

**Commission on Racial Equity and Justice**  
**Listening Session #2: Public Defenders**  
*Heather Cessna, SBIDS, Host*  
*July 21, 2020*

Held virtually via Zoom

**Participants**

This listening session was hosted by Heather Cessna, Executive Director of the State Board of Indigent Defense Services. Participants were public defenders, both state and federal, and members of SBIDS.

**Commissioners Attending**

- Judge Monique Centeno
- Mark Dupree
- Chris Howell
- Mark McCormick
- John Nave
- Shannon Portillo

**Topics Discussed**

*How have you seen your community and your clients impacted by racial inequity, particularly around policing and law enforcement?*

*What steps should the state of Kansas take to address racial inequity and injustice, particularly around policing and law enforcement?*

The strongest theme of the session was that public defense is underfunded and that public defenders are on the front lines of racial inequity in the criminal justice system. Public defenders need more money and need to have a place at the table whenever these issues are being discussed. Other themes included reforming jury selection processes to reduce racial bias, eliminating drivers license suspensions for failure to pay fines and fees, and bail reform.

Specific items discussed:

- Public defense funding:

- 85% of adults charged with felonies in Kansas are represented by public counsel – 14,000 per year are handled by public defenders, 17,000 by private assigned counsel.
- Private counsel costs an average of \$282 more per case than a public defender.
- From July 1<sup>st</sup>, 2019 to mid-March this year, at least one public defenders office was shut down and unable to accept new cases because of funding issues.
- Turnover is high and high numbers of trial public defenders have very little experience.
- Public defenders are taking on so many cases that they don't have the time to fully investigate the cases, or address police and prosecutor misconduct.
- There's no public defenders office in Wyandotte County or in Douglas County.
- Public defenders deserve a place at the table:
  - There's also no infrastructure to advocate for systemic change. No dedicated person to push for policy changes that would reduce caseloads: defelonization of certain crimes, end to the death penalty, less rigidity in charging standards. Other entities have a lobbyist (police orgs, DAs, the KBI). Public defenders voices are missing in those conversations.
  - High number of cases and a broad view of the system. They can see patterns and identify practices that result in racial inequities.
- Data collection. Transparency isn't meaningful if the data isn't reliable.
- Batson Law/Jury selection:
  - It's illegal to strike someone from a jury due to race, but they use things like how they're dressed or body language. We need a law that prevents a juror from being stricken for things that are subjective and just a cover for race.
  - Jury diversity is an issue, jurors don't appear in a racially-balanced manner.
- Driver's license suspensions:
  - Need to remove the fines and fees associated with suspended licenses. 215,000 Kansans have a suspended license, mostly because they can't pay their fines. They're never going to pay, they can't afford it.
- Bail reform:
  - Judge Arnold-Burger is chairing a task force on this. Bondsmen are a problem, why not have the court hold the money, keep a portion. Then it could be used for restitution, costs.
  - Judge needs to really look at each case and determine if bail is necessary.
  - Washington did away with cash bail and found the #1 predictor of someone showing up for court was whether they received a text message reminder about their court date.

- There's no provision for counsel at the time of first appearance, because indigency hasn't been established so no counsel has been assigned.
- Police behavior and racial profiling
  - Using pretextual stops to racially profile
  - There is some data but needs to be more. And there has to be a consequence for the failure to keep data.
- Diversification of BIDS, of judges, throughout the criminal justice system
  - When you raise the issue of implicit bias of a police officer, the judge feels that they're being asked to find that the officer is a racist.
- Bigger structural issues as well – health care system, education, child welfare. The disproportionate impacts in all of these places have an effect on the criminal justice system and our clients.
- Juvenile law and juvenile prosecutions are an issue
- Probation and issues surrounding probation, especially with marginalized communities