

Senate Judiciary
March 19, 2020
HB 2109
Proponent

Written Testimony of
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Kansas State Board of Indigents' Defense Services

Chairperson Senator Warren, Vice-Chair Senator Wilburn, Ranking Minority Senator Haley, and Members of the Senate Judiciary,

The Board of Indigents' Defense Services is tasked with providing constitutionally effective and fiscally efficient legal representation to all indigent persons in Kansas accused of state felony crimes. As such, a fully filled and functioning Board is essential to our state mandate to appropriately administer these services to the people of Kansas.

The make-up of our Board is set out in K.S.A. 22-4519, which has not be amended since 1995. Currently, K.S.A. 22-4519 requires the Board to have nine members: four members of the public who are not attorneys, and five registered Kansas attorneys. From that group, the First Congressional District must have a public member plus an attorney member, while the other three congressional districts must have at least one member (either a public or an attorney member). Additionally, each county with a population over 100,000 must have an attorney member. In the past 25 years, enough counties have surpassed the current 100,000 population mark that the appointing authority (the Governor, with Senate confirmation) will not be able to finish appointing members to our Board without also violating our statute. The changes proposed in HB 2109 are aimed at solving this statutory conundrum.

Why HB 2109 is Necessary

We currently have three public members— from the First, Third, and Fourth Congressional Districts— actively appointed to our Board. The required First Congressional District attorney member is currently from Saline County. The Board currently has the required attorney members for four of the five Kansas counties with populations over 100,000: Johnson, Sedgwick, Shawnee, and Wyandotte. But Douglas County surpassed the 100,000 population mark and is qualified for an attorney position on our Board. However, appointing a Douglas County attorney member as required by

K.S.A. 21-4519(c)(2) would simultaneously violate subsection (c)(3), which sets the total limit of attorney members at five.

What HB 2109 Does

HB 2109 would change the proportion of Board members from four public members to three, and five attorney members to six. It would also raise the population trigger for new attorney members up from 100,000 to 115,000. These proposed changes would allow for the appointment of an additional attorney member in compliance with the population trigger portion of the statute without having to increase the number of Board members or run afoul of the attorney and public member limits. Based on population projections, it would also buy us as many as nine to ten years before we might encounter a situation like the one we are currently in, i.e. when an additional county is anticipated to qualify for an additional attorney member under the statute.

HB 2109 Solves Our Present-Day Concerns and Allows Time to Plan for the Future

1). Our Board operates the largest provider of criminal defense services in the State of Kansas. It would be helpful and appropriate for the presently unfilled Board seat to be filled by an additional attorney member, in order to assist in that unique and somewhat specialized mandate of conducting oversight of how we provide counsel to Kansans in poverty accused of state felony crimes. We regularly tackle some of the most difficult questions of how to continue providing competent, ethical, and zealous representation to our clients in a fiscally efficient manner. Having an additional Board member with relevant legal training and experience to provide appropriate input on those weighty questions will be vital going forward.

2). These changes allow us to continue to have a sizeable public member presence on our Board. These public members will therefore continue to be able to provide their unique experience and fresh opinions to our discussions. We value their input and under these amendments will continue to benefit from such input going forward.

3). These amendments retain an important part of our Board statute, the population triggers. It is particularly helpful to continue adding attorney members to our Board as their individual county populations increase because the demand for our services in that jurisdiction and how to best provide those services becomes a much more pressing issue as populations in an area continue to rise. Therefore, having the input of local attorneys in those jurisdictions aids us in tackling those issues head on. And setting the population trigger at 115,000 buys us some much needed time before any additional statutory fixes might need to be addressed again. We are in the process of going through an exhaustive

review of our Board statutes and regulations. This amendment will allow us to have a fully staffed Board as we go through that in-depth extensive process and think, long term, about what kind of additional amendments to our statutes might be necessary down the road.

I'm always happy to provide any other information that the committee may find helpful. Thank you for your consideration.

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