

ENGROSSED HOUSE  
BILL NO. 2065

BY: STEIDLEY

( INDIGENT DEFENSE - AMENDING SEVEN SECTIONS IN  
TITLE 22 - INDIGENT DEFENSE ACT - AMENDING 19  
O.S. 1991, SECTION 138.4 -

EMERGENCY )

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 1355.4, is amended to read as follows:

Section 1355.4 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 indigent criminal defendants;

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 indigent defenders and defense attorneys who represent indigents pursuant to contract or who volunteer to represent indigents of the state;

12. To gather and disseminate information to indigent 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.

H. In counties subject to the provisions of Section 138.1 of Title 19 of the Oklahoma Statutes, expert witness compensation for indigent defense shall be paid by the court fund pursuant to procedures established by the governing board of the court fund.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 1355.5, is amended to read as follows:

Section 1355.5 A. Effective July 1, 1992, for each Judicial Administrative District, except the District for Tulsa-Pawnee counties, the Board shall provide for indigent defense in one of the following manners:

1. By creation of an indigent defender district with an office of trial indigent defender pursuant to this section;

2. By contracting with an attorney or attorneys in private practice to represent indigents pursuant to Section ~~9~~ 1355.8 of this ~~act~~ title; or

3. By providing for court appointment from a list of attorneys in private practice who have informed the Board that they are volunteering to represent indigents, pursuant to Section ~~9~~ 1355.8 of this ~~act~~ title. The list for each Judicial Administrative District

shall be compiled by the Board and provided to the courts in each District.

The provisions of this section shall not apply to those counties subject to the provisions of Section 138.1 of Title 19 of the Oklahoma Statutes and said counties shall not be included in the indigent defense program established for any Judicial Administrative District. For purposes of indigent defense only, Pawnee county shall be included in the Northeastern Judicial Administrative District.

B. There is hereby created the Trial Indigent Defender Division to be comprised of each Judicial Administrative District in which an office of trial indigent defender is established. The Executive Director shall serve as the chief administrative officer of the Division.

C. The Board shall determine whether or not a Judicial Administrative District shall be included in a trial indigent defender district, based on the findings of the Board as to whether it is financially feasible for the Judicial Administrative District to be included in an indigent defender district, and on recommendations received from a panel comprised of the Presiding Judge of the Judicial Administrative District, and two (2) attorneys selected by the Board and licensed to practice law in this state, who are experienced in defending criminal cases and are members of bar associations of counties within the Judicial Administrative District who shall serve without compensation; provided if a district is comprised of more than one county, the attorneys shall not be residents of the same county in which the Presiding Judge resides and if the district is comprised of more than two counties, the attorneys shall not be residents of the same county. The attorneys shall serve for two-year terms and until their successors are appointed. Vacancies on the panel shall be filled in the same manner as the original appointments; provided, if a Judicial

Administrative District is comprised of more than three counties, the attorneys appointed by the panel shall not be residents of either of the counties in which their predecessors reside or of the county in which the Presiding Judge resides.

The Board shall notify the Presiding Judge of each Judicial Administrative District in writing of such determination by January 2, 1992.

D. Once a Judicial Administrative District has been included in an indigent defender district it shall not be withdrawn from participation in the Trial Indigent Defender Division, unless the Board determines that another method of providing for defense of indigents should be used. The panel provided for in subsection C of this section may make recommendations for proposed changes to the Board.

E. Any Judicial Administrative District having previously been excluded from a trial indigent defender district may be placed in such a district the following fiscal year by written notification by the Board to the Presiding Judge of the Judicial Administrative District by August 15th of that fiscal year.

F. There shall be one trial indigent defender in each of the indigent defender districts created by the Board and said person shall serve as the chief administrative officer of that district. There shall not be a trial indigent defender in any Judicial Administrative District that is not placed in a trial indigent defender district. Trial indigent 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.

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

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

I. Any Judicial Administrative District which is not included in a trial indigent defender district 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 3. AMENDATORY 22 O.S. 1991, Section 1355.6, is amended to read as follows:

Section 1355.6 A. The office of trial indigent defender of an indigent defender district shall have the responsibility of defending all indigents within the district as determined by the district courts in this state in all felony, misdemeanor, juvenile, guardianship~~7~~ and mental health cases~~7~~. In addition the office of trial indigent defender of an indigent defender district shall have the responsibility of defending all indigents within the district as determined by the district courts in this state in traffic cases punishable by incarceration if incarceration for a conviction is likely to result, and all contempt proceedings punishable by incarceration if incarceration is likely to result.

