office Staffing

The following staffing information is provided in an effort to identify the nature, structure, and cost factors that must be taken into account in establishing expanded public defender services in Kansas.

To ensure adequate staffing for any proposed defender offices, a basic unit of one attorney, one investigator, and one secretary is suggested, except that some offices might receive investigative services from other offices. Although frequently misunderstood, the role of an investigator is vital to the defense of many cases, especially if the facts of the case are in doubt. Further, his contribution can be substantial at the beginning of representation; investigators can make daily jail checks to ensure that early representation is provided as well as to minimize the possibility of an accused person being "lost" in the system. These are only two functions of investigative services that are part of an effective defender system. If these services are provided

by trained personnel whose salary is lower than that of an attorney who might otherwise perform these duties, the representation function is not diminished in quality and cost savings are realized.

The staffing of larger defender offices is determined by the caseload expected for the office. Attorney needs are established according to national caseload standards, discussed above. Exceptions can be made for the offices that provide prisoner or other specialized services. Such offices may have a higher number of cases per attorney than others due to the large volume and less time-consuming nature of some post-conviction motions and proceedings. The ratio of these type of cases to pre-trial felony cases is about 3:1. Interns can also be used in such offices. Investigator and clerical staffing for larger offices contemplates a ratio of one position each for three attorneys.

The factor most affecting defender program costs are the pay rates for personnel as well as the number needed in each category. The attorneys fit into two groups or position classifications:

District Public Defenders (1) This position would be filled by attorneys with three or more years of criminal defense experience; they would also be the head of the office, regardless of the size of the staff. Each office should have one individual with this title; insufficient qualified applicants for these positions could result in interim appointments of attorneys with slightly less experience who could subsequently qualify for the position. An average salary of \$22,500 suggested for this position is essentially the same as for similar positions in Colorado, used as a reference point due to its proximity and comparability.

Deputy Public Defender.(2) The position classifications in this group are distinguishable by salary and the extent of experience expected. The higher of the two slots, starting at \$19,000 annually, should be filled by a person with one and one-half to two years criminal defense experience. In larger offices, these attorneys should be expected to handle most of the more difficult cases. A second deputy position would be for attorneys who have passed the bar examination but who have comparatively little experience. An annual salary of \$16,000 should be comparable with prevailing rates and permit the system to obtain qualified lawyers in those entry-level positions.

Annual pay rates for the other staff positions in such offices would be similar to those presently in use in Kansas. These were identified to the team as: investigator - \$10,5000; intern - \$8,400; legal secretary - \$9,000; clerk stenographer - \$7,500. The study team is aware that these salaries as well as those for attorneys may not be consistent with those paid to the staff of the three existing defender offices. If the current pay rates are higher, the team suggests they be continued.

Other costs

Combining the experience of the three Kansas offices and those in other states the consultants are familiar with, the non-salary costs of a defender system can be readily determined. Some specific items may vary from the actual requirements in each instance but the study team believes the overall amounts would be adequate. The consultants would estimate these costs as follows:

- 1) Communications. Including telephone services, especially toll charges, as well as postage, \$5.70 per case closed is the rate suggested for this item.
- 2) Printing. Much more limited than the first item, these costs are estimated to require \$.35 per case.
- 3) Rentals. Composed of two types of services -- space and equipment -- rentals are a major cost item for such offices. Space can be obtained at a cost based on 150 net square feet per employee (including those less than full-time) at an average of \$4 per square foot. Almost certainly, there will be deviations from both the average size and average cost. However, because some offices may not be in urban areas and there are minimum special needs for all offices, the averages should be adequate.

Copy machine rental should be planned for each office. The requirements will vary depending on the extent of discovery copying that is required or the necessity of copying court documents for case files. This type of machine costs \$840 annually, increased by \$.30 per case closed by each office. Some offices will probably not have requirements that exceed the minimum annual rate. Also, contracting with other organizations or the courts for copy machine use can be explored as an alternative.

- 4) Travel and Subsistence. These requirements are affected directly by the size of the area covered and by the staff in each office. Consequently, \$5 for each case closed by offices serving two counties or less should be adequate, the consultants believe, especially if the cases are disproportionately heavy in the resident county. Service to three or more counties will require \$7 per case closed, again affected by the distribution of cases. Out-of-state travel can be considered separately under training needs.
- 5) Other Services. There are miscellaneous services such as subscriptions to law journals and periodicals to be maintained. An estimated \$1.75 per case closed is suggested for this item.

- 6) Commodities. Included in this category are the stationery, office supplies, file folders, and miscellaneous expendable materials necessary for the proper functioning of each office. The total cost for these items is estimated to be \$3.00 per case closed.

