

ENROLLED HOUSE
BILL NO. 1366

By: Steidley of the House

and

Mickle of the Senate

An Act relating to criminal procedure; amending 19 O.S. 1991, Sections 138.5, as amended by Section 3, Chapter 357, O.S.L. 1992, 138.7, as amended by Section 4, Chapter 357, O.S.L. 1992, and 138.9, as amended by Section 22, Chapter 303, O.S.L. 1992 (19 O.S. Supp. 1992, Sections 138.5, 138.7 and 138.9), which relate to indigent defense in certain counties; correcting reference; providing for the appointment of the Indigent Defense System in certain circumstances; changing responsibility for representation of certain appeals; providing for representation in certain cases involving conflicts; clarifying references; amending 20 O.S. 1991, Section 55, which relates to qualification rules for court-appointed attorney; setting time limit for establishing certain rules; removing conflicting reference to source of payment; amending 22 O.S. 1991, Section 1054, which relates to appeals in criminal cases; modifying times for appeals; modifying notification requirement for court clerk; requiring the clerk of the Court of Criminal Appeals to issue certain notice within a specified time; providing for service of contempt order; amending 22 O.S. 1991, Sections 1355.6 and 1355.8, as last amended by Sections 7 and 8, Chapter 357, O.S.L. 1992, and 1356, as amended by Section 12, Chapter 303, O.S.L. 1992 (22 O.S. Supp. 1992, Sections 1355.6, 1355.8 and 1356), which relate to the Indigent Defense Act; modifying scope of responsibility of the Indigent Defense System; clarifying language; changing authority and procedure for determination of indigency; requiring volunteer attorneys to provide proof of professional liability insurance coverage; granting the Board certain authority; modifying requirement concerning awarding of contracts; modifying bid procedure; requiring bid files; providing for joint and several liability; clarifying scope of compensation limits; providing payment schedule for indigent defense contracts; authorizing the transfer of monies to the Contract Retention Revolving Fund; providing length of time contract attorneys provide representation; providing for authorization for withdrawal from a case; providing that the Indigent Defense System shall not perfect certain appeals; providing for certain conflicts of interest; creating a revolving fund; amending Section 9 of Enrolled House Bill No. 1250 of the 1st Session of the 44th Oklahoma Legislature, which

relates to a noncodified section relating to approval of certain payments; clarifying reference; repealing 20 O.S. 1991, Section 120.1, which relates to contracts for legal representation of indigents; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 19 O.S. 1991, Section 138.5, as amended by Section 3, Chapter 357, O.S.L. 1992 (19 O.S. Supp. 1992, Section 138.5), is amended to read as follows:

Section 138.5 A. It shall be the duty of the office of the county indigent defender to represent as counsel anyone who appears for arraignment without aid of counsel, and who has been informed by the judge that it is his right to have counsel, and who desires counsel, but is unable to employ such aid; and upon order of a district judge of such county he shall investigate any matter pending before said judge and report to him in the manner prescribed by said judge.

B. When a defendant or, if applicable, his parent or legal guardian requests representation by the county indigent defender, such person shall submit an appropriate application, the form of which shall state that such 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 defendant has been released on bond. In addition, if the defendant 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 declares that he or she does not have the means to employ 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. Any fee collected pursuant to this subsection shall be retained by the court clerk as an administrative fee and deposited in the court fund. Before the court appoints the ~~Indigent Defense System~~ county indigent defender based on said application, the court shall advise the defendant or, if applicable, his or her parent or legal guardian that the application is signed under oath and under the penalty of perjury. A copy of the application shall 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 county indigent defender.

C. 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. AMENDATORY 19 O.S. 1991, Section 138.7, as amended by Section 4, Chapter 357, O.S.L. 1992 (19 O.S. Supp. 1992, Section 138.7), is amended to read as follows:

Section 138.7 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, an attorney who represents indigents pursuant to contract, or a private attorney who

has agreed to accept such appointments. In addition, in every case where the defendant is subject to the death penalty and a conflict of interest exists between the defendant and the county indigent defender, the court may appoint the Indigent Defense System to represent the defendant. However, in every case where multiple defendants exist in the case and more than one defendant is subject to the death penalty and a conflict of interest exists between one or more of the defendants that are subject to the death penalty and the county indigent defender, the court may appoint the Indigent Defense System to represent not more than one of the defendants in the case.

