

SENATE BILL No. 505

AN ACT concerning records; relating to electronic access to court records; exemption from fees; use of moneys in the judiciary technology fund; amending K.S.A. 20-1a12 and K.S.A. 2005 Supp. 22-4504, 22-4506 and 22-4507 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. Notwithstanding any statute, law, rule, regulation or supreme court rule to the contrary, any county may provide electronic access to district court records that are otherwise publicly available. A county may charge reasonable fees, not to exceed those authorized by law, for providing electronic access to such records. No statute, law, rule, regulation or supreme court rule shall authorize the charging of a fee in addition to a county fee, if any, for providing electronic access to district court records.

Sec. 2. K.S.A. 20-1a12 is hereby amended to read as follows: 20-1a12. (a) There is hereby established in the state treasury a judiciary technology fund.

(b) Moneys in the judiciary technology fund shall be used to:

(1) *Establish, operate and maintain a state-wide system of electronic remote access, at no cost to users, to court records that are otherwise publicly available;*

(2) implement technological improvements in the Kansas court system; and

(3) ~~to~~ fund meetings of the judicial council technology advisory committee at the judicial council reimbursement rate pursuant to K.S.A. 20-2206, and amendments thereto. Expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chief justice of the Kansas Supreme Court or a person designated by the chief justice.

Sec. 3. K.S.A. 2005 Supp. 22-4504 is hereby amended to read as follows: 22-4504. (a) When any defendant who is entitled to have the assistance of counsel, under the provisions of K.S.A. 22-4503, and amendments thereto, claims to be financially unable to employ counsel, the court shall require that the defendant file an affidavit containing such information and in the form as prescribed by rules and regulations adopted by the state board of indigents' defense services. The affidavit filed by the defendant shall become a part of the permanent file of the case. The court may interrogate the defendant under oath concerning the contents of the affidavit and may direct the county or district attorney, sheriff, marshal or other officer of the county to investigate and report upon the financial condition of the defendant and may also require the production of evidence upon the issue of the defendant's financial inability to employ counsel.

(b) Upon the basis of the defendant's affidavit, the defendant's statements under oath, and such other competent evidence as may be brought to the attention of the court, which shall be made part of the record in the case, the court shall determine whether the defendant is financially unable to employ counsel. In making such determination the court shall consider the defendant's assets and income; the amount needed for the payment of reasonable and necessary expenses incurred, or which must be incurred to support the defendant and the defendant's immediate family; the anticipated cost of effective representation by employed counsel; and any property which may have been transferred or conveyed by the defendant to any person without adequate monetary consideration after the commission of the alleged crime. If the defendant's assets and income are not sufficient to cover the anticipated cost of effective representation by employed counsel when the length and complexity of the anticipated proceedings are taken fully into account, the defendant shall be determined indigent in full or in part and the court shall appoint an attorney as provided in K.S.A. 22-4503, and amendments thereto. If the court determines that the defendant is financially able to employ counsel, the court shall so advise the defendant and shall give the defendant a reasonable opportunity to employ an attorney of the defendant's own choosing. All determinations by a court as to whether a defendant is financially unable to employ counsel shall be subject to and in accordance with rules and regulations adopted by the state board of indigents' defense services under this act.

(c) The court shall inform the defendant for whom counsel is appointed that the amount expended by the state in providing counsel and other defense services may be entered as a judgment against the defendant if the defendant is convicted and found to be financially able to pay the amount, and that an action to recover such amount may be brought against any person to whom the defendant may have transferred or conveyed any of the defendant's property without adequate monetary consideration after the date of the commission of the alleged crime. A determination by the court that the defendant is financially unable to employ counsel or pay other costs of the defendant's defense may preclude a recovery from the defendant but may not preclude recovery from any person to whom the defendant may have transferred or conveyed any property without adequate monetary consideration after the date of the commission of the alleged crime.

(d) If found to be indigent in part, the defendant shall be promptly informed of the terms under which the defendant may be expected to pay for counsel. Any payments pursuant to such terms shall apply upon any judgment entered pursuant to K.S.A. 22-4513, and amendments thereto. Payments made for services of appointed counsel provided under K.S.A. 22-4503, and amendments thereto, shall be paid to the clerk of the district court. The clerk of the district court shall remit all moneys received as payment for services of appointed counsel under this section to the state board of indigents' defense services at least monthly and the board shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(e) The determination that a defendant is indigent or partially indigent shall be subject to review at any time by any court before whom the cause is then pending.

(f) The state board of indigents' defense services shall adopt rules and regulations in accordance with K.S.A. 77-415 *et seq.*, and amendments thereto, relating to the income, assets and anticipated costs of representation for the purpose of determining whether a defendant is financially able to employ counsel and the ability of a defendant to contribute to the cost of the defendant's legal defense services.

(g) *Whenever it is determined that electronic access to court records is necessary to present a defendant's cause adequately and it is further determined that the defendant is indigent, the court having jurisdiction in the matter shall order that the records be supplied to the defendant, at no charge, by the electronic access service. The state board of indigents' defense services shall be exempt from paying user fees to access electronic court records.*

Sec. 4. K.S.A. 2005 Supp. 22-4506 is hereby amended to read as follows: 22-4506. (a) Whenever any person who is in custody under a sentence of imprisonment upon conviction of a felony files a petition for writ of habeas corpus or a motion attacking sentence under K.S.A. 60-1507 and files with such petition or motion such person's affidavit stating that the petition or motion is filed in good faith and that such person is financially unable to pay the costs of such action and to employ counsel therefor, the court shall make a preliminary examination of the petition or motion and the supporting papers.