- 7) Capital Outlay. Although non-recurring, these equipment and furnishing items would be required for the opening of new offices and additions to existing offices. Approximately \$93,600 (\$17 per case) should be planned for this purpose, an average of \$1,350 for each new attorney, investigator, and intern. Clerical positions should average \$1,490 each. These rates will provide the following for each professional: desk, credenza, executive and side chairs, table, file cabinet, book case, and dictating equipment. Substitutions for investigators' recording and photographic equipment should be considered. Clerical staff should each have a desk, chair, a typewriter, transcriber, and \$50 for miscellaneous furnishings. The totals for each office should be sufficient to provide seating for clients. A minimum of \$750 for each new office is suggested for criminal defense reference materials; that amount should be increased by \$75 per attorney for offices with more than four defenders.

The unpredictability of the separate needs of each office for experts and transcripts is the reason these cost factors are not specified. Experience in other jurisdictions indicates that these items can be handled most efficiently by a central office on an as-needed basis. Further, a separate office for handling appeals could reduce the other offices' needs for transcript funds. The following discussions focus on an appellate and state level office.

APPELLATE REPRESENTATION

An effective and aggressive appellate public defender office can have as great an impact on the quality of a criminal justice system as a trial level office. Although longer range in impact, its efforts can result in decisions that, even if only one defendant is directly involved, greatly assist in the defense of future clients or remove the possibility of charges against individuals who would otherwise become statistics of the judicial process.

The recently-created Kansas Court of Appeals exemplifies the state's concern that the appellate process remain viable. In fiscal year 1977, the two appellate courts received 295 felony appeals, 207 of which originated from the four most populous counties in the state. Data is not readily available to determine the ratio of indigent appeals to the total appeals. Since appeals are much more costly than trial court cases, the rate of indigency for appellate purposes is probably at least as high as the 70-75 per cent rate at the district court level. No less than 200 appeals could be expected in the first year of a statewide appellate office operation.

There was widespread agreement among the persons interviewed by the consultants that establishment of an appellate defender unit should be given serious consideration.

Appellate Office Staff

The attorney staffing standards discussed in the Trial Court Representation section includes the guideline that appeals be limited to 25

per attorney per year.* Cases arising out of district (general jurisdiction) court decisions may generate appeals. The time interval between the filing of an appeal and its subsequent closing is too long to permit the number of cases closed by decision to be the measure of attorney workload. Appellate defender productivity can be measured by the briefs written and the cases dismissed or from which the attorney withdraws.

The standard** is not specific as to the level of experience appellate attorneys should have. Ideally, all should have had extensive trial court experience as well as some in appellate work. Although important, the level of experience necessary for appellate work is considered to have a narrower spectrum than is required for trial defense. Accordingly, the attorney staff for an appellate office should include:

One attorney comparable to a district public defender who would function as the head of the office; and

A number of second-level deputy public defenders who could be assigned most of the appeals received, except those involving the issue of capital punishment, which would be handled by the senior defender.

Such a staffing arrangement would permit the office to become effective sooner than if entry-level attorneys were to be recruited. Law school student interns could be utilized to perform part of the legal research duties associated with appellate work.

The other staff needs for an appellate office would include three legal secretaries. Their effectiveness would be enhanced by the use of

*NAC, Courts, Standard 13.12; NLADA Standard 5.1.

**NAC, Courts Standard 13.12.

automatic typing equipment. The remaining costs of such an office would be based on the factors involved in trial level offices, with the exception of substantial transcript costs.

The cost of AID representation in criminal appellate matters is not clear from the data available to the team, nor is the number of appeals. In fiscal year 1977, the cost for appeals was at least \$171,000. The office under consideration for Kansas would have a first year cost of approximately \$240,000. The \$1,199 cost per case for such an office is not dissimilar from the costs for similar work in other states. For example, it is approximately 60% of the case cost of a Colorado appeal carried through decision by a court-appointed attorney, according to team members from that state.

ADVANTAGES OF A STATE PUBLIC DEFENDER SYSTEM

Even though the largest cost of the consultants preliminary recommendations is for trial court services, the system's effectiveness and success is directly dependent upon the caliber of coordination provided by a state public defender. It is essential that a statewide network of defense services be carefully directed and coordinated. A state defender's office could perform the extremely important functions of recruiting attorneys as well as providing their in-service training. Consultation on difficult cases assigned to district defender offices could be provided by the state defender and the chief deputies. The responsibility for establishing and maintaining appointed counsel lists for the courts' and

subsequent compensation to these private lawyers should not be included in the duties of this office. However, a state defender could be expected to consult on these matters.

The study team cannot overemphasize the resources and leadership that must be expected from this office. These responsibilities can only be properly discharged if the office is adequately staffed and free from direct or indirect control factors and is as independent as any private law firm. On that assumption, the following staff would be appropriate for this office:

1) State Public Defender. This individual would be the head of the defender system. The salary rate must be sufficient to attract and retain a competent, experienced trial attorney. Because of possible comparisons of this position to the state Attorney General and the fact that the salary for that elective position is statutorily established, the salary for the state defender can be determined in several ways. Perhaps the most logical would be to have comparability with that of the members of the Court of Appeals. For budget purposes, \$29,000 (the same rate used in the cost estimate for Senate Bill 125, 1977 Legislature) is the rate suggested.

