

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1612

BY: STEIDLEY

COMMITTEE SUBSTITUTE

AN ACT RELATING TO CRIMINAL PROCEDURE; AMENDING 22
O.S. 1981, SECTION 1355, AS AMENDED BY SECTION 3,
CHAPTER 253, O.S.L. 1988 AND SECTION 4, CHAPTER
253, O.S.L. 1988 (22 O.S. SUPP. 1990, SECTIONS 1355
AND 1355.1), WHICH RELATE TO THE OKLAHOMA PUBLIC
DEFENDER SYSTEM; PROVIDING SHORT TITLE; STATING
LEGISLATIVE INTENT; CHANGING THE NAME OF THE
OKLAHOMA PUBLIC DEFENDER SYSTEM TO THE OKLAHOMA
INDIGENT DEFENSE SYSTEM; CREATING DIVISIONS;
CHANGING THE NAME OF THE OKLAHOMA PUBLIC DEFENDER
SYSTEM BOARD TO THE OKLAHOMA INDIGENT DEFENSE
SYSTEM BOARD; PLACING A RESTRICTION ON MEMBERSHIP;
PROVIDING THAT THE BOARD SHALL NOT BE SUBJECT TO
THE OKLAHOMA SUNSET LAW; DEFINING TERMS; PROVIDING
POWERS AND DUTIES OF THE BOARD; REQUIRING AN ANNUAL
REPORT; PROVIDING FOR SALARIES; PROVIDING FOR AN
EXECUTIVE DIRECTOR; PROVIDING FOR APPOINTMENT,
TENURE, QUALIFICATIONS, POWERS AND DUTIES OF THE
EXECUTIVE DIRECTOR; PROVIDING FOR CERTAIN
COMPENSATION AND REIMBURSEMENT; CREATING THE TRIAL
PUBLIC DEFENDER DIVISION; PROVIDING FOR A TRIAL
PUBLIC DEFENDER; PROVIDING FOR INCLUSION AND

EXCLUSION IN TRIAL PUBLIC DEFENDER DISTRICTS;
PROVIDING QUALIFICATIONS AND TENURE OF TRIAL PUBLIC
DEFENDERS; PROVIDING FOR THE EMPLOYMENT OF
ADDITIONAL PERSONNEL; PROVIDING FOR CLAIMS BY
CERTAIN COUNTIES FOR ATTORNEYS FEES; PROVIDING
DUTIES AND POWERS OF TRIAL PUBLIC DEFENDERS AND
ASSISTANTS; PROVIDING PROCEDURE IF A CONFLICT OF
INTEREST EXISTS; PROVIDING FOR PAYMENT OF CERTAIN
ATTORNEY; PROVIDING RATES OF COMPENSATION;
PROVIDING FOR ESTABLISHMENT OF TRIAL PUBLIC
DEFENDER OFFICES; CREATING THE CAPITAL LITIGATION
DIVISION; PROVIDING POWERS AND DUTIES; PROVIDING
FOR APPOINTMENTS; PROVIDING PROCEDURE IF A CONFLICT
OR MULTIPLE CONFLICTS OF INTEREST EXISTS; PROVIDING
FOR APPOINTMENT AND TENURE OF THE CHIEF
ADMINISTRATIVE OFFICER OF THE DIVISION; PROVIDING
FOR THE EMPLOYMENT OF ADDITIONAL PERSONNEL;
PROVIDING PROCEDURE AND RATES FOR COMPENSATION FOR
CASES SUBJECT TO THE DEATH PENALTY; AMENDING 22
O.S. 1981, SECTIONS 1356 AND 1357, AS AMENDED BY
SECTIONS 5 AND 6, CHAPTER 253, O.S.L. 1988, 1360,
AS AMENDED BY SECTION 2, CHAPTER 153, O.S.L. 1987,
1362, AS AMENDED BY SECTION 1, CHAPTER 248, O.S.L.
1986, AND 1366, AS AMENDED BY SECTION 7, CHAPTER
253, O.S.L. 1988 AND SECTION 8, CHAPTER 253, O.S.L.
1988 (22 O.S. SUPP. 1990, SECTIONS 1356, 1357,
1360, 1362, 1366 AND 1368), WHICH RELATE TO THE
OKLAHOMA APPELLATE PUBLIC DEFENDER SYSTEM; CHANGING
THE NAME OF THE OKLAHOMA APPELLATE PUBLIC DEFENDER
SYSTEM TO THE OKLAHOMA PUBLIC DEFENDER DIVISION;
PROVIDING FOR UNITS WITHIN THE DIVISION;
AUTHORIZING REPRESENTATION OF CERTAIN CLIENTS;

