

2012 Kansas Statutes

22-4504. Same; determination of indigency; partial indigency, effect; disposition of payments for appointed counsel services; no fee for electronic access to court records. (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.

History: L. 1969, ch. 291, § 4; L. 1979, ch. 101, § 1; L. 1981, ch. 157, § 1; L. 1982, ch. 142, § 14; L. 1997, ch. 181, § 22; L. 2001, ch. 5, § 82; L. 2006, ch. 148, § 3; July 1.