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ENGR. S. B. NO. 867

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ENGROSSED SENATE

BILL NO. 867

BY: MICKLE of the SENATE

and

STEIDLEY of the HOUSE

[INDIGENT DEFENSE - AMENDING SECTIONS IN TITLES 20,
22 AND 28 - RECEIPTS AND DISBURSEMENTS - MODIFYING
STATUTORY REFERENCES - NONCODIFICATION -
EMERGENCY]

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

SECTION 2. AMENDATORY 20 O.S. 1991, Section 1307, is amended to read as follows:

Section 1307. a. Within thirty (30) days after the end of each quarter of every calendar year, the court clerk of each county shall report to the Supreme Court, in such manner as prescribed by the Supreme Court, the receipts that have been deposited in the court fund and the disbursements therefrom for the preceding quarter of the year and the total amount in the fund at the end of the quarter. Ten percent (10%) of the amount collected in the court fund ~~minus any statutory transfers to the Indigent Defense System Revolving Fund~~ shall be transferred to the State Judicial Retirement Fund at the end of each quarter.

b. In the report for the last quarter of every fiscal year, the court clerk shall, in addition to other information required, submit the following data: (1) the gross receipts to the court fund during the entire last fiscal year, (2) the total amount of expenses paid during the entire last fiscal year, including bond and interest expense as well as payments to the county general fund ~~and~~, (3) the total amount of money transferred, and to be transferred, to the State Judicial Fund and the State Judicial Retirement Fund for the entire last fiscal year as set forth in Section 1308 of this title and (4) the total amount of money paid to the State Treasurer and placed to the credit of the General Revenue Fund of the State Treasury.

SECTION 3. AMENDATORY 20 O.S. 1991, Section 1308 (Section 29, Chapter 238, O.S.L. 1991), is amended to read as follows:

Section 1308. At the time the quarterly report required by Section 1307 of this title is made, the court clerk must transmit to the Supreme Court for deposit in the State Judicial Retirement Fund, ten percent (10%) of the amount collected in the court fund for the quarter ~~minus any statutory transfers to the Indigent Defense System Revolving Fund~~ and must also transmit for deposit in the State Judicial Fund the amount by which the receipts deposited in the court fund for the quarter, including the interest earned on said court fund, exceeds the expenses for said quarter, provided the court clerk shall retain from said excess amount a sum equal to twenty percent (20%) of the expenses for said quarter. The percentage of the expenses retained, as herein provided, shall be regarded as an item of receipt to the court fund during the quarter in which it was retained. Within thirty (30) days of the end of each fiscal year, the court clerk, in addition to the other amounts due hereunder, shall transmit to the Supreme Court for deposit in the State Judicial Fund an amount equal to the gross receipts for

the entire past fiscal year less the total amount of expenses, as defined in subsection b of Section 1307 of this title, and less the four quarterly transfers made for the past fiscal year.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 1355.5, is amended to read as follows:

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 of this act; 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 of this act. 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 and said person shall serve as the chief administrative officer of that 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~~ budget of the Trial Indigent Defender Division of the Oklahoma Indigent Defense System except as provided in subsections B and C of Section 4 of this act.

SECTION 5. 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. If the conflict of interest is between a defendant and an attorney who represents indigents pursuant to a contract with the Board and the case is reassigned by the trial court to a private attorney who has agreed to accept such appointments pursuant to subsection D of this section, payment to such trial attorney shall be made from the attorney who represents indigents pursuant to a contract with the Board.

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. If the case is reassigned to a private attorney who has agreed to accept such appointments pursuant to subsection D of this section, payment to such private attorney shall be made from the office of the county indigent defender.

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~~ Except as provided in subsections B and C of this section, payment to such private attorneys shall be made from the ~~Indigent Defense System Revolving Fund~~ Oklahoma Indigent Defense System and shall be at the rates set forth in ~~Section 9 and Section 14 of this act~~ Sections 1355.8 and 1355.13 of this title and shall be subject to the statutory limits established in Sections ~~9 and 14~~ 1355.8 and 1355.13 of this ~~act~~ title.

SECTION 6. AMENDATORY 22 O.S. 1991, Section 1355.13, is amended to read as follows:

Section 1355.13 A. Except for counties subject to the provisions of Section 138.1 of Title 19 of the Oklahoma Statutes, in all cases in every county of this state whenever the defendant is subject to the death penalty and attorneys other than attorneys of the Capital Litigation Division are appointed, the Executive Director shall direct that the court-appointed attorneys be paid from the ~~Indigent Defense System Revolving Fund~~ budget of the Capital Litigation Division of the Indigent Defense System. The fee shall be One Hundred Twenty-five Dollars (\$125.00) an hour for all reasonable services the attorneys may render. Except as provided in subsection C of this section, total compensation for a capital case shall not exceed Twenty Thousand Dollars (\$20,000.00).

