STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 294 BY: FAIR

AS INTRODUCED

AN ACT RELATING TO CRIMINAL PROCEDURE; AMENDING 22 O.S. 1981, SECTIONS 1356, AS AMENDED BY SECTION 5, CHAPTER 253, O.S.L. 1988, 1358, 1359, 1360, AS AMENDED BY SECTION 2, CHAPTER 153, O.S.L. 1987, 1082, AND SECTION 1, CHAPTER 153, O.S.L. 1987 (22 O.S. SUPP. 1990, SECTIONS 1356, 1360 AND 1089), WHICH RELATE TO OKLAHOMA APPELLATE PUBLIC DEFENDER SYSTEM, COURT COSTS AND EXPENSES FOR REPRESENTATION, AND POST-CONVICTION RELIEF IN CAPITAL CASES; DELETING LANGUAGE; PROHIBITING APPELLATE PUBLIC DEFENDER SYSTEM FROM REPRESENTING INDIGENTS ON CERTAIN POST-CONVICTION PROCEEDINGS; MAKING PROVISION FOR PENDING CASES; DELETING PROVISION FOR FEES AND EXPENSES TO BE PAID FROM COURT FUND; MODIFYING LANGUAGE; PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. 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 shall consist of two divisions. The first division shall be designated as the Capital Division. The Capital Division 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 by Oklahoma district courts ~~and all federal courts~~. The second division shall be designated as the General Division. The General Division shall perfect ~~all other~~ the first direct ~~appeals~~ appeal to the Oklahoma Court of Criminal Appeals for ~~the~~ all other remaining cases assigned to the Oklahoma Appellate Public Defender System by the Oklahoma district courts. The appellate public defender shall assign personnel to each of these divisions subject to the approval of the Oklahoma Public Defender System Board.

B. The chief administrative officer of the Oklahoma Appellate Public Defender System shall be the appellate public defender. The appellate public defender shall be appointed by 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. 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 2. AMENDATORY 22 O.S. 1981, Section 1358, is amended to read as follows:

Section 1358. Judges of the district courts shall assign ~~all~~ indigent criminal appeals except ~~those identified in Section 5 which are felony or misdemeanor appeals, appeals by petition for writ of certiorari, juvenile appeals, appeals from revocation of a parole, appeals from revocation of a suspended sentence and appeals from acceleration of deferred judgments~~ as provided in Section 1359 of this title to the appellate public defender for the perfection of ~~such~~ first direct appeals. The only exception shall be in those cases in which a conflict exists between or among multiple defendants. If a judge of the district court finds that such a conflict exists, he shall appoint private counsel for a defendant's appeal. In addition, if the appellate public defender determines that a conflict exists after evaluating such an assigned case, he shall return the case to the appropriate judge of the district court for the assignment of private counsel by said judge. Compensation for appointed private counsel shall be determined by the appropriate judge of the district court and paid from the court fund of the county in which the defendant was convicted.

SECTION 3. AMENDATORY 22 O.S. 1981, Section 1359, is amended to read as follows:

Section 1359. In those counties with a population in excess of two hundred thousand (200,000) under the latest Federal Decennial Census, the county public defenders as authorized by ~~19 O.S.,~~ Sections 138.1 through 138.6 of Title 19 of the Oklahoma Statutes shall perfect first direct appeals for those defendants which they represented in the trial court unless an appellate conflict exists between two or more such defendants. The appellate public defender shall be appointed for those conflict cases. The appellate public defender shall also represent all indigent defendants on the first direct appeal from such counties who were not represented at trial by the county public defenders.

SECTION 4. AMENDATORY 22 O.S. 1981, Section 1360, as amended by Section 2, Chapter 253, 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 in the district courts of this state on issues of appellate counsel appointment and requests for exhibits, records and transcripts.