2) Chief Deputy Public Defender. This individual could be expected to assist the state defender on legal questions as well as provide consultation to defenders in the system. In addition, this person would be responsible for in-service training programs. The salary should be \$25,000.

3) Administrator, Office Manager/Accountant and Legal Secretary. These three positions would be responsible for the non-legal aspects of the operation of the system. The administrator, at a salary of \$22,500, would handle the fiscal affairs of the system, including budgeting, case reporting and monitoring, system analysis, fiscal reviews, and contacts between the office and other departments in the state government. The office manager/accountant would be responsible for the specific accounting functions, payroll, purchasing, and contracts.

The other office costs set forth below are similar to those that were used for the Senate Bill 125 cost analysis. The total first year cost of the type of system described above would be as follows:

Estimated Budget

STATE PUBLIC DEFENDER OFFICE FOR KANSAS

<u>SALARIES & WAGES</u>	<u>POSITIONS</u>	<u>AMOUNT</u>
State Defender	1.0	\$ 29,000
Chief Deputy State Defender	1.0	25,000
Administrator	1.0	22,500
Office Manager/Accountant	1.0	15,000
Secretary	1.0	9,000
SUB TOTAL	<u>5.0</u>	<u>\$100,500</u>
Benefits		14,070
TOTAL SALARIES & WAGES	5.0	<u>\$114,570</u>
<u>CONTRACT SERVICES</u>		
Communications		\$ 4,900
Printing		750
Rents for Equipment (copy machine)		1,000
Rent for Space (200x5x\$5)		5,000
Fees for Experts		10,000
Fees for Transcripts		70,000
Travel & Subsistence		2,650
Other Contract Services		1,250
TOTAL CONTRACT SERVICES		<u>\$ 95,550</u>
<u>COMMODITIES</u>		
Stationary & Office Supplies		\$ 2,550
Other Commodities		500
TOTAL COMMODITIES		<u>\$ 3,050</u>
TOTAL CAPITAL OUTLAY		\$ 8,230
OFFICE TOTAL	5.0	\$211,400

NOTE: Fees for experts and transcripts will continue to be necessary but are not budgeted by office. Some of the \$80,000 will be necessary for AID cases.

Fiscal Impact

The fiscal impact of these proposals can be seen in Table VIII (See Appendix J.). The \$2,282,811 total for fiscal year 1979 would provide defender services in about one-half of the state's counties, establish a separate appellate office, incorporate prisoner legal services with district offices, and create an office of the state public defender. The cost per case would be \$324. Appropriations for fiscal year 1978 are \$2,428,152 for AID, legal services to prisoners, and the three public defender offices. The study team believes that Kansas, by adopting these proposals can not only reduce its current level of fiscal support but also improve the quality of defense services.

Recognizing that all the suggested approaches may not be implemented, the consultants have developed two tentative alternatives. While neither is endorsed per se, they are provided for optional consideration. The consultants' final report may address additional options. The composition of each alternative is identified to ensure clarity. The data used are from Table VI.

ALTERNATIVE I

- 1) Implement or expand the suggested public defender system in the following judicial districts: 1st, 3rd, 5th, 8th - 11th, 14th, 18th, and 27th - 29th;
- 2) Establish an appellate defender office and a state public defender office.
- 3) Include prisoner legal services in the caseloads of district defender offices.
- 4) Continue the AID program in the remaining 17 judicial districts.

	<u>PUBLIC DEFENDER</u>		<u>APP. COUNSEL</u>		<u>TOTAL DEFENSE COST</u>		
	<u>Cases</u>	<u>Cost</u>	<u>Cases</u>	<u>Cost</u>	<u>Cases</u>	<u>Cost</u>	<u>Per Case</u>
PD Services	4,750	1,090,452	545	181,869	5,295	1,272,321	240
AID Services	-	-	1,555	418,545	1,555	418,545	269
SUB TOTAL	4,750	1,090,452	2,100	600,414	6,850	1,690,866	247
Appeals	200	239,710	-	-	200	239,710	1,199
St. Office	-	211,400	-	-	-	221,400	-
TOTAL	4,950	1,551,562	2,100	600,414	7,050	2,151,976	305

ALTERNATIVE II

- 1) Implement or expand the suggested public defender system in ten of the twelve judicial districts proposed in Alternative I; under this option, districts 11 and 14 would remain in the aid program.
- 2) Establish a state public defender office.

