

SHORT TITLE: Indigent defense; adding statutory reference;
effective date.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 1020

By: Shurden

AS INTRODUCED

An Act relating to indigent defense; amending 22 O.S. 1991, Section 1355.6, as last amended by Section 6, Chapter 298, O.S.L. 1993 (22 O.S. Supp. 1993, Section 1355.6), which relates to responsibility of Indigent Defense System to indigent; adding statutory reference; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 1355.6, as last amended by Section 6, Chapter 298, O.S.L. 1993 (22 O.S. Supp. 1993, Section 1355.6), is amended to read as follows:

Section 1355.6 A. The Indigent Defense System shall have the responsibility of defending all indigents, as determined in accordance with the provisions of the Indigent Defense Act, Section 1355 et seq. of this title, in all felony, misdemeanor, traffic cases punishable by incarceration, and all contempt proceedings punishable by incarceration; provided however, in any case in which the trial court stipulates that upon conviction or finding of contempt of court, the indigent shall not be subject to incarceration, the indigent shall not be entitled to representation pursuant to the Indigent Defense Act. In addition, the System shall have the responsibility of defending all indigents, as determined in

accordance with the provisions of the Indigent Defense Act, in juvenile, guardianship, and mental health cases in which representation is required by law.

B. The System shall be appointed to represent any indigent witness, as determined in accordance with the Indigent Defense Act and pursuant to policies established by the Board, called to testify in state grand jury proceedings.

C. The System shall be appointed to perfect appeals and to provide representation in post-conviction cases in accord with post-conviction policy, to the extent provided in the Indigent Defense Act and pursuant to policies established by the Board.

D. When an indigent or, if applicable, a parent or legal guardian requests representation by the System, such person shall submit an appropriate application to the court clerk, which shall state that the application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such. The application shall state whether or not the indigent has been released on bond. In addition, if the indigent has been released on bond, the application shall include a written statement from the applicant that he or she has contacted three (3) attorneys, licensed to practice law in this state, and the applicant has been unable to obtain legal counsel. A nonrefundable application fee of Fifteen Dollars (\$15.00) shall be paid to the court clerk at the time the application is submitted, and no application shall be accepted without payment of the fee; except that the court may, based upon the financial information submitted, waive the fee, if the person is in custody or if the court determines that the person does not have the financial resources to pay the fee. Ten percent (10%) of any fee collected pursuant to this subsection shall be retained by the court clerk as an administrative fee and deposited in the court fund. The balance of the application fees collected pursuant to this subsection shall be transmitted to the State

Treasurer, who shall credit the same to the Indigent Defense Revolving Fund.

E. 1. The Court of Criminal Appeals shall promulgate rules governing the determination of indigency pursuant to the provisions of Section 55 of Title 20 of the Oklahoma Statutes. The initial determination of indigency shall be made by the Chief Judge of the Judicial District or a designee thereof, based on the defendant's application and the rules provided herein.

2. Upon promulgation of the rules required by law, the determination of indigency shall be subject to review by the Presiding Judge of the Judicial Administrative District. Until such rules become effective, the determination of indigency shall be subject to review by the Court of Criminal Appeals.

F. Before the court appoints the System based on the application, the court shall advise the indigent or, if applicable, a parent or legal guardian, that the application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such. A copy of the application may be sent to the prosecuting attorney or the Office of the Attorney General, whichever is appropriate, for review, and, upon request, the court shall hold a hearing on the issue of the eligibility for appointment of the System.

G. If the defendant is admitted to bail and the defendant or another person on behalf of the defendant posts a bond, other than by personal recognizance, this fact shall constitute a rebuttable presumption that the defendant is not indigent.

SECTION 2. This act shall become effective September 1, 1994.

44-2-1370

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