SECTION 3. AMENDATORY 19 O.S. 1991, Section 138.9, as amended by Section 22, Chapter 303, O.S.L. 1992 (19 O.S. Supp. 1992, Section 138.9), is amended to read as follows:

Section 138.9 In those counties with a population in excess of two hundred thousand (200,000) under the latest Federal Decennial Census, the county ~~public~~ indigent defenders, for those counties subject to the provisions of Section 138.1 of Title 19 of the Oklahoma Statutes, shall perfect appeals for those defendants which they represented in the trial court unless an appellate conflict exists between two or more such defendants. ~~The Oklahoma Indigent Defense System shall be appointed for those conflict cases, in which case the county indigent defender shall represent one defendant, the Oklahoma Indigent Defense System shall represent one defendant, and the court may assign the appeal of the case for any other defendants in the same manner as provided for conflict at the trial level in Section 138.7 of this title.~~ The Oklahoma Indigent Defense System shall also represent all indigent defendants from such counties who were not represented at trial by the county public defenders unless a conflict of interest on appeal exists between defendants, in which case the Oklahoma Indigent Defense System shall represent one defendant, the county indigent defender shall represent one defendant and the court may assign the appeal of the case for any other defendants in the same manner as provided for conflict at the trial level in Section 138.7 of this title.

SECTION 4. AMENDATORY 20 O.S. 1991, Section 55, is amended to read as follows:

Section 55. ~~The~~ No later than August 1, 1993, the Court of Criminal Appeals shall establish qualification rules for determining when a defendant in a criminal case shall be entitled to a court-appointed attorney paid for from the Court Fund.

It is the intent of the Oklahoma Legislature that the payment of bail by a defendant or on behalf of a defendant shall be prima facie evidence that said defendant has funds to employ his own attorney and the Court shall then inquire into the financial status of the defendant prior to appointing an attorney ~~paid for from the Court Fund.~~

SECTION 5. AMENDATORY 22 O.S. 1991, Section 1054, is amended to read as follows:

Section 1054. A. In misdemeanor ~~cases the appeal must be taken within one hundred twenty (120) days after the judgment is rendered.~~ ~~In~~ and felony cases the appeal must be ~~taken~~ perfected within ~~six (6) months after~~ ninety (90) days from the judgment is rendered date of the pronouncement of the judgment and sentence. A transcript in both felony and misdemeanor cases must be filed as hereinafter directed.

B. It shall be the duty of the clerk of the court from which notice of appeal has been given, and in which ~~case made or the original record and transcript has been~~ are to be filed and withdrawn, to notify the clerk of the Court of Criminal Appeals ~~if a~~

~~certificate from such clerk acknowledging receipt of such case made or transcript is delayed three (3) days beyond the one hundred twenty (120) days maximum time from date of judgment provided for appeal in a misdemeanor case, and of six (6) months in case of a felony case, and on notification by the clerk of nonfiling of case made or transcript in the Court of Criminal Appeals, the judgment of the trial court will be immediately carried out as provided by law when the original record and transcripts are assembled for transmission to the Court of Criminal Appeals, and the parties, or their counsel, have been advised to that effect. The clerk of the Court of Criminal Appeals shall, within ten (10) days after the receipt of the district court clerk's notice of the completion of the record, issue a notice to transmit the original and one certified copy of the appeal records to the clerk of the Court of Criminal Appeals and one certified copy of the original records and transcripts to either the Oklahoma Indigent Defense System, pursuant to Section 1362 of this title, or the retained or other appointed counsel of record on appeal.~~

SECTION 6. AMENDATORY 22 O.S. 1991, Section 1355.6, as last amended by Section 7, Chapter 357, O.S.L. 1992 (22 O.S. Supp. 1992, 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, 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 ~~defendant~~ indigent shall not be subject to incarceration, the ~~defendant~~ 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 a ~~defendant~~ an indigent or, if applicable, ~~his~~ a parent or legal guardian requests representation by the System, such person shall submit an appropriate application to the court clerk, the form of which shall state that such 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 ~~defendant~~ 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 ~~declares that he or she does not have the means to employ~~ 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 said the application, the court shall advise the ~~defendant~~ indigent or, if applicable, his 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 ~~shall~~ 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. ~~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. If a case is being handled by an attorney employed by the System, the determination of indigency shall be made by the Executive Director or a designee of the Executive Director, according to guidelines established by the Board based upon criteria provided by the Court of Criminal Appeals and the determination of indigency shall be subject to review by the court. If the case is being handled by a private attorney pursuant to a contract with the System or by a private attorney who has agreed to accept appointments, the determination of indigency shall be made by the Executive Director or a designee of the Executive Director, according to guidelines established by the Board and subject to review by the trial court.~~