	<u>PUBLIC DEFENDER</u>		<u>APP. COUNSEL</u>		<u>TOTAL DEFENSE COST</u>		
	<u>Cases</u>	<u>Cost</u>	<u>Cases</u>	<u>Cost</u>	<u>Cases</u>	<u>Cost</u>	<u>Per Case</u>
PD Services	4,415	978,336	490	167,264	4,905	1,145,600	234
AID Service	-	-	1,945	507,320	1,945	507,320	261
SUB TOTAL	4,415	978,336	2,435	674,584	6,850	1,652,920	241
Appeals	-	-	*	171,000	*	171,000	-
St. Office	-	221,400	-	-	-	221,400	-
TOTAL	4,415	1,199,736	2,435	845,584	6,850	2,045,320	299

*Number of cases not known; cost figure is the minimum for FY1977.

Cost Comparisons

Both of these alternative approaches would restrict public defender representation in the district courts. The second, however, by eliminating one office from Alternative I, would also require that court appointed counsel be continued for indigent appeals. Cost-per-case comparisons are much less meaningful in the second alternative due to the lack of data on cases comprising the \$171,000 AID expenditure for appeals. Although the least costly of the estimates considered, Alternative II would also provide fewer defense services.

This concludes the preliminary report. The final report is now in preparation and delivery is scheduled for May, 1978.

APPENDIX A

STATEMENT OF WORK
SYSTEMS DEVELOPMENT STUDY
STATE OF KANSAS

LETTER OF UNDERSTANDING
BETWEEN KANSAS JUDICIAL COUNCIL AND THE CENTER

STATEMENT OF WORK
SYSTEMS DEVELOPMENT STUDY
STATE OF KANSAS

Introduction

This technical assistance was requested by the Public Defender Committee of the Kansas Bar. A previous TA request initiated by Ira Kirkendoll, Third Judicial District Public Defender, had been approved by LEAA but was tabled pending additional support by the Kansas Bar. The State Bar Association's Executive Committee subsequently endorsed a statewide study of defense services. The State Legislature then passed a concurrent resolution calling for such a study. Ms. Elaine Esparza, Deputy Director for Courts, GCCA, has agreed that the request should relate back to the original approval.

A modified TA request developed at a planning meeting held in the office of Gerald L. Goodell, Esq., of the KBA Public Defender Committee in Topeka, Kansas, identified three basic objectives for a study. The Kansas Judicial Council's Advisory Committee on Counsel for Indigent Defendants reviewed the proposed Statement of Work, amending it slightly.

A representative of NCDM met with the Committee in late August, 1977 to explain the suggested methodology. A letter of understanding was mutually agreed upon, setting forth the expectations of the Committee.

Objectives

The purpose of this technical assistance is to respond to the aforementioned request by providing consulting services to accomplish the following tasks:

- o An assessment of the needs of the State of Kansas relating to the development of a legal defense system.
- o A suggested structure for a legal defense system, including draft legislation.
- o Analyses of existing and proposed indigent defense systems as to cost and effectiveness.

Task Requirements

Task 1: NCDM will assess the need for a legal defense system, giving consideration to alternative methods of providing indigent representation with particular emphasis on the experiences of the states of Maryland, Wisconsin and Colorado. This will include an evaluation of the quality and cost of representation in sample jurisdictions. The NCDM will include in its itinerary the following locations: Johnson, Wyandotte and Sedgwick counties and the 28th and 15th Judicial Districts.

Task 2: NCDM will provide recommendations as to a proposed legal defense system; the systems in Maryland, Wisconsin and Colorado will be analyzed for comparability and applicability to Kansas. This will include a breakout of options such as single county vs. multi-county districts and/or combination of districts within a state program; the extent of optimal private bar involvement will also be examined.

Task 3: NCDM will analyze the current cost of indigent defense services in the State of Kansas to the extent practicable and provide cost projections with respect to proposed alternative systems based on such factors as caseload, indigency rate and manpower requirements.



JUSTICE ALFRED G. SCHROEDER, TOPEKA
CHAIRMAN

JAMES D. WAUGH, TOPEKA
SECRETARY

OTHER MEMBERS

ELWAINE F. POMEROY, TOPEKA
CHAIRMAN SENATE JUDICIARY COMMITTEE

E. RICHARD BREWSTER, TOPEKA
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JAMES J. NOONE, WICHITA
JUDGE DISTRICT COURT, 10TH DISTRICT

HERBERT W. WALTON, OLATHE
JUDGE DISTRICT COURT, 10TH DISTRICT

The Judicial Council of Kansas

1105 Merchants Bank Building
Topeka, Kansas 66612

September 23, 1977

OTHER MEMBERS

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Mr. David Rapoport
National Center for
Defense Management.
Suite 601
2100 M Street, N. W.
Washington, D. C. 20037

NATIONAL CENTER FOR DEFENSE MANAGEMENT	
SEP 26 1977	
ROUTE TO: <i>David R.</i>	FOR: <i>signature/peterson</i>
THEN TO:	FOR:
COPIES TO:	FOR:

Dear Mr. Rapoport:

The Kansas Judicial Council, at its meeting of September 9, 1977, approved expenditure of the 13% hard-match required for our share of a study by your organization. The Council resolution provides that the total amount of Judicial Council commitment is limited to \$2,000. It is the understanding of the Judicial Council that the study will be within the framework of the previously agreed upon "Statement of Work."