MAKING THE CHIEF ADMINISTRATIVE OFFICER OF THE APPELLATE PUBLIC DEFENDER SYSTEM THE CHIEF ADMINISTRATIVE OFFICER OF THE DIVISION; MODIFYING TENURE AND QUALIFICATIONS FOR THE CHIEF ADMINISTRATIVE OFFICER; MODIFYING AUTHORIZED ADDITIONAL PERSONNEL AND PROVIDING TENURE THEREFOR; STATING THAT APPELLATE PUBLIC DEFENDER ATTORNEYS ARE NOT REQUIRED TO APPEAR IN CERTAIN CIRCUMSTANCES; PROHIBITING CERTAIN APPEALS, WITH EXCEPTIONS; MODIFYING NUMBER OF CERTIFIED COPIES OF CERTAIN DOCUMENTS TO BE TRANSMITTED; PROVIDING FOR APPOINTMENT OF COUNSEL AFTER A CERTAIN DATE; CHANGING THE NAME OF THE OKLAHOMA APPELLATE PUBLIC DEFENDER SYSTEM REVOLVING FUND TO THE INDIGENT DEFENSE SYSTEM REVOLVING FUND; CHANGING NAME REFERENCES TO CONFORM WITH THIS ACT; AMENDING 21 O.S. 1981, SECTION 701.14, AS AMENDED BY SECTION 1, CHAPTER 105, O.S.L. 1985 (21 O.S. SUPP. 1990, SECTION 701.14), WHICH RELATES TO PAYMENT FOR CERTAIN DEFENSE COSTS; AMENDING 22 O.S. 1981, SECTION 464, AS AMENDED BY SECTION 1, CHAPTER 232, O.S.L. 1985 AND SECTION 2, CHAPTER 232, O.S.L. 1985 (22 O.S. SUPP. 1990, SECTIONS 464 AND 1176), WHICH RELATE TO CRIMINAL PROCEDURE; MODIFYING SOURCE OF CERTAIN PAYMENTS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 22 O.S. 1981, Section 1355, as amended by Section 3, Chapter 253, O.S.L. 1988 (22 O.S. Supp. 1990, Section 1355), is amended to read as follows:

Section 1355. A. Sections 1355 through 1377 of this title and Sections 3 through 14 of this act shall be known and may be cited as the "Indigent Defense Act".

B. The Oklahoma Constitution ensures that all people shall have the right to the effective assistance of counsel. The inability to obtain this assured right because an economic barrier exists, destroys the ability to govern fairly. All the people of this state are responsible for the assurance of constitutional rights and the burden cannot fall upon one branch, or one class of the citizens, but must be borne by all.

C. The Legislature hereby declares that in order to ensure equal access to the system of justice in this state in all instances where criminal, juvenile, mental health, or grand jury actions are pending, under investigation, or on appeal an attorney shall be available without regard to the financial position of the individual in need of representation.

D. The Oklahoma ~~Public Defender~~ Indigent Defense System is hereby created. The Oklahoma ~~Public Defender~~ Indigent Defense System shall include the Oklahoma Appellate Public Defender ~~System~~ Division created pursuant to Section 1356 of this title, the Trial Public Defender Division created pursuant to Section 6 of this act, the Capital Litigation Division created pursuant to Section 11 of this act, and any other defender ~~systems~~ divisions or programs authorized by law after ~~July 1, 1988~~ July 1, 1992.