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 if 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.~~

C. The maximum statutory fee 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 7. AMENDATORY 22 O.S. 1991, Section 1355.14, is amended to read as follows:

Section 1355.14 The court may order any person represented by a trial indigent defender, a county indigent defender, the Capital Litigation Division, the Oklahoma Indigent Defender Division, the Oklahoma Appellate Indigent Defender Division, or a defense attorney who contracts or volunteers to represent indigents pursuant to the provisions of the Indigent Defense Act, to pay the costs for representation in total or in installments and, in the case of installment payments, set the amount and due date of each installment, after a judicial determination that the person is financially able to pay such costs.

Said fees shall be collected by the court clerk ~~and deposited in~~ and paid to the State Treasurer and placed to the credit of the ~~Indigent Defense System Revolving Fund~~ General Revenue Fund of the State Treasury except fees collected for representation by a county indigent defender shall be deposited in the court fund.

The Supreme Court and the Court of Criminal Appeals shall implement procedures and rules for methods of determining the solvency of any such person and procedures and rules for methods of payment. The procedures and rules shall be distributed to all district courts and municipal courts by the Administrative Director of the Courts.

SECTION 8. AMENDATORY 28 O.S. 1991, Section 153, is amended to read as follows:

Section 153. The clerks of the courts shall collect as costs in every criminal case for each offense of which the defendant is convicted, irrespective of whether or not the sentence is deferred, the following flat charges and no more, except for charges otherwise provided for by law, which fee shall cover docketing of the case, filing of all papers, issuance of process, warrants, orders, and other services to date of judgment:

For each defendant convicted of
a misdemeanor, including
violation of any traffic
law, other than for driving
under the influence of alcohol
or other intoxicating substance,
whether charged
individually or conjointly
with others \$70.00

For each defendant convicted of
a felony, other than for driving
under the influence of alcohol or
other intoxicating substance,
whether charged
individually or conjointly
with others \$90.00

For each defendant convicted of
the misdemeanor of driving under
the influence of alcohol or other
intoxicating substance, whether
charged individually or
conjointly with others \$170.00

For each defendant convicted of the
felony of driving under the influence
of alcohol or other intoxicating

substance, whether charged individually
 or conjointly with others \$170.00
 For the services of a court reporter at
 each trial held in the case \$20.00
 For each time a jury is requested \$30.00
 A sheriff's fee for serving or
 endeavoring to serve each
 writ, warrant, order,
 process, command, or
 notice or pursuing any
 fugitive from justice \$20.00 or
 mileage as established
 by the Oklahoma
 Statutes, whichever
 is greater.

Prior to conviction, parties in criminal cases shall not be required to pay, advance, or post security for the issuance or service of process to obtain compulsory attendance of witnesses. These fees shall be deposited into the court fund except that the sheriff's fee provided for in this section and the amount provided for in Section 153.2 of this title, when collected, shall be transferred to the Sheriff's Service Fee Account, created pursuant to the provisions of Section 514.1 of Title 19 of the Oklahoma Statutes, of the sheriff in the county in which service is made or attempted. Thirteen Dollars (\$13.00) of the fee collected for every criminal case for each offense of which the defendant is convicted, irrespective of whether or not the sentence is deferred, shall be ~~dedicated to~~ paid to the State Treasurer and placed to the credit of the Indigent Defense System Revolving Fund General Revenue Fund of the State Treasury.

SECTION 9. AMENDATORY 28 O.S. 1991, Section 153.1, is amended to read as follows:

Section 153.1 In any case in which a defendant is charged with driving under the influence of alcohol or other intoxicating substance within a municipality with a municipal court other than a court of record, one-half (1/2) of the costs charged in said case as provided for in Section 153 of Title 28 of the Oklahoma Statutes, after the first Thirteen Dollars (\$13.00) which is ~~dedicated to~~ paid to the State Treasurer and placed to the credit of the Indigent Defense System Revolving Fund General Revenue Fund of the State Treasury has been subtracted, shall be paid to the municipality to be used to defer the cost of such prosecution to the municipality if the arresting officer was an employee of the municipality's law enforcement agency.