It is also the understanding of the Judicial Council that as much work as is possible will be conducted by the NCDM prior to the on site visit to assess need. It is further understood that the team of consultants and staff will visit at least the following locations:

1. Johnson County,
2. Wyandotte County,
3. Sedgwick County,
4. 28th Judicial Districts, and
5. 15th Judicial District.

It is further understood that the estimated cost of the study will be between \$14,000 and \$16,000 of which 87% will be paid for by the NCDM and 13% by the Judicial Council. However, in no event shall the total expenditure required of the Judicial Council exceed \$2,000.

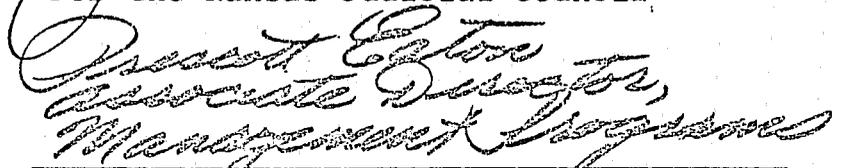
Page Two
Mr. David Rapoport
September 23, 1977

It is understood that the Judicial Council will receive a preliminary report from NCDM before December 31, 1977 and will receive a final report by April 15, 1978. The Judicial Council will receive 15 copies of each report and an additional unbound copy from which copies may be made.

If the contents of this letter are agreeable with regard to the understandings contained therein, please sign the letter and return one copy to the Judicial Council and keep one for your file. If there is a problem, redraft the letter as you understand the agreements, sign two copies leaving a blank line for a signature by the Judicial Council representative and send that letter to me.



For the Kansas Judicial Council



For the National Center for Defense
Management

RMH:pml

APPENDIX B

JUDICIAL DISTRICT QUESTIONNAIRE
OF THE
KANSAS JUDICIAL COUNCIL

SEPTEMBER, 1977

SEPTEMBER, 1977

Q U E S T I O N N A I R E

1. How do you establish a panel and then select counsel for indigents from that panel in felony cases at both the trial and appellate level?

2. How do you select counsel for indigents in the following?

Misdemeanor:

Care & Treatment:

Juvenile:

Other: (as appeals from municipal court) (habeas corpus)
(actions under K.S.A. 1507) (alcoholism)

3. As a practical matter how do you determine indigency?

4. In other than felony cases:

(a) How do you pay for appointed counsel for indigents (e.g. county general fund, special budget item)?

(b) Is the pay established on a case or hourly basis and what is the rate?

(c) What was the total amount paid for attorneys fees for indigent in other than felony cases for fiscal year 1976.

APPENDIX E

ORGANIZATION CHART
UNIFIED COURT SYSTEM

Source:

STATE OF KANSAS
GOVERNOR'S COMMITTEE ON
CRIMINAL ADMINISTRATION
COMPREHENSIVE LAW ENFORCEMENT ACTION PLAN
1975

State of Kansas
Unified Court System.

SUPREME COURT

COURT OF APPEALS

DISTRICT COURT

FUNCTIONS:

PROBATE	JUVENILE	CRIMINAL	DOMESTIC CIVIL	SMALL CLAIMS	TRAFFIC
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APPENDIX F