SECTION 2. AMENDATORY Section 4, Chapter 253, O.S.L. 1988 (22 O.S. Supp. 1990, Section 1355.1), is amended to read as follows:

Section 1355.1 There is hereby created the Oklahoma ~~Public Defender~~ Indigent Defense System Board. The Board shall govern the

Oklahoma ~~Public Defender~~ Indigent Defense System. The Board shall be composed of five (5) members appointed for five-year terms by the Governor with the advice and consent of the Senate. At least three members shall be attorneys licensed to practice law in the State of Oklahoma who have experience through the practice of law in the defense of persons accused of crimes. The Governor shall designate one Board member to serve as chair. No congressional district shall be represented by more than one member on the Board. No county shall be represented by more than one member. The Board shall meet at least once each quarter upon the call of the chair. Board members shall serve without compensation, but shall be reimbursed for their necessary travel expenses as provided by the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes. The terms of office for the initial appointees to the Board shall be as follows:

1. The term for Position One shall expire on July 1, 1989;
2. The term for Position Two shall expire on July 1, 1990;
3. The term for Position Three shall expire on July 1, 1991;
4. The term for Position Four shall expire on July 1, 1992; and
5. The term for Position Five shall expire on July 1, 1993.

A Board member shall be eligible for reappointment and shall continue in office until his successor has been appointed, qualified and confirmed by the Senate. The Board shall not be subject to the Oklahoma Sunset Law.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1355.2 of Title 22, unless there is created a duplication in numbering, reads as follows:

As used in the Indigent Defense Act:

1. "Board" means the Oklahoma Indigent Defense System Board;
2. "Executive Director" means the chief executive officer of the Oklahoma Indigent Defense System; and
3. "System" means the Oklahoma Indigent Defense System.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1355.3 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. The Board shall have the following powers and duties:

1. To establish policies for the indigent defense programs as provided by law;

2. To require annual reports of expenditures of funds, cases involved in, and status of such cases for the preceding fiscal year from each of the chief administrative officers of the respective indigent defense programs;

3. To approve a master budget for the System, which will be prepared and administered by the Executive Director;

4. To establish through written policies maximum caseloads for the programs assigned to the Board;

5. To require reduction of caseloads through reassignment of cases to private attorneys, as necessary;

6. To approve the sharing of office space, equipment, or personnel among the separate indigent defense programs;

7. To authorize the acceptance and expenditure of monies, gifts, grants, or services from any public or private source;

8. To authorize entering into contracts with individuals, educational institutions, or state or federal agencies;

9. To establish an equitable distribution plan for allocation of any funds or gifts received from public or private sources for indigent defense and distribute such funds in accordance with such plan; and

10. To appoint an advisory council made up of public defenders and indigent defense lawyers to discuss problems and hear recommendations concerning necessary research, minimum standards, educational needs, and other matters imperative to conducting Oklahoma criminal defense in a professional manner.

B. The Board shall make an annual report to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Oklahoma Supreme Court regarding the efforts of the Board to implement the purposes of the Indigent Defense Act.

C. The salaries of all employees of the Oklahoma Indigent Defense System shall be at least commensurate with the salaries of district attorney employees.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1355.4 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. The chief executive officer of the Oklahoma Indigent Defense System shall be the Executive Director, who shall be appointed by the Board and serve at the pleasure of the Board. The Executive Director shall be an attorney who has been licensed to practice law in this state for at least five (5) years preceding the appointment, with experience in the representation of persons accused or convicted of crimes.

B. The Executive Director shall perform administrative functions which serve the Board, and each of the divisions assigned to the Board.