SECTION 10. AMENDATORY 28 O.S. 1991, Section 162, is amended to read as follows:

Section 162. A. The clerks of the courts shall collect as costs in every juvenile delinquency, child in need of supervision, child in need of treatment, or deprived case in which the juvenile is adjudicated, irrespective of whether or not the sentence is deferred, or in every such case in which a petition is filed at the demand of the parents of a juvenile and said petition is subsequently dismissed prior to adjudication at said parents' request, the following flat charge and no more, except for the charges provided for in this section, which fee shall cover docketing of the case, filing of all papers, issuance of process, warrants and orders, and other services to date of judgment:

For each case where one or more juveniles are	
adjudicated deprived.....	\$50.00
For each juvenile who is certified to stand	
trial as an adult	\$75.00
In each juvenile case wherein parental rights	
are terminated.....	\$50.00
For each juvenile adjudicated in need of	

Supervision or in need of
treatment.....\$50.00

For each juvenile adjudicated for an offense
which would be a misdemeanor if committed
by an adult, including violation of any
traffic law, whether charged
individually or conjointly with others.....\$50.00

For each juvenile adjudicated for an offense
which would be a felony if committed by an
adult, whether charged individually or
conjointly with others.....\$75.00

For the services of a court reporter at each
trial held in the case.....\$20.00

When a jury is requested.....\$30.00

A sheriff's fee for serving or
endeavoring to serve all writs,
warrants, orders, process, commands,
or notices or pursuing any fugitive
from justice.....\$20.00 or mileage as established
by Oklahoma Statutes, whichever
is greater.

B. Such costs shall be levied against the juvenile, the parent,
or both, but shall not be levied against the legal guardian or any
state or private agency having custody of any juvenile subject to
such proceedings.

C. Prior to adjudication, parties in juvenile delinquency,
child in need of supervision, child in need of treatment, and
deprived cases shall not be required to pay, advance, or post
security for the issuance or service of process to obtain compulsory
attendance of witnesses. These fees shall be deposited into the
court fund, except the sheriff's fee, when collected, shall be

transferred to the general fund of the county in which service is made or attempted to be made.

D. The clerk of the district court shall charge the sum of Thirty Dollars (\$30.00) for preparing, assembling, indexing, and transmitting the record for appellate review. This fee shall be paid by the party taking the appeal and shall be entered as costs in the action. If more than one party to the action shall prosecute an appeal from the same judgment or order, the fee shall be paid by the party whose petition in error is determined by the district court or by the appellate court to commence the principal appeal. The fees collected hereunder shall be paid into the court fund.

E. Thirteen Dollars (\$13.00) of the fees collected for each juvenile case shall be ~~transferred to~~ paid to the State Treasurer and placed to the credit of the Indigent Defense System Revolving Fund General Revenue Fund of the State Treasury. Fees and costs collected in juvenile cases, other than the fees ~~dedicated to~~ paid to the State Treasurer and placed to the credit of the Indigent Defense System Revolving Fund General Revenue Fund of the State Treasury, may be withdrawn from the court fund and used for operations of the juvenile bureaus, in counties wherein a statutory juvenile bureau is in operation, upon approval by the Chief Justice of the Oklahoma Supreme Court.

F. In those seventy-four counties in which court services are provided by contract between the Oklahoma Supreme Court and the Department of Human Services, funds received from court costs in juvenile cases, other than the fees ~~dedicated to~~ paid to the State Treasurer and placed to the credit of the Indigent Defense System Revolving Fund General Revenue Fund of the State Treasury, may be withdrawn from the court fund and paid to the Department of Human Services upon approval by the Chief Justice of the Oklahoma Supreme Court. Said funds are to be expended by the Department of Human Services to supplement community-based programs, such as juvenile

offender victim restitution work programs, youth services programs, day treatment programs, group home services, and detention services. Specific annual training of Department workers in community-based services providing the above court-related services is also to be included for expenditure of funds received from court costs in juvenile cases by the Department of Human Services.

SECTION 11. On July 1, 1992, all unencumbered or otherwise unobligated monies from the Indigent Defense System Revolving Fund shall be transferred and credited to the General Revenue Fund of the State Treasury.

SECTION 12. The provisions of Section 10 shall not be codified in the Oklahoma Statutes.

SECTION 13. REPEALER 20 O.S. 1991, Section 1307.1, and 22 O.S. 1991, Section 1368, are hereby repealed.

SECTION 14. 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 Senate the 11th day of March, 1992.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1992.

Speaker of the House of Representatives