TABLE I
COMPARISON OF KANSAS DISTRICT COURT
TERMINATIONS AND AID CASES PAID IN
FY 1976 and FY 1977

Source:
JUDICIAL ADMINISTRATOR'S OFFICE
TOPEKA, KANSAS

SOURCE:
 JUDICIAL ADMINISTRATOR'S OFFICE
 TOPEKA, KANSAS

TABLE I

COMPARISON OF DISTRICT COURT TERMINATIONS AND AID CASES PAID IN FY 1976 AND FY 1977

JUDICIAL DISTRICT	FY 1976			FY 1977			TWO YEAR AVERAGE		
	Court Term.	AID Cases	% AID of Term.	Court Term.	AID Cases	% AID of Term	Court Term	AID Cases	% AID of Term.
FIRST	142	196	138.0	151	157	104.0	146	176	120.5
SECOND	101	42	41.6	117	50	42.7	109	46	42.2
THIRD	572	492/	8.62/	652	852/	13.02/	612	67	10.9
FOURTH	203	98	48.3	204	85	41.7	204	91	44.6
FIFTH	92	88	95.6	60	98	163.3	76	93	122.4
SIXTH	104	69	66.3	111	69	62.2	107	69	64.5
SEVENTH	191	164	85.9	182	169	92.9	186	166	89.2
EIGHTH	245	342/	13.92/	250	542/	21.62/	247	44	17.8
NINTH	155	144	92.9	162	138	85.2	158	141	89.2
TENTH	679	471	69.4	5421/	535	98.7	610	503	82.4
ELEVENTH	268	265	98.9	265	230	86.8	266	247	92.8
TWELFTH	41	26	63.4	73	41	56.2	57	33	57.9
THIRTEENTH	193	116	60.1	185	98	53.0	189	107	56.6
FOURTEENTH	191	157	82.2	207	181	87.14	199	169	84.9
FIFTEENTH	50	15	30.0	72	26	34.2	61	20	32.8
SIXTEENTH	63	69	109.5	104	100	96.1	83	84	101.2
SEVENTEENTH	61	24	39.3	67	39	58.2	64	31	48.4
EIGHTEENTH	1548	1060	68.5	1858	1138	61.2	1703	1099	64.5
NINETEENTH	196	149	76.0	316	192	60.7	256	170	66.4
TWENTIETH	228	108	47.4	202	123	60.9	215	115	53.5
TWENTY-FIVE	156	148	94.9	156	152	97.4	156	150	96.1
TWENTY-SECOND	60	44	73.3	78	46	59.0	69	45	65.2
TWENTY-THIRD	41	46	112.2	78	46	59.0	59	46	78.0
TWENTY-FOURTH	48	51	106.2	59	69	116.9	53	60	113.2
TWENTY-FIFTH	110	89	80.9	203	108	53.2	156	98	62.8
TWENTY-SIXTH	119	99	83.2	105	98	93.3	112	98	87.5
TWENTY-SEVENTH	255	200	78.4	174	174	100.0	214	187	87.4
TWENTY-EIGHTH	174	222/	12.62/	231	332/	14.32/	203	28	13.8
TWENTY-NINTH	773	328	42.4	478	292	61.1	625	310	49.6
STATE TOTAL	7059	4371	61.9	7342	4626	63.0	7200	4498	62.5

1/ Adjusted by 66 cases to account for revised data in district court statistical report for FY 1977.

2/ Low because of public defender offices.

NOTE: AID cases greater than terminations may be the result of overlapping years for the two types of data or a difference in reporting for those judicial districts. The two year average minimizes the effect of the overlap.

APPENDIX G

TABLE III
COSTS OF REPRESENTATION
IN SELECTED COLORADO JUDICIAL DISTRICTS
FY 1977

Source:
OFFICE OF THE PUBLIC DEFENDER
STATE OF COLORADO

SOURCE:
 OFFICE OF THE PUBLIC DEFENDER
 STATE OF COLORADO

TABLE III

RESPECTIVE COSTS OF REPRESENTATION IN SELECTED COLORADO JUDICIAL DISTRICTS FY 1977

<u>JUDICIAL DISTRICT</u>	<u>COUNTIES</u>	<u>PUBLIC DEFENDER</u>		<u>APPOINTED COUNSEL</u>	
		<u>Cases</u>	<u>Cost</u>	<u>Cases</u>	<u>Cost</u>
SECOND	1	2330	217	278	540
FOURTH	2	991	223	224	349
THIRTEENTH	7	89	203	7	429
FOURTEENTH	4	100	408	17	357
SEVENTEENTH	1	577	253	103	224
EIGHTEENTH	4	521	265	80	320
STATE TOTAL	63	7900	235	1384	341

NOTES:

1. The Public Defender offices closed misdemeanor and juvenile cases as well as the above felony cases. The costs per case are those for felony equivalent cases.
2. Appointed counsel cases are for pre-trial and trial felony closings. The 1,384 is 14.9 per cent of the total 9,284 closed whose defendants were indigent.

APPENDIX H

TABLE IV
COLORADO JUDICIAL DISTRICT
DATA FOR FY 1977
PUBLIC DEFENDER SERVICES

Source:
OFFICE OF THE PUBLIC DEFENDER
STATE OF COLORADO

SOURCE:
 OFFICE OF THE PUBLIC DEFENDER
 STATE OF COLORADO

Table IV

COLORADO JUDICIAL DISTRICT DATA FOR FY 1977, SHOWING PUBLIC DEFENDER SERVICES

<u>DEFENDER OFFICE & COUNTY</u>	<u>DISTRICT</u>	<u>1975 POPULATION</u>		<u>PUBLIC DEFENDER</u>	
		<u>Number</u>	<u>% of Total</u>	<u>Cases</u>	<u>% of Total</u>
<u>ALAMOSA</u>					
Alamosa*	12	13218	31.5	30	24.3
Conejos		9031	21.5	26	21.4
Costilla		3541	8.4	12	10.0
Mineral		866	2.1	2	1.4
Rio Grande		11239	26.7	28	22.9
Saguache		4119	9.8	25	20.0
TOTAL		42014	100.0	123	100.0
<u>BOULDER</u>	20	157390	100.0	447	100.0
<u>BRIGHTON (Adams County)</u>	17	216595	100.0	577	100.0
<u>COLORADO SPRINGS</u>					
El Paso*	4	306045	98.6	980	98.9
Teller	4	4450	1.4	11	1.1
TOTAL		310495	100.0	991	100.0
<u>DENVER</u>	2	521132	100.0	2330	100.0
<u>DURANGO</u>					
Archuleta	6	3275	7.4	6	4.8
Delores	22	1759	4.0	3	2.4
La Plata*	6	23365	52.6	73	64.3
Montezuma	22	15102	34.0	32	28.5
San Juan	6	904	2.0	-	-
TOTAL		44405	100.0	114	100.0
<u>FT. COLLINS (Larimer County)</u>	8	126055	100.0	243	100.0

