

## 2012 Kansas Statutes

**22-4506. Persons in custody after felony conviction; habeas corpus or 60-1507 motions; capital murder cases; appointment of counsel; assignment, standards and compensation; no fee for electronic access to court records.** (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.

**History:** L. 1969, ch. 291, § 6; L. 1982, ch. 142, § 16; L. 1997, ch. 181, § 6; L. 2006, ch. 148, § 4; July 1.