~~E. 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 7. AMENDATORY 22 O.S. 1991, Section 1355.8, as last amended by Section 8, Chapter 357, O.S.L. 1992 (22 O.S. Supp. 1992, Section 1355.8), is amended to read as follows:

Section 1355.8 A. The Executive Director of the Indigent Defense System may select attorneys to handle noncapital indigent trial cases, ~~from the a~~ list of attorneys who have volunteered to accept appointments, who provide proof of professional liability insurance coverage, 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 System.

B. The Board shall have the authority to provide for representation for indigent criminal defendants and others for whom representation is required by either the Constitution or laws of this state by attorneys employed by the System.

C. The Board shall have the authority to award contracts to provide legal representation to indigent criminal defendants and others for whom representation is required by the Constitution and laws of this state. ~~D.~~ Any such contract shall, to the extent possible, be awarded in June of each year for the next succeeding fiscal year or at such time as the Board may deem necessary.

~~E. D.~~ The Executive Director shall cause notice to be published 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.~~ E. Only members in good standing of the Oklahoma Bar Association shall be eligible to ~~enter~~ submit bids pursuant to this section. In addition, all bids must be accompanied by proof of professional liability insurance coverage and a written statement of the manner in which representation shall be made available as needed.

~~G.~~ F. 1. The Board shall accept the lowest and best bid or bids ~~if the Board determines that more than one attorney shall be hired,~~ received from a qualified bidder or bidders. ~~For any county,~~ ~~in~~ In determining whether ~~or not~~ a bid is the ~~lowest and best bid,~~ the Board shall take into consideration, among other factors, the following:

- a. whether ~~or not~~ the attorney or attorneys submitting the bid ~~has~~ maintain an office within that county ~~and;~~
- b. whether ~~or not~~ any such office is the attorney's primary office;
- c. whether the attorney or attorneys submitting the bid have been awarded a contract in another county;
- d. whether sufficient attorneys are included in the bid to competently address the number of cases to be covered under the bid; and
- e. the accessibility of the attorney or attorneys to the clients to be served if the bidder is awarded a contract.

2. The Board shall maintain bid files. The Central Purchasing Division of the Department of Central Services shall provide such advice and assistance as is necessary for the Board to establish and maintain said bid files.

3. Every contract awarded pursuant to the provisions of this subsection which is signed by more than one attorney shall provide that every attorney signing such contract shall be jointly and severally liable for the full performance of all services to be delivered to such contract.

~~1.~~ 4. In the event that only one qualified bid is received, the Board ~~shall~~ may accept the bid ~~or,~~ readvertise or provide representation pursuant to subsection B of this section.

~~2.~~ 5. In the event that no qualified bids are received, the Board ~~shall~~ may 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 J~~ subsection G of this section.

~~3.~~ 6. In the event that no qualified bids are received ~~and no attorneys agree to serve as volunteer attorneys,~~ and in lieu of creating a list of qualified volunteer attorneys pursuant to paragraph 2 3 of this subsection, the Board ~~shall~~ may, pursuant to subsection B of this section and Section 1355.9 of this title, provide for representation for indigent criminal defendants and others for whom representation is required by either the Constitution ~~and~~ or laws of this state by attorneys employed by the System.

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

~~H.~~ G. 1. Except as provided in paragraph 3 of this subsection ~~J of this section,~~ total compensation for a case which is not

covered by an annual contract awarded pursuant to this section shall not exceed Eight Hundred Dollars (\$800.00) in the following cases:

- ~~1.~~ a. juvenile cases;
- ~~2.~~ b. mental health cases;
- ~~3.~~ c. post-conviction cases;
- ~~4.~~ d. grand jury cases;
- ~~5.~~ e. traffic cases punishable by incarceration;
- ~~6.~~ f. misdemeanor cases;
- ~~7.~~ g. guardianship cases; and
- ~~8.~~ h. contempt proceedings punishable by incarceration.

~~I.~~ 2. Except as provided in paragraph 3 of this subsection ~~of this section~~, total compensation for a case which is not covered by an annual contract awarded pursuant to this section shall not exceed Three Thousand Five Hundred Dollars (\$3,500.00) in felony cases, except capital cases.

~~J.~~ 3. The maximum statutory fees established in this ~~section~~ subsection may be exceeded only upon a determination made by the Executive Director and approved by the Board 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.

~~K.~~ H. 1. Attorneys paid for indigent defense on a contractual basis ~~may~~ shall be paid an annual fee in twelve monthly installments each equalling six and one-half percent (6.5%) of the total value of the contract, or as otherwise provided by contract.

2. Attorneys paid for indigent defense pursuant to paragraph 1 of this subsection shall receive the balance of twenty-two percent (22%) of the total value of the contract upon completion of all felony and misdemeanor matters covered by the contract. A matter is completed for purposes of this paragraph when no additional services are required under the contract. The system may transfer the amount retained from the total value of the contract pursuant to this subsection to the Contract Retention Revolving Fund created by Section 9 of this act.

I. To receive payment, an attorney must submit a claim in accordance with the provisions of the Indigent Defense Act.

~~L.~~ J. Attorneys providing appellate or post-conviction services pursuant to a contract with the System, shall provide periodic status reports on all such cases, as often as deemed necessary by the Board, ~~of all such cases~~.

K. Any attorney providing services pursuant to a contract with the System shall continue to provide representation for all cases assigned to the attorney during the contract period at the trial level until the trial court ceases to retain jurisdiction; provided, the court may allow an attorney to withdraw from any case if the attorney makes proper application to the Board to withdraw from the case and if the application is approved by the Board.

SECTION 8. AMENDATORY 22 O.S. 1991, Section 1356, as amended by Section 12, Chapter 303, O.S.L. 1992 (22 O.S. Supp. 1992, Section 1356), is amended to read as follows:

Section 1356. A. The System shall perfect all direct appeals and post-conviction proceedings in all state and federal courts for all capital cases assigned to the System by Oklahoma district courts and all federal courts, except for direct appeals for indigent defendants represented by the county indigent defender in counties subject to the provisions of Section 138.1 et seq. of Title 19 of the Oklahoma Statutes, and shall perfect all other direct appeals to the Oklahoma Court of Criminal Appeals for the remaining cases assigned to the System by the Oklahoma district courts.

B. The System shall perfect all appeals for indigent defendants from counties subject to the provisions of Section 138.1 of Title 19 of the Oklahoma Statutes who were not represented at trial by the county public defenders, unless a conflict of interest exists, in which case the county indigent defender shall be appointed to represent the indigent defendant. If the county indigent defender has a conflict of interest, the court shall appoint counsel in the same manner as is provided for conflicts at the trial level in Section 138.7 of Title 19 of the Oklahoma Statutes.

C. The System also may represent the clients for whom the System 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 subsection shall not authorize attorneys for the System to represent clients in civil rights actions brought pursuant to state or federal law in any court or represent clients in any proceeding unless prior approval is granted by the Board.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1369 of Title 22, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Oklahoma Indigent Defense System, to be designated the "Contract Retention Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies retained by the Indigent Defense System, pursuant to the provisions of Section 1355.8 of Title 22 of the Oklahoma Statutes. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Indigent Defense System for the purpose of making contract payments pursuant to paragraph 2 of subsection H of Section 1355.8 of Title 22 of the Oklahoma Statutes. 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 10. AMENDATORY Section 9 of Enrolled House Bill No. 1250 of the 1st Session of the 44th Oklahoma Legislature is amended to read as follows:

Section 9. NONCODIFICATION Section 7 8 of this act shall not be codified in the Oklahoma Statutes.

SECTION 11. REPEALER 20 O.S. 1991, Section 120.1, is hereby repealed.

SECTION 12. This act shall become effective July 1, 1993.

SECTION 13. 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 27th day of May, 1993.

Speaker of the House of Representatives

Passed the Senate the 28th day of May, 1993.

President of the Senate