*County in which office is located

DISTRICT	1975 POPULATION		PUBLIC DEFENDER		
	Number	% of Total	Cases	% of Total	
<u>GLENWOOD SPRINGS</u>					
Eagle	5	11558	25.9	28	26.7
Garfield*	9	17631	39.5	35	33.3
Pitkin	9	10179	22.8	42	40.0
Rio Blanco	9	5223	11.8	-	-
TOTAL		44591	100.0	105	100.0
<u>GOLDEN</u>					
Clear Creek	5	5786	2.0	14	2.0
Gilpin	1	1537	.5	2	.3
Jefferson*	1	284657	97.5	670	97.7
TOTAL		291980	100.0	686	100.0
<u>GRAND JUNCTION</u>					
Delta	7	16212	20.6	39	27.1
Mesa*	21	62276	79.4	106	72.9
TOTAL		78488	100.0	145	100.0
<u>GREELEY (Weld County)</u>					
	19	119501	100.0	375	100.0
<u>LA JUMIA</u>					
Bent	16	6487	12.0	11	7.5
Cheyenne	15	2517	4.7	4	2.5
Crowley	16	3444	6.4	11	7.5
Kiowa	15	2122	3.9	-	-
Otero*	16	24782	46.0	63	42.5
Prowers	15	14473	27.0	50	40.0
TOTAL		53825	100.0	149	100.0
<u>LITTLETON</u>					
Arapahoe*	18	194556	89.7	492	94.5
Douglas	18	11966	5.5	17	3.3
Elbert	18	5297	2.5	3	.4
Lincoln	18	5013	2.3	9	1.8
TOTAL		216832	100.0	521	100.0

DISTRICT	1975 POPULATION		PUBLIC DEFENDER		
	Number	% of Total	Cases	% of Total	
<u>MONTROSE</u>					
Montrose*	7	18460	83.0	74	70.6
Ouray	7	1780	8.0	18	17.6
San Miguel	7	2010	9.0	13	11.8
		<u>22250</u>	<u>100.0</u>	<u>105</u>	<u>100.0</u>
<u>PUEBLO (Pueblo County)</u>	10	124542	100.0	470	100.0
<u>SALIDA</u>					
Chaffee*	11	11966	18.4	63	23.1
Custer	11	1211	1.9	6	2.2
Fremont	11	25380	39.1	143	52.7
Gunnison	7	8605	13.3	24	8.8
Hinsdale	11	260	.4	-	-
Lake	5	8462	13.0	18	6.6
Park	11	2930	4.5	3	1.1
Summit	5	6117	9.4	14	5.5
		<u>64931</u>	<u>100.0</u>	<u>271</u>	<u>100.0</u>
<u>STEAMBOAT SPRINGS</u>					
Grand	14	7672	27.4	11	10.8
Jackson	8	2682	9.6	11	10.8
Moffat	14	7142	25.5	41	40.6
Routt*	14	10529	37.5	37	37.8
		<u>28025</u>	<u>100.0</u>	<u>100</u>	<u>100.0</u>
<u>STERLING</u>					
Kit Carson	13	7998	10.9	10	11.5
Logan*	13	20367	27.8	23	25.9
Morgan	13	22382	30.6	44	49.5
Phillips	13	4341	5.9	2	2.3
Sedgwick	13	3503	4.8	8	9.2
Washington	13	5835	8.0	1	.8
Yuma	13	8730	12.0	1	.8
		<u>73156</u>	<u>100.0</u>	<u>89</u>	<u>100.0</u>

<u>DISTRICT</u>	<u>1975 POPULATION</u>		<u>PUBLIC DEFENDER</u>		
	<u>Number</u>	<u>% of Total</u>	<u>Cases</u>	<u>% of Total</u>	
<u>TRINIDAD</u>					
Baca	16	6042	21.0	8	10.2
Huerfano	3	6702	23.2	30	38.6
Las Animas*	3	16036	55.8	41	51.2
TOTAL		<u>28784</u>	<u>100.0</u>	<u>79</u>	<u>100.0</u>
STATE TOTAL		2564991	100.0	7900	100.0

APPENDIX I

TABLE V
AID PROGRAM EXPENDITURES
IN
FOUR EXPENSE CATEGORIES
FY 1973-74 and 1976-77

Source:
JUDICIAL ADMINISTRATOR'S OFFICE
TOPEKA, KANSAS

SOURCE:
 JUDICIAL ADMINISTRATOR'S OFFICE
 TOPEKA, KANSAS

Table V
 AID Program Expenditures
 in
 Four Expense Categories
 FY 1973-74 & 1976-77