C. The Executive Director shall have the following powers and duties:

1. To prepare and administer a master budget and to process claims for the System;

2. To take such actions as shall strengthen the criminal justice system in this state;

3. To provide a professional organization for the education, training, and coordination of technical efforts of all attorneys representing indigents;

4. To maintain and improve defense efficiency and effectiveness in guaranteeing effective representation for the indigent criminal defendant;

5. To employ such personnel as necessary to carry out the duties imposed upon the System by law;

6. To solicit and maintain a current list of attorneys licensed to practice law in this state who are willing to accept court appointments and who meet any other qualifications as set by the Board;

7. To solicit and maintain a separate list of persons eligible for appointment to capital cases, who meet the qualifications set by the Board;

8. To determine when appointment of counsel is needed in pro se applications for post-conviction relief, subject to the approval of the Board;

9. To establish policies for the appointment of counsel in post-conviction cases, subject to approval by the Board;

10. To convene regional or statewide conferences and training seminars for the purpose of implementing the provisions of the Indigent Defense Act;

11. To serve in an advisory capacity to the public defenders and indigent defense attorneys of the state;

12. To gather and disseminate information to public defenders relative to their official duties, including, but not limited to, changes in the law relative to their office; and

13. To recommend additional legislation necessary to upgrade the Oklahoma Indigent Defense System or to improve the justice system.

D. When an attorney has been appointed in accordance with the Indigent Defense Act, in any county, and needs investigative, expert, or other services, a request for compensation for such services shall be made to the Executive Director on a form provided

by the Executive Director. The Executive Director may authorize compensation at a reasonable hourly rate.

E. Each individual performing the services provided for in subsection D of this section shall be reimbursed for their necessary travel expenses as provided by the State Travel Reimbursement Act.

F. Requests for expenses not included in subsections D and E of this section shall require pre-approval by the Executive Director.

G. Any claim for services in excess of Three Thousand Dollars (\$3,000.00) shall require the approval of the Board.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1355.5 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Trial Public Defender Division. There shall be a trial public defender in each District Attorney District as established in Section 215.1 of Title 19 of the Oklahoma Statutes, except for those districts subject to the provisions of Section 138.1 of Title 19 of the Oklahoma Statutes and those districts in which none of the counties in the district elect to be included within a division.

B. The District Judges of each county shall determine whether or not the county shall be included in the appropriate trial public defender district, provided that the Board has determined it is financially feasible for the county to be included, and shall notify the Board in writing of such determination by January 2, 1992.

C. Once a county has been included in the system it shall not withdraw from participation in the Trial Public Defender Division.

D. Any county having previously been excluded from a trial public defender district may be included in the division the following fiscal year by written notification by the District Judges to the Board by August 15th of that fiscal year.

E. There shall be one trial public defender in each of the districts who shall serve as the chief administrative officer of that district. Trial public defenders shall be:

1. licensed to practice law in the State of Oklahoma;
2. experienced in the defense of criminal cases; and
3. licensed to practice law for at least four (4) years prior to appointment.

F. The trial public defenders shall serve at the pleasure of the Board, and shall continue in office until their successors take office.

G. Each district shall have as many assistant public defenders, investigators, research assistants, and support staff as necessary to represent indigent citizens, as determined by the Board. The trial public defender, serving as the chief administrative officer of the district, shall have the responsibility of hiring all assistants, investigators and support staff within the budget prescribed by the Board. All employees of each district shall serve at the pleasure of the district public defender for that district.

H. Any county which has chosen not to be included in a trial public defender district pursuant to subsection B of this section shall have all claims for attorney fees for defending indigents submitted to the Executive Director for payment from the Indigent Defense System Revolving Fund.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1355.6 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. All trial public defenders and their assistants shall have the responsibility of defending all indigents as determined by the district courts in this state in all felony, misdemeanor, juvenile, and mental health cases.

B. The trial public defender shall be appointed to represent any indigent witness called to testify in state grand jury proceedings.

C. The trial public defender may be appointed in post-conviction cases in accord with post-conviction policy, as approved by the Board.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1355.7 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. If a conflict of interest is deemed to exist by the trial public defender or a county public defender, the case may be reassigned to another trial public defender or to a private attorney.

B. Appointment of a private attorney in all counties of this state shall be from a list of attorneys willing to accept court appointments and who meet the qualifications established by the Board for such appointments.

C. Payment to such private attorneys shall be made from the Indigent Defense System Revolving Fund and shall be at the rates set forth in subsection C of Section 9, and subsection A of Section 14 of this act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1355.8 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. The trial public defender may select attorneys to handle indigent cases, from the list of attorneys who have volunteered to accept appointments and who meet the qualifications established by the Board for such appointments.

B. Payment to such attorneys shall be made from the budget of the appointing trial public defender.

C. In the event trial counsel is appointed by the court from the list of volunteer attorneys meeting the qualifications

established by the Board, in any case other than a capital case, said trial counsel shall be paid at the rate of Seventy-five Dollars (\$75.00) per hour. This rate of payment shall apply in counties within the Oklahoma Indigent Defense System and in counties not in the System.

D. Except as provided in subsection F of this section, total compensation for a case shall not exceed One Thousand Five Hundred Dollars (\$1,500.00) in the following cases:

1. juvenile cases;
2. mental health cases;
3. post-conviction cases; and
4. grand jury cases.

E. Except as provided in subsection F of this section, total compensation for a case shall not exceed Five Thousand Dollars (\$5,000.00) in felony cases.

F. The maximum statutory fees established in this section may be exceeded only upon a determination by the trial court that the case was an exceptional one which required an extraordinary amount of time to litigate, and that the request for extraordinary attorney fees is reasonable.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1355.9 of Title 22, unless there is created a duplication in numbering, reads as follows:

Each trial public defender shall establish one main office and as many satellite offices as necessary for the proper representation of all indigents in that district.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1355.10 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Capital Litigation Division which shall represent, as lead counsel, all indigents charged with

murder in the first degree unless the prosecutor agrees in writing not to seek the death penalty.

B. In addition, the trial court shall appoint the trial public defender or a local attorney from a list of attorneys who have volunteered for court appointments and who have met the qualifications established by the Board for such capital litigation cases.

C. In those counties subject to the provisions of Section 138.1 of Title 19 of the Oklahoma Statutes, if a conflict is determined to exist by the trial or county public defender between the trial or county public defender office and the defendant, the Capital Litigation Division shall represent the defendant. Such representation shall be in conjunction with local appointed counsel, whose name appears on the list for capital litigation referred to in subsection B of this section.

D. Should there be multiple conflicts, any indigent defendant not represented by the Capital Litigation Division or the trial or county public defender shall be represented by a trial public defender or county public defender from another district, or by a person or persons whose names appear on the list of attorneys for capital litigation referred to in subsection B of this section, or by both a public defender from another district and by a person or persons whose names appear on the list referred to in subsection B of this section.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1355.11 of Title 22, unless there is created a duplication in numbering, reads as follows:

The Board shall appoint a licensed attorney as the chief administrative officer of the Capital Litigation Division. This attorney shall have prior experience in defending capital cases, be licensed to practice law in this state, and have been licensed to practice law for a period of not less than four (4) years prior to

appointment. The chief administrative officer of the Capital Litigation Division shall serve at the pleasure of the Board, and shall continue in office until his successor takes office.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1355.12 of Title 22, unless there is created a duplication in numbering, reads as follows:

The chief administrative officer of the Capital Litigation Division shall hire as many assistant attorneys, investigators, research assistants, secretaries, and other personnel as necessary to properly represent those persons charged with capital murder. All employees of the Capital Litigation Division shall serve at the pleasure of the chief administrative officer of the Division.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1355.13 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. In all cases in every county of this state whenever the defendant is subject to the death penalty and attorneys other than public defenders are appointed, the Executive Director shall direct that the court-appointed attorneys be paid from the Indigent Defense System Revolving Fund. The fee shall be One Hundred Twenty-five Dollars (\$125.00) an hour for all reasonable services the attorneys may render.

B. An application for compensation shall be accompanied by an affidavit of the appointed attorney, detailing the hours spent on the case and the services rendered. The application shall also state that any amount awarded by the Executive Director shall be the sole source of compensation for the services provided. If other sources of compensation are also used, the other sources of compensation and amounts shall be specified in the application. There shall be no maximum amount of compensation in capital cases.

SECTION 15. AMENDATORY 22 O.S. 1981, Section 1356, as amended by Section 5, Chapter 253, O.S.L. 1988 (22 O.S. Supp. 1990, Section 1356), is amended to read as follows:

Section 1356. A. There is hereby created the Oklahoma Appellate Public Defender ~~System~~. ~~The Oklahoma Appellate Public Defender System~~ Division which shall consist of two ~~divisions~~ units.