(b) If the court finds that the petition or motion presents substantial questions of law or triable issues of fact and if the petitioner or movant has been or is thereafter determined to be an indigent person as provided in K.S.A. 22-4504 and amendments thereto, the court shall appoint counsel from the panel for indigents' defense services or otherwise in accordance with the applicable system for providing legal defense services for indigent persons prescribed by the state board of indigents' defense services, to assist such person and authorize the action to be filed without a deposit of security for costs. If the petition or motion in such case raises questions shown by the trial record, the court shall order that the petitioner or movant be supplied with a transcript of the trial proceedings, or so much thereof as may be necessary to present the issue, without cost to such person.

(c) If an appeal is taken in such action and if the trial court finds that

the petitioner or movant is an indigent person, the trial court shall appoint counsel to conduct the appeal, order that the appellant be supplied with a record of the proceedings or so much thereof as such counsel determines to be necessary and order that the deposit of security for costs be waived.

(d) (1) The state board of indigents' defense services shall provide by rule and regulation for: (A) The assignment of attorneys to the panel for indigents' defense services to represent indigent persons, who have been convicted of capital murder and are under sentence of death, upon a filing of a petition for writ of habeas corpus or a motion attacking sentence under K.S.A. 60-1507 and amendments thereto;

(B) standards of competency and qualification for the appointment of counsel in capital cases under this section; and

(C) the reasonable compensation of counsel appointed to represent individuals convicted of capital murder and under a sentence of death, during proceedings conducted pursuant to subsection (a), (b) or (c) and for reasonable and necessary litigation expense associated with such proceedings.

(2) If a petitioner or movant, who has been convicted of capital murder and is under a sentence of death, files a petition for writ of habeas corpus or a motion attacking sentence under K.S.A. 60-1507 and amendments thereto, the district court shall make a determination on the record whether the petitioner or movant is indigent. Upon a finding that the petitioner or movant is indigent and accepts the offer of representation or is unable competently to decide whether to accept or reject the offer, the court shall appoint one or more counsel, in accordance with subsection (d) (1), to represent the petitioner or movant. If the petitioner or movant rejects the offer of representation, the court shall find on the record, after a hearing if necessary, whether the petitioner or movant rejected the offer of representation with the understanding of its legal consequences. The court shall deny the appointment of counsel upon a finding that the petitioner or movant is competent and not indigent.

(3) Counsel appointed to represent the petitioner or movant shall not have represented the petitioner or movant at trial or on direct appeal therefrom unless the petitioner or movant and counsel expressly request continued representation.

(e) Whenever it is determined that electronic access to court records is necessary to present a petitioner's cause adequately and it is further determined that the petitioner or movant is an indigent person, the court having jurisdiction in the matter shall order that the records be supplied to the defendant, at no charge, by the electronic access service. The state board of indigents' defense services shall be exempt from paying user fees to access electronic court records.

Sec. 5. K.S.A. 2005 Supp. 22-4507 is hereby amended to read as follows: 22-4507. (a) An attorney, other than a public defender or assistant public defender or contract counsel, who ~~performs~~ *is appointed by the court to perform* services for an indigent person, as provided by this act, shall at the conclusion of such service or any part thereof be entitled to compensation for such services and to be reimbursed for expenses reasonably incurred by such person in performing such services. Compensation for services shall be paid in accordance with standards and guidelines contained in rules and regulations adopted by the state board of indigents' defense services under this section.

(b) Claims for compensation and reimbursement shall be certified by the claimant and shall be presented to the court at sentencing. A supplemental claim may be filed at such later time as the court may in the interest of justice determine if good cause is shown why the claim was not presented at sentencing. In accordance with standards and guidelines adopted by the state board of indigents' defense services under this section, all such claims shall be reviewed and approved by one or more judges of the district court before whom the service was performed, or, in the case of proceedings in the court of appeals, by the chief judge of the court of appeals and in the case of proceedings in the supreme court, by the departmental justice for the department in which the appeal originated. Each claim shall be supported by a written statement, specifying in detail the time expended, the services rendered, the expenses incurred in connection with the case and any other compensation or reimbursement

received. When properly certified and reviewed and approved, each claim for compensation and reimbursement shall be filed in the office of the state board of indigents' defense services. If the claims meet the standards established by the board, the board shall authorize payment of the claim.

(c) If the state board of indigents' defense services determines that the appropriations for indigents' defense services or the moneys allocated by the board for a county or judicial district will be insufficient in any fiscal year to pay in full claims filed and reasonably anticipated to be filed in such year under this section, the board may adopt a formula for prorating the payment of pending and anticipated claims under this section.

(d) The state board of indigents' defense services may make expenditures for payment of claims filed under this section from appropriations for the current fiscal year regardless of when the services were rendered.

(e) The state board of indigents' defense services shall adopt rules and regulations prescribing standards and guidelines governing the filing, processing and payment of claims under this section.

(f) *An attorney, other than a public defender, assistant public defender or contract counsel, who is appointed by the court to perform services for an indigent person and who accesses electronic court records for an indigent person, as provided by this act, shall be exempt from paying fees to access electronic court records.*

Sec. 6. K.S.A. 20-1a12 and K.S.A. 2005 Supp. 22-4504, 22-4506 and 22-4507 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.