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

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

SECTION 4. AMENDATORY 22 O.S. 1991, Section 1355.7, is amended to read as follows:

Section 1355.7 A. If the court determines that a conflict of interest exists between a defendant and the office of trial indigent defender, the case may be reassigned by the court to another trial indigent defender, a county indigent defender, or to a private attorney with whom the Board has a contract for indigent defense or who is included in a list of volunteers as provided in subsection D of this section.

B. If the court determines that a conflict of interest exists between a defendant and an attorney who represents indigents either pursuant to a contract with the Board or as a volunteer, the case may be reassigned by the court to a trial indigent defender, a county indigent defender, another attorney who represents indigents pursuant to a contract with the Board, or another private attorney who has agreed to accept such appointments pursuant to subsection D of this section.

C. In those counties subject to the provisions of Section 138.1 of Title 19 of the Oklahoma Statutes, if the court determines that a conflict of interest exists between a defendant and the county indigent defender, the case may be reassigned by the court to another county indigent defender, a trial indigent defender, an attorney who represents indigents pursuant to contract, or a private attorney who has agreed to accept such appointments pursuant to subsection D of this section.

D. 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.

E. Payment to such private attorneys shall be made from the Indigent Defense System Revolving Fund and shall be at the rates set forth in Section ~~9~~ 1355.8 and Section ~~14~~ 1355.13 of this ~~act~~ title

or at rates established by contract between the Board and the private attorney if said rates are lower than the rates provided in Sections 1355.8 and 1355.13 of this title and shall be subject to the statutory limits established in Sections ~~9~~ 1355.8 and ~~14~~ 1355.13 of this ~~act~~ title.

SECTION 5. AMENDATORY 22 O.S. 1991, Section 1355.8, is amended to read as follows:

Section 1355.8 A. The trial indigent 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 indigent defender.

C. In every Judicial Administrative District which does not have an office of trial indigent defender or is not served by a county indigent defender pursuant to Section 138.1 of Title 19 of the Oklahoma Statutes, the Board shall award a contract to provide legal representation to indigent criminal defendants and others for whom representation is required by the Constitution and laws of this state.

D. The contract shall be awarded in June of each year for the next succeeding fiscal year.

E. The Board shall cause to be published in a newspaper of general circulation in the Judicial Administrative District and in the Oklahoma Bar Journal notice that bids will be accepted to provide indigent legal services. The notice required by this subsection shall include the following:

1. The date, time and place where bids will be opened;
2. The qualifications required of those desiring to enter a bid;
3. The period covered by the contract; and
4. A general description of the services required.

F. Only members in good standing of the Oklahoma Bar Association who have an office in the Judicial Administrative District shall be eligible to enter bids pursuant to this section. In addition, all bids must be accompanied by proof of professional liability insurance coverage.

G. The Board shall accept the lowest and best bid received from a qualified bidder or bidders, if the Board determines that more than one attorney shall be hired:

1. In the event that only one qualified bid is received, the Board shall accept the bid.

2. In the event that no qualified bids are received, the Board shall cause to be created a list of qualified volunteer attorneys, who provide proof of professional liability insurance coverage, to provide representation to indigent criminal defendants and others for whom representation is required by the Constitution and laws of this state. Compensation for such attorneys shall be as provided in subsections H through K of this section.

3. In the event that no attorneys agree to serve as volunteer attorneys pursuant to paragraph 2 of this subsection, the Board shall provide for representation for indigent criminal defendants and others for whom representation is required by the Constitution and laws of this state by an office of trial indigent defender of another Judicial Administrative District or by attorneys providing indigent defense pursuant to a contract with the Board for another Judicial Administrative District.

4. In no event shall an attorney<sup>7</sup> who has not voluntarily agreed to provide representation to indigent criminal defendants and others for whom representation is required by the Constitution and laws of this state<sup>7</sup> be appointed to represent an indigent person.

H. 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 Seventy-five Dollars (\$75.00) per hour, unless the volunteer attorney has agreed pursuant to contract to provide representation at a lesser rate. This rate of payment shall apply in counties within the Oklahoma Indigent Defense System and in counties not in the System.

I. Except as provided in subsection K 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;
4. Grand jury cases;
5. Traffic cases punishable by incarceration;
6. Misdemeanor cases;
7. Guardianship cases; and
8. Contempt proceedings punishable by incarceration.