B. The first ~~division~~ unit shall be designated as the Capital ~~Division Unit~~. The Capital ~~Division Unit~~ shall perfect all direct appeals and post-conviction proceedings in all state and federal courts for all capital cases assigned to the Oklahoma Appellate Public Defender ~~System~~ Division by Oklahoma district courts and all federal courts.

C. The second ~~division~~ unit shall be designated as the General ~~Division Unit~~. The General ~~Division Unit~~ shall perfect all other direct appeals to the Oklahoma Court of Criminal Appeals for the remaining cases assigned to the Oklahoma Appellate Public Defender ~~System~~ Division by the Oklahoma district courts.

D. The appellate public defender shall assign personnel to each of these ~~divisions~~ units subject to the approval of the ~~Oklahoma Public Defender System~~ Board.

E. The Oklahoma Appellate Public Defender Division also may represent the clients for whom the Division has been appointed, if such representation is related to the case for which the original appointment was made. Such representation may extend to this state or any other state court and to federal court.

~~B.~~ F. The chief administrative officer of the Oklahoma Appellate Public Defender ~~System~~ Division shall be the appellate public defender. The appellate public defender shall be appointed by and serve at the pleasure of the ~~Oklahoma Public Defender System~~ Board ~~for a four-year term and shall be removed by the Board only for cause~~. The appellate public defender shall be an attorney licensed to practice law in this state, have had prior experience in

~~defending criminal cases, and have been licensed to practice law for at least four (4) years. The Oklahoma Public Defender System Board is hereby authorized to establish additional requirements for this position. The Oklahoma Public Defender System Board shall establish policies for the Oklahoma Appellate Public Defender System and the duties of the appellate public defender, and shall approve the budget for the System within the funds authorized by the Legislature.~~

SECTION 16. AMENDATORY 22 O.S. 1981, Section 1357, as amended by Section 6, Chapter 253, O.S.L. 1988 (22 O.S. Supp. 1990, Section 1357), is amended to read as follows:

Section 1357. A. The appellate public defender shall appoint an appropriate number of deputy appellate public defenders, assistant appellate public defenders, secretaries, investigators, ~~law student~~ administrators, research assistants, and other personnel as ~~authorized by the Oklahoma Public Defender System Board.~~

B. ~~The appellate public defender shall appoint a director of administration with the approval of the Board. The director of administration shall prepare and administer the budget of the Oklahoma Appellate Public Defender System and perform other administrative duties assigned by the appellate public defender. The director of administration shall act under the supervision of the appellate public defender.~~ All personnel of the Oklahoma Appellate Public Defender Division shall serve at the pleasure of the appellate public defender.

SECTION 17. AMENDATORY 22 O.S. 1981, Section 1360, as amended by Section 2, Chapter 153, O.S.L. 1987 (22 O.S. Supp. 1990, Section 1360), is amended to read as follows:

Section 1360. A. The Oklahoma Appellate Public Defender ~~System is prohibited from representing indigents for post-conviction relief in the district courts of this state, except in capital cases. The~~

~~System is also prohibited from appearing~~ Division may represent indigents in post-conviction relief in all capital cases.

B. In noncapital cases, the Appellate Public Defender Division may represent indigents for post-conviction relief, if the representation is related to another case in which the Division has been appointed, or if representation is requested by the Executive Director pursuant to policies approved by the Board.

C. No appellate public defender attorney shall be required to appear in the district courts of this state on issues of appellate counsel appointment and requests for exhibits, records and transcripts.

~~B. The~~ After a mandate has been rendered by the Oklahoma Court of Criminal Appeals in any case on direct appeal, the Oklahoma Appellate Public Defender System Division is prohibited from appealing or representing any indigent in any matter in any United States court that case in any further proceedings in either a state or federal court, except in capital cases and in cases provided for in subsection B of this section. In such capital cases the ~~System Division~~ shall perfect ~~the petition~~ all petitions for writ of certiorari ~~on direct appeal~~ to the United States Supreme Court and represent such appellants or appellees, as the case may be, in any appearance ~~on direct appeal~~ before that Court. In addition, ~~members of the System's staff~~ attorneys of the Division may represent indigents who have been sentenced to death in federal habeas corpus proceedings in any United States Court when ~~they are~~ the Division is appointed and adequate federal funds for such representation are designated by ~~that Court~~ the federal court system for that purpose. ~~Said federal funds shall recompense attorneys, investigators and other staff members for services rendered and shall include per diem and reimbursement for reasonable mileage and other reasonable expenses.~~

SECTION 18. AMENDATORY 22 O.S. 1981, Section 1362, as amended by Section 1, Chapter 248, O.S.L. 1986 (22 O.S. Supp. 1990, Section 1362), is amended to read as follows:

Section 1362. The district court clerks for each county shall transmit one original and two certified copy copies of the original record for each appeal authorized by ~~this act~~ the Indigent Defense Act directly to the appellate public defender as soon as possible after the filing of the notice of intent to appeal and the order appointing the appellate public defender. One original and two certified copy copies of ~~the transcript~~ all transcripts, records and exhibits designated shall be transmitted for each authorized appeal by the district court clerk to the appellate public defender within the time limits as established by the Rules of the Court of Criminal Appeals and applicable statutes. The appellate public defender is hereby authorized to supplement the designation of record as filed by the trial counsel by filing a written supplemental designation of record. When a written supplemental designation of record is filed by the appellate public defender, it shall be the duty of the court clerk or the court reporter, as appropriate, to include the supplementary materials as part of the record on appeal.

SECTION 19. AMENDATORY 22 O.S. 1981, Section 1366, as amended by Section 7, Chapter 253, O.S.L. 1988 (22 O.S. Supp. 1990, Section 1366), is amended to read as follows:

Section 1366. The appointment of counsel ~~for appeal under the provisions of this act~~ pursuant to the provisions of the Indigent Defense Act, in addition to appointments of the Oklahoma Appellate Public Defender Division, shall commence for indigent criminal defendants ~~adjudged guilty on or subsequent to the effective date of this act~~ July 1, 1992.

SECTION 20. AMENDATORY Section 8, Chapter 253, O.S.L. 1988 (22 O.S. Supp. 1990, Section 1368), is amended to read as follows:

Section 1368. There is hereby created in the State Treasury a revolving fund for the Oklahoma ~~Appellate Public Defender~~ Indigent Defense System to be designated the "~~Oklahoma Appellate Public Defender~~ Indigent Defense System Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of federal funds, grants, gifts and such other funds as are provided by law. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the ~~Oklahoma Appellate Public Defender System~~ Board to defray expenses relating to the performance of duties imposed upon the Oklahoma ~~Appellate Public Defender~~ Indigent Defense System by law. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 21. AMENDATORY 21 O.S. 1981, Section 701.14, as amended by Section 1, Chapter 105, O.S.L. 1985 (21 O.S. Supp. 1990, Section 701.14), is amended to read as follows:

Section 701.14 In all cases, wherein the defendant is subject to the death penalty triable in the State of Oklahoma, where it is satisfactorily shown to the trial court that the defendant has no means and is unable to employ counsel, the court shall, in all such cases, where counsel is appointed and assigned for defense, allow and direct to be paid ~~from the State Judicial Fund~~ by the Indigent Defense System Board, a reasonable and just compensation to the attorney so assigned for such services as they may render such compensation being allowable in any court of record. Provided, however, that such attorney shall not be paid a sum to exceed the following amounts:

For services rendered prior to and in
preparation for preliminary hearing \$200.00
For services rendered at preliminary hearing \$500.00
For services rendered from the time the

defendant is bound over on the charge
of murder in the first degree through
final disposition in the trial court \$2,500.00

No application for compensation shall be heard by the trial court prior to final trial disposition, unless the appointed attorney has been allowed for good cause to permanently withdraw from the case by order of the court. An application for compensation shall be accompanied by an affidavit of the appointed attorney which shall state that any amount which may be awarded by the trial court will be the sole source of compensation for the services provided, or if not, the affidavit shall state the other sources of compensation and the amounts thereof.