B. The Oklahoma Appellate Public Defender System is prohibited from appealing or representing any indigent in any matter in any United States court~~, except in capital cases~~. ~~In such cases the System shall perfect the petition for writ of certiorari on direct appeal to the United States Supreme Court and represent such appellants in any appearance on direct appeal before that Court. In addition, members of the System's staff may represent indigents who have been sentenced to death in federal habeas corpus proceedings in any United States Court when they are appointed and adequate federal funds for such representation are designated by that Court 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.~~

C. This act shall not prohibit the Oklahoma Appellate Public Defender System from representing the case matters assigned to the Oklahoma Appellate Public Defender System prior to September 1, 1991; however, no additional post-conviction relief or direct appeal for any case assigned prior to September 1, 1991, shall be allowed, except as provided in this act.

SECTION 5. AMENDATORY 22 O.S. 1981, Section 1082, is amended to read as follows:

Section 1082. If the applicant is unable to pay court costs ~~and expenses of representation~~, he shall include an affidavit to that effect with the application, which shall then be filed without costs. ~~Counsel necessary in representation shall be made available to the applicant after filing the application on a finding by the court that such assistance is necessary to provide a fair determination of meritorious claims. If an attorney is appointed to represent such an applicant then the fees and expenses of such attorney shall be paid from the court fund.~~

SECTION 6. AMENDATORY Section 1, Chapter 153, O.S.L. 1987 (22 O.S. Supp. 1990, Section 1089), is amended to read as follows:

Section 1089. A. The application for post-conviction relief of a defendant who is under the sentence of death and whose death sentence has been reviewed by the Court of Criminal Appeals in accordance with the provisions of Section 701.13 of Title 21 of the Oklahoma Statutes, and affirmed, shall be expedited as provided in this section.

B. The Oklahoma Appellate Public Defender System ~~shall represent all~~ <u>is prohibited from representing</u> indigent defendants in capital cases seeking post-conviction relief ~~upon appointment by the appropriate district court after a hearing determining the indigency of any such defendant~~.

C. 1. The application for post-conviction relief shall be filed in the district court which imposed the sentence within sixty (60) days:

a. from the expiration date of the time for filing a petition for a writ of certiorari with the United States Supreme Court; or

b. from the date that the United States Supreme Court denied the defendant's petition for writ of certiorari.

2. The state shall have fifteen (15) days thereafter within which to file a response to the application. The district court shall make its decision within forty-five (45) days from the date that the state filed its response.

3. If the district court determines that an evidentiary hearing should be held, that hearing shall be held within thirty (30) days from the date that the state filed its response, and the district court shall issue its ruling within forty-five (45) days from the date of the conclusion of the evidentiary hearing.

4. If the defendant's application for post-conviction relief is denied by the district court, a notice of intent to appeal and a designation of the record shall be filed by the defendant's counsel in district court within ten (10) days from the denial of the application. A copy of the notice of intent to appeal and the designation of the record shall be served on the court reporter, the district attorney, and the Attorney General, and shall be filed with the Court of Criminal Appeals. If an evidentiary hearing was held, the court reporter shall prepare and file all transcripts necessary for the appeal within sixty (60) days from the date the notice of intent to appeal and designation of record is filed. The brief-in-chief shall be filed within forty-five (45) days from the date the transcript is filed in the Court of Criminal Appeals or, if no evidentiary hearing was held, within forty-five (45) days from the date of the filing of the notice of appeal. The Attorney General shall have twenty (20) days thereafter to file a response brief. The court clerk shall file the records on appeal with the Court of Criminal Appeals on or before the date the brief-in-chief is due. The Court of Criminal Appeals shall issue an opinion in the case within one hundred twenty (120) days of the filing of the response brief by the Attorney General.

D. All matters not specifically governed by the provisions of this section shall be subject to the provisions of the

Post-Conviction Procedure Act, Section 1081 et seq. of this title. If the provisions of ~~this act~~ Section 1360 of this title and this section conflict with the provisions of the Post-Conviction Procedure Act, the provisions of ~~this act~~ Section 1360 of this title shall govern.

SECTION 7. This act shall become effective September 1, 1991.

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