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

K. 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 6. AMENDATORY 22 O.S. 1991, Section 1355.10, is amended to read as follows:

Section 1355.10 A. There is hereby created the Capital Litigation Division which shall represent, as lead counsel, all indigents, except indigents in counties subject to the provisions of Section 138.1 of Title 19 of the Oklahoma Statutes, charged with murder in the first degree unless the prosecutor agrees in writing not to seek the death penalty. Provided, the Capital Litigation

Division may enter into agreements with county indigent defenders to provide assistance to county indigent defender programs or to obtain assistance from county indigent defender programs.

B. In addition, the trial court may appoint a local attorney from a list, compiled by the Board, of attorneys who have volunteered for court appointments and who have met the qualifications established by the Board for such capital litigation cases or beginning July 1, 1992, the trial indigent defender.

C. In those counties subject to the provisions of Section 138.1 of Title 19 of the Oklahoma Statutes, in first-degree murder cases in which the prosecutor is seeking the death penalty, if a conflict is determined to exist by the court between the county indigent defender office and the defendant, the Capital Litigation Division shall represent the defendant. Such representation ~~shall~~ may 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 county indigent defender, or beginning July 1, 1992, the trial indigent defender, shall be represented by a county indigent 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 beginning July 1, 1992, by a trial indigent defender from another district, or by both ~~a county an~~ an indigent defender, ~~or beginning July 1, 1992, a trial indigent 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 7. AMENDATORY 22 O.S. 1991, Section 1356, is amended to read as follows:

Section 1356. A. There is hereby created the Oklahoma Appellate Indigent Defender Division which shall consist of two units.

B. The first unit shall be designated as the Capital Unit. The Capital 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 Indigent Defender Division by Oklahoma district courts and all federal courts.

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

D. The appellate indigent defender shall assign personnel to each of these units subject to the approval of the Board.

E. The Oklahoma Appellate Indigent Defender Division also may represent the clients for whom the Division has been appointed in other proceedings, if such representation is related to the case for which the original appointment was made and if not otherwise prohibited by the Indigent Defense Act. The provisions of this section shall not authorize the Oklahoma Appellate Indigent Defender Division to represent clients in civil rights actions brought pursuant to state or federal law in any court or represent clients in any proceeding unless duly appointed as provided by this act.

F. The chief administrative officer of the Oklahoma Appellate Indigent Defender Division shall be the appellate indigent defender. The appellate indigent defender shall be appointed by and serve at the pleasure of the Board. The appellate indigent 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.

SECTION 8. AMENDATORY 19 O.S. 1991, Section 138.4, is amended to read as follows:

Section 138.4 In counties subject to the provisions of Sections 138.1 through 138.6 of this act title, wherein the district judges have determined, in accordance with Section 138.3 of this title that:

(a) the protection of the unfortunate and poverty-stricken defendants subject to criminal action in such county require the employment of a county indigent defender on a full-time basis, such person so appointed shall not engage in any practice of law except in the performance of his duties as county indigent defender, and shall receive a salary commensurate with the salary received by the district attorney in said district, payable monthly, from the court fund of such county, provided such salaries shall not apply to counties of less than two hundred thousand (200,000) population; provided that such judges after determining that additional assistance is required by the county indigent defender to properly fulfill the duties of his office may authorize the employment of and appoint assistant defenders on a full-time basis, which assistants shall be under the same restrictions as to the practice of law as the county indigent defender of such county, and each shall receive a salary commensurate with the salaries of assistant district attorneys in their districts, payable monthly, out of the court fund of the county as determined and fixed by such judges;

(b) conditions do not require the employment of a county indigent defender on a full-time basis, or that the protection of the unfortunate and poverty-stricken defendants subject to criminal action in such county may be adequately provided by the employment of one part-time county indigent defender, or one part-time county indigent defender and one or more part-time assistant county indigent defenders, the persons so appointed may engage in any practice of law which does not conflict with the duties of the

office of county indigent defender; and the salary of such county indigent defender or assistant county indigent defenders shall be paid out of the court fund of the county in an amount as determined and fixed by the district judges and approved by the county commissioners of such county, but in any event shall not exceed Seven Thousand Two Hundred Dollars (\$7,200.00) per annum, payable monthly;

(c) conditions require that the office of county indigent defender be authorized to contract with attorneys to represent indigents, the office of county indigent defender may enter into such contracts with attorneys who are licensed to practice law in this state and who have volunteered to accept such appointments; provided the rate of compensation for such attorneys shall not exceed the limits provided in Sections 1355.8 and 1355.13 of Title 22 of the Oklahoma Statutes.

SECTION 9. This act shall become effective July 1, 1992.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 3rd day of March, 1992.

Speaker of the House of Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1992.

President of the Senate