

HOUSE BILL No. 2419

By Legislative Post Audit Committee

12-28

1 AN ACT concerning criminal procedure; relating to aid to indigent
2 defendants; amending K.S.A. 22-4504 and repealing the existing
3 section.
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 Sec. 1. K.S.A. 22-4504 is hereby amended to read as follows: 22-
7 4504. (a) When any defendant who is entitled to have the assistance of
8 counsel, under the provisions of K.S.A. 22-4503, and amendments thereto,
9 claims to be financially unable to employ counsel, the court shall require
10 that the defendant file an affidavit containing such information and in the
11 form as prescribed by rules and regulations adopted by the state board of
12 indigents' defense services. The affidavit filed by the defendant shall
13 become a part of the permanent file of the case. The court ~~may~~ shall
14 interrogate the defendant under oath concerning the contents of the
15 affidavit and may direct the county or district attorney, sheriff, marshal or
16 other officer of the county to investigate and report upon the financial
17 condition of the defendant and may also require the production of evidence
18 upon the issue of the defendant's financial inability to employ counsel.

19 (b) Upon the basis of the defendant's affidavit, the defendant's
20 statements under oath, and such other competent evidence as may be
21 brought to the attention of the court, which shall be made part of the record
22 in the case, the court shall determine whether the defendant is financially
23 unable to employ counsel. In making such determination the court shall
24 consider the defendant's assets and income; the amount needed for the
25 payment of reasonable and necessary expenses incurred, or which must be
26 incurred to support the defendant and the defendant's immediate family;
27 the anticipated cost of effective representation by employed counsel; and
28 any property which may have been transferred or conveyed by the
29 defendant to any person without adequate monetary consideration after the
30 commission of the alleged crime. If the defendant's assets and income are
31 not sufficient to cover the anticipated cost of effective representation by
32 employed counsel when the length and complexity of the anticipated
33 proceedings are taken fully into account, the defendant shall be determined
34 indigent in full or in part and the court shall appoint an attorney as
35 provided in K.S.A. 22-4503, and amendments thereto. If the court
36 determines that the defendant is financially able to employ counsel, the

1 court shall so advise the defendant and shall give the defendant a
2 reasonable opportunity to employ an attorney of the defendant's own
3 choosing. All determinations by a court as to whether a defendant is
4 financially unable to employ counsel shall be subject to and in accordance
5 with rules and regulations adopted by the state board of indigents' defense
6 services under this act.

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

21 (d) If found to be indigent in part, the defendant shall be promptly
22 informed of the terms under which the defendant may be expected to pay
23 for counsel. Any payments pursuant to such terms shall apply upon any
24 judgment entered pursuant to K.S.A. 22-4513, and amendments thereto.
25 Payments made for services of appointed counsel provided under K.S.A.
26 22-4503, and amendments thereto, shall be paid to the clerk of the district
27 court. The clerk of the district court shall remit all moneys received as
28 payment for services of appointed counsel under this section to the state
29 board of indigents' defense services at least monthly and the board shall
30 remit all moneys received under this section to the state treasurer in
31 accordance with the provisions of K.S.A. 75-4215, and amendments
32 thereto. Upon receipt of each such remittance, the state treasurer shall
33 deposit the entire amount in the state treasury to the credit of the state
34 general fund.

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

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

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

8 Sec. 2. K.S.A. 22-4504 is hereby repealed.

9 Sec. 3. This act shall take effect and be in force from and after its
10 publication in the statute book.

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