

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 2617

By: Paulk of the House

and

Brown of the Senate

An Act relating to crimes and punishments; providing for crimes against witnesses, persons attending official proceedings, and informants; providing punishments; providing scope of application to proceeding, testimony, record, document or other object; providing that certain propositions need not be proved; repealing 21 O.S. 1991, Section 455, as amended by Section 1, Chapter 182, O.S.L. 1993 (21 O.S. Supp. 1995, Section 455), which relates to preventing witnesses from giving testimony; providing for codification; and providing an effective date.

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and entire bill and insert

"[criminal justice - amending 19 O.S. 1991, Section 215.28
- Attorney General - prison bed space - funds - bill of
particulars - amending 22 O.S. 1991, Section 355 - jury
proceedings - amending 51 O.S. 1991, Section 94 -
investigation and ouster proceedings - effective date]

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

SECTION 1. AMENDATORY 19 O.S. 1991, Section 215.28, is amended to read as follows:

Section 215.28 A. There is hereby created a special division of the office of Attorney General to be known as the District Attorneys Council which shall be organized and administered as herein provided. Any reference in the Oklahoma Statutes to the "District Attorneys Training Coordination Council" shall mean the District Attorneys Council.

B. The chief executive officer of the office of the Council is the Executive Coordinator who shall be appointed and supervised by the Council. The Executive Coordinator shall serve at the pleasure of the Council. The Executive Coordinator shall be licensed to practice law in Oklahoma and shall have been a district attorney or assistant district attorney, or have held an equivalent position in state or federal government for at least three (3) years prior to ~~his~~ the appointment. The Executive Coordinator may appoint an Assistant Coordinator, both of whom shall be in the unclassified service of the state. The Executive Coordinator and the Assistant Coordinator, who shall also be licensed to practice law in Oklahoma, shall devote full time to their duties and shall not engage in the private practice of law. The Executive Coordinator shall perform the functions and duties as may be assigned ~~to him~~ by the Council. The Executive Coordinator shall be named the project director and fiