

ENROLLED SENATE
BILL NO. 1143

By: Smith of the Senate

and

Steidley of the House

An Act relating to fees; amending 22 O.S. 1991, Sections 718, as amended by Section 5, Chapter 227, O.S.L. 1993, 722, 1355.6, as last amended by Section 6, Chapter 298, O.S.L. 1993, and 1355.14, as amended by Section 11, Chapter 303, O.S.L. 1992 (22 O.S. Supp. 1993, Sections 718, 1355.6 and 1355.14) and 28 O.S. 1991, Sections 81, 82, as last amended by Section 6, Chapter 227, O.S.L. 1993, and 153, as last amended by Section 7, Chapter 227, O.S.L. 1993 (28 O.S. Supp. 1993, Sections 82 and 153), which relate to fees of witnesses and jurors, the Indigent Defense System and costs in criminal cases; clarifying and conforming language relating to witness fees; raising witness fee of certain nonresident witnesses; deleting language relating to deposit of certain costs of representation; prohibiting payment of certain fines, fees or costs; providing procedures and guidelines for determining witness fees; providing for time of payment of witness fees; providing for payment of witness fees by certain parties seeking attendance of certain witnesses; providing for payment of certain fines and costs to court fund; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 718, as amended by Section 5, Chapter 227, O.S.L. 1993 (22 O.S. Supp. 1993, Section 718), is amended to read as follows:

Section 718. ~~A. Except as otherwise provided by Section 82 of Title 28 of the Oklahoma Statutes, all witnesses in a criminal action who appear pursuant to a subpoena shall be paid out of the court fund the fees and mileage prescribed by law. Upon conviction of the defendant, said fees and mileage shall be taxed as costs, collected and deposited as other costs in the case.~~

~~B. Except as otherwise provided by Section 82 of Title 28 of the Oklahoma Statutes, a~~ A witness who appears from another state to testify in this state in a criminal case or proceeding pursuant to a subpoena issued in accordance with the provisions of the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings, Section 721 et seq. of this title, shall be reimbursed ~~from the court fund of the court where prosecution is pending~~ as prescribed by law for travel and expenses at rates not to exceed those prescribed by law for reimbursement of state employees

traveling interstate. Upon conviction, such fees and mileage shall be taxed as costs, collected and deposited as other costs in the case.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 722, is amended to read as follows:

Section 722. A. If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution, or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

B. If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, (and of any other state through which the witness may be required to pass by ordinary course of travel), will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

C. If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

D. If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the greater of the sum authorized by the law of the state to which the witness must travel or the sum of ~~ten cents (\$0.10)~~ fifteen cents (\$0.15) a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and ~~Five Dollars (\$5.00)~~ Twelve Dollars (\$12.00) for each day, that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

SECTION 3. 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 4. AMENDATORY 22 O.S. 1991, Section 1355.14, as amended by Section 11, Chapter 303, O.S.L. 1992 (22 O.S. Supp. 1993, Section 1355.14), is amended to read as follows:

Section 1355.14 The court shall order any person represented by an attorney employed by the System or a defense attorney who contracts or volunteers to represent indigents pursuant to the provisions of the Indigent Defense Act, Section 1355 et seq. of this title, 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. The Executive Director or a designee of the Executive Director shall document for the court the total costs for representation.

Said costs shall be collected by the court clerk and ~~deposited in the Indigent Defense System Revolving Fund. The court clerk shall retain ten percent (10%) of all such costs collected as an administrative fee, which shall be~~ deposited in the court fund.

Said costs shall be a debt against the person represented until paid and shall be subject to any method provided by law for the collection of debts.

For purposes of collection of debts arising from the provisions of this section, the Executive Director, on behalf of the System, is authorized to utilize the procedures provided in Section 205.2 of Title 68 of the Oklahoma Statutes in the same manner and to the same extent as any state agency and the Oklahoma Tax Commission is directed to provide the same service to the Executive Director attempting to collect such debts pursuant to Section 205.2 of Title 68 of the Oklahoma Statutes as it provides to other state agencies.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1355.15 of Title 22, unless there is created a duplication in numbering, reads as follows:

The Indigent Defense Board shall not approve payment of any claims for fines, attorney fees, or court costs resulting from contempt citations issued to attorneys defending indigent clients.

SECTION 6. AMENDATORY 28 O.S. 1991, Section 81, is amended to read as follows:

Section 81. ~~Witnesses when subpoenaed, including witnesses who appear before a grand jury inobedience to a subpoena, shall receive the following fees:~~

1. ~~For attending any court, before any judge, or commissioner of courts of record, less than sixty (60) miles from his residence, per day, Five Dollars (\$5.00);~~

2. ~~For attending any court, before any judge, or commissioner of courts of record, more than sixty (60) miles from his residence, per day, Twelve Dollars (\$12.00); and~~

3. ~~For any witness each mile actually and necessarily traveled in going to and returning from the place of attendance, fifteen cents (\$0.15); provided, that no mileage shall be allowed where the distance is less than one (1) mile.~~

A. Whenever, under the laws of this state, a person may be compelled by order, subpoena, or other lawful compulsion to appear as a witness, whether or not testimony or other evidence is actually adduced, the witness shall receive the following:

1. For a witness who appears from another state or foreign country in a criminal proceeding in this state, the amount specified in Section 718 of Title 22 of the Oklahoma Statutes;

2. For a witness who appears from this state in a criminal proceeding in another state, the amount specified in Section 722 of Title 22 of the Oklahoma Statutes;

3. For a witness who appears from this state pursuant to an order, subpoena, or other lawful means for compelling the appearance of the witness:

a. if attendance is required at a place less than sixty (60) miles from the residence of the witness, Five Dollars (\$5.00) for each day of attendance, plus fifteen cents (\$0.15) for each mile actually and necessarily traveled in going to and returning from the place of attendance, or

b. if attendance is required at a place more than sixty (60) miles from the residence of the witness, Twelve Dollars (\$12.00) for each day of attendance, plus fifteen cents (\$0.15) for each mile actually and necessarily traveled in going to and returning from the place of attendance.

B. In computing mileage allowances for witnesses, parts of a mile shall be rounded to the nearest whole number of miles. Where the total mileage actually and necessarily traveled is less than one and one-half miles, no mileage shall be allowed.

C. No witness shall receive per diem or mileage in more than one case covering the same period of time, or the same travel, and each witness shall be required to make oath that the fees claimed have not been claimed or received in any other case, and no juror while serving as a juror or party to a civil action shall receive pay compensation as a witness while serving as such juror.

D. The fees and expenses allowed by this section shall be paid as follows:

1. In civil cases, the fees for one day's attendance shall be paid pursuant to Section 2004.1 of Title 12 of the Oklahoma Statutes and fees for subsequent attendance shall be paid on the day before each additional day of attendance unless the witness agrees to another time for payment;

2. In criminal cases, the witness shall be paid at the conclusion of each day of attendance unless the witness agrees to another time for payment; or

3. In all other cases, the witness shall be paid at the conclusion of attendance unless the witness agrees to another time for payment.

E. Any error in computing the number of miles allowable shall not be sufficient grounds for failure to obey the order, subpoena, or other lawful compulsion if a per diem has been tendered to the witness.

SECTION 7. AMENDATORY 28 O.S. 1991, Section 82, as last amended by Section 6, Chapter 227, O.S.L. 1993 (28 O.S. Supp. 1993, Section 82), is amended to read as follows:

Section 82. A. Any witness ~~on behalf of the state~~ appearing in obedience to a ~~subpoena or order~~ an order, subpoena, or other lawful compulsion at any stage of a criminal case or proceeding, grand jury proceeding and in any civil case or proceeding ~~brought by the State of Oklahoma directly or on relation of~~ in which the party seeking the attendance of the witness is represented by the district attorney, or by the board of county commissioners on behalf of the county, shall be paid, from any monies available for the operations of the district ~~attorney~~ attorney's office in ~~such~~ the county where

attendance is required, the fees and mileage at the rate prescribed by law.

B. Except as otherwise provided by Section 1355.4 of Title 22 of the Oklahoma Statutes, any Any witness on behalf of an indigent defendant appearing in obedience to a subpoena or order an order, subpoena, or other lawful compulsion at any stage of a criminal case or proceeding brought by the State of Oklahoma directly or on relation of the district attorney in which the party seeking the attendance of the witness is represented by the Indigent Defense System or its agent shall be paid from the court fund. The court clerk shall report the amount of witness fees paid pursuant to this subsection in conjunction with the quarterly report required by Section 1307 of Title 20 of the Oklahoma Statutes monthly to the Administrative Office of the Courts. The Administrative Office of the Courts shall bill the Indigent Defense System for the cost of the witness fees which shall be paid from funds available for expenditure by the Indigent Defense System. Payment by the Indigent Defense System to the Administrative Office of the Courts shall be made within ten (10) days of the receipt of the billing.

C. Any witness appearing in obedience to an order, subpoena, or other lawful compulsion in an administrative proceeding, medicaid fraud investigation, or multicounty grand jury proceeding shall be paid by the party seeking the attendance of the witness. If the party seeking the attendance is the Attorney General or represented by the Attorney General, the witness shall be paid from funds available for expenditure by the Attorney General. If an administrative agency seeking the attendance of the witness is not represented by the Attorney General, the witness shall be paid from funds available for expenditure by the administrative agency.

D. Any witness appearing in obedience to an order, subpoena, or other lawful compulsion issued by a court of this state for which no provision of this section is applicable, shall be paid in the discretion of the court from funds which are subject to the court's orders.

E. Upon conviction conclusion of the proceedings, such fees and mileage shall be taxed as costs in the case, and collected and deposited as other costs in the case. The court clerk shall report the total amount of monies collected pursuant to this subsection and Section 718 of Title 22 of the Oklahoma Statutes in conjunction with the quarterly report required by Section 1307 of Title 20 of the Oklahoma Statutes.

SECTION 8. AMENDATORY 28 O.S. 1991, Section 153, as last amended by Section 7, Chapter 227, O.S.L. 1993 (28 O.S. Supp. 1993, Section 153), is amended to read as follows:

Section 153. A. 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:

1. For each defendant convicted of exceeding the speed limit by at least one (1) mile per hour but not more than ten (10) miles per hour, whether charged individually or conjointly with others \$57.00
2. For each defendant convicted of misdemeanor, including violation of any traffic law, other than for driving under the influence of alcohol or other intoxicating substance or an offense provided for in paragraph 1 of this subsection,

- whether charged individually or conjointly with others
\$73.00
3. 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 \$93.00
 4. 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 \$173.00
 5. 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 \$173.00
 6. For the services of a court reporter at each trial held in the case \$20.00
 7. For each time a jury is requested \$30.00
 8. 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.

B. Of the amount collected pursuant to paragraphs 2 through 5 of subsection A of this section, the sum of Three Dollars (\$3.00) shall be deposited to the credit of the county Law Library Fund pursuant to Section 1201 et seq. of Title 20 of the Oklahoma Statutes.

C. 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.

D. Forty-six Dollars and fifty cents (\$46.50) of the fee collected for every traffic case for each offense of which the defendant is convicted, irrespective of whether or not the sentence is deferred, shall be transmitted to the State Treasurer for deposit into the General Revenue Fund.

E. Costs required to be collected pursuant to this section shall not be dismissed or waived.

F. As used in this section, "convicted" means any final adjudication of guilt, whether pursuant to a plea of guilty or nolo contendere or otherwise, and any deferred judgment or suspended sentence.

G. A court clerk may accept in payment for any fee, fine or cost for violation of any traffic law a nationally recognized credit card issued to the applicant. The court clerk may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such credit card. For purposes of this paragraph, "nationally recognized credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate or by any other name, issued with or without fee by an issuer

for the use of the cardholder in obtaining goods, services or anything else of value and which is accepted by over one thousand (1,000) merchants in this state. The court clerk shall determine which nationally recognized credit cards will be accepted as payment for fees; provided, the court clerk must ensure that no loss of state revenue will occur by the use of such card.

H. Upon receipt of payment of fines and costs for offenses charged prior to July 1, 1992, the court clerk shall apportion and pay Thirteen Dollars (\$13.00) per conviction to the court fund.

SECTION 9. This act shall become effective September 1, 1994.
Passed the Senate the 19th day of May, 1994.

President of the Senate

Passed the House of Representatives the 19th day of May, 1994.

Speaker of the House of Representatives