SECTION 22. AMENDATORY 22 O.S. 1981, Section 464, as amended by Section 1, Chapter 232, O.S.L. 1985 (22 O.S. Supp. 1990, Section 464), is amended to read as follows:

Section 464. A. If the defendant appear for arraignment, without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel. If he desires and is financially unable to employ counsel, the court must assign counsel to defend him. The attorney so appointed shall represent said person in the examining magistrate court until he is discharged or bound over by said court and shall receive such compensation as is ordered by the court, not to exceed One Hundred Dollars (\$100.00) as approved by a judge of the district court. Provided, that in all counties of the state having a city therein of over one hundred thousand (100,000) and less than two hundred twenty-five thousand (225,000) population, according to the last preceding regular Federal Decennial Census, a majority of the district judges, sitting regularly in said county, shall appoint not to exceed two duly qualified and practicing attorneys to act as counsel in all such cases, who shall serve in such capacity during the tenure of the judges making such

appointment, or until sooner termination thereof by a majority vote of said district judges. Each of the attorneys so appointed shall receive for such services the sum of Two Hundred Dollars (\$200.00) per month, One Hundred Dollars (\$100.00) thereof to be paid by the county in which said appointment is made, and One Hundred Dollars (\$100.00) thereof to be paid out of the court fund of said county, together with an amount not to exceed Fifty Dollars (\$50.00) each per month, out of the court fund, in payment of expenses incurred for transportation, communications, investigations, transcripts and secretarial hire, and shall be precluded from appearing as counsel in any and all other criminal actions.

B. When a person is charged with a criminal offense where such person faces the possibility of a death sentence, the court may, upon application of the defendant demonstrating that an expert witness is necessary to prepare the defense and that the defendant is financially unable to pay for such services, provide access to such witnesses and other services as are reasonably necessary to permit the defendant to adequately prepare and present his defense at trial and at any subsequent proceeding by authorizing counsel to obtain such services. The court will rule on the reasonableness of the request for expert witnesses and other services by the defendant. Compensation for such expert witnesses and other services shall be paid ~~from the State Judicial Fund~~ by the Indigent Defense System Board in a sum not to exceed Seven Hundred Fifty Dollars (\$750.00) per defendant, the specific amount to be determined by the trial judge, subject to the approval of the Chief Justice. Extraordinary expenses in excess of Seven Hundred Fifty Dollars (\$750.00) per defendant may be compensated upon application to and approval by the Chief Justice according to rules promulgated by the Supreme Court. No application for compensation of such expert witnesses and other services shall be heard by the trial court prior to final trial disposition. An application for compensation must

include an itemized statement of the services provided and shall be accompanied by an affidavit of the person who provided the services which shall state that any amount which may be awarded by the trial court will be the sole source of compensation for the services provided, or if not, the affidavit shall state the other sources of compensation and the amounts thereof.

SECTION 23. AMENDATORY Section 2, Chapter 232, O.S.L. 1985 (22 O.S. Supp. 1990, Section 1176), is amended to read as follows:

Section 1176. A. If the defendant intends to raise the question of mental illness or insanity at the time of the offense, the defendant shall file an application with the court at least twenty (20) days before trial. The procedure to be followed for review of such an application will be the same as provided in Section 1175.3 of Title 22 of the Oklahoma Statutes.

B. If the court finds that the defendant's sanity at the time of the offense is to be a significant factor in his defense at trial and that the defendant is financially unable to obtain the services of a psychiatrist, the court shall provide the defendant with access to a psychiatrist by authorizing counsel to obtain the services of a psychiatrist to conduct an appropriate examination and assist in evaluation, preparation and presentation of the defense.

Compensation for such services shall be paid ~~from the State Judicial Fund~~ by the Indigent Defense System Board as provided in subsection B of Section 464 of Title 22 of the Oklahoma Statutes.

SECTION 24. This act shall become effective July 1, 1992.

43-1-6116 EN