<u>EXPENSE CATEGORY</u>	<u>FY 1973</u>			<u>FY 1974</u>			<u>FY 1976</u>			<u>FY 1977</u>		
	<u>Amt.</u>	<u>Per Case</u>	<u>Per Cent of Total</u>	<u>Amt.</u>	<u>Per Case</u>	<u>Per Cent of Total</u>	<u>Amt.</u>	<u>Per Case</u>	<u>Per Cent of Total</u>	<u>Amt.</u>	<u>Per Case</u>	<u>Per Cent of Total</u>
<u>COUNSEL FEES</u>												
Out-of-Court	334439	133.03	52.1	450822	148.93	50.2	716085	163.90	49.3	789357	170.67	51.3
In-Court	265532	105.62	41.4	372612	123.10	41.5	619844	141.87	42.6	616347	133.26	40.0
SUBTOTAL	599971	238.65	93.5	823434	272.03	91.7	1335929	305.77	91.9	1405704	303.93	91.3
<u>EXPENSE REIMBURSEMENT</u>	19208	7.64	3.0	25572	8.45	2.8	53131	12.16	3.7	51798	11.20	3.4
Transcripts	17494	6.96	2.7	36845	12.17	4.1	51681	11.83	3.5	69186	14.95	4.5
Invest. & Experts	4621	1.60	.8	12148	4.01	1.4	12822	2.93	.9	12232	2.64	.8
TOTAL	641294	254.85	100.0	879999	296.66	100.0	1453563	332.69	100.0	1538920	332.72	100.0
PER CENT CHANGE				+40.0	+16.4		+61.9	+12.1		+5.9	-	

APPENDIX J

TABLE VIII
FY 1979
COST OF PROPOSED SERVICES
FOR INDIGENT DEFENDANTS

Source:
CONSULTANT JAMES AYERS
OFFICE OF THE PUBLIC DEFENDER
DENVER, COLORADO

SOURCE:
CONSULTANT JAMES AYERS
OFFICE OF THE PUBLIC DEFENDER
DENVER, COLORADO

TABLE VIII

FY 1979 COST OF RECOMMENDED SERVICES FOR INDIGENT DEFENDANTS

JUDICIAL DISTRICT	PUBLIC DEFENDER		CT. APPT. COUNSEL		TOTAL DEFENSE COST		
	Cases	Cost	Cases	Cost*	Cases	Cost	Per Case
FIRST	600	100086	35	5495	635	105581	166
SECOND	-	-	55	11385	55	11385	207
THIRD	500	109933	70	20440	570	130373	229
FOURTH	-	-	80	15600	80	15600	195
FIFTH & EIGHTH	345	107529	55	13700	400	121229	303
SIXTH	-	-	75	20550	75	20550	274
SEVENTH	160	43946	25	6825	185	50771	274
NINTH & TWENTY-EIGHTH	260	76766	35	12335	295	89101	302
TENTH	505	114184	70	28490	575	142674	248
ELEVENTH & FOURTEENTH	335	112116	55	14605	390	126721	325
TWELFTH	-	-	45	9630	45	9630	214
THIRTEENTH ^{1/}	-	-	100	22200	100	22200	222
FIFTEENTH	-	-	35	16310	35	16310	466
SIXTEENTH	100	57100	15	4725	115	61825	538
SEVENTEENTH	-	-	45	12870	45	12870	286
EIGHTEENTH ^{1/}	1230	261582 ^{1/}	150	62550	1380	324132	235
NINETEENTH ^{2/}	120 ^{2/}	57462 ^{2/}	30	5940	150	63402	423
TWENTIETH	115	57372	15	4125	130	61497	473
TWENTY-FIRST	115	43242	15	2580	130	45822	352
TWENTY-SECOND	-	-	50	14300	50	14300	286
TWENTY-THIRD	-	-	50	20200	50	20200	404
TWENTY-FOURTH	-	-	75	33750	75	33750	450
TWENTY-FIFTH	115	57372	15	4605	130	61977	477
TWENTY-SIXTH	-	-	105	27300	105	27300	260
TWENTY-SEVENTH ^{2/}	695 ^{2/}	128268 ^{2/}	35 ^{2/}	9205	730	137473	188
TWENTY-NINTH	280	79988	40	15040	320	95028	297
SUBTOTAL	5475	1406946	1375	414755	6850	1821701	265
APPEALS	200	239710	-	-	200	239710	1199
STATE OFFICE	-	221400	-	-	-	221400	-
STATE TOTAL	5675	1868056	1375	414755	7050	2282811	324

^{1/} Sumner County in 18th District.

^{2/} Pratt County in 27th District.

* Uses FY 1977 cost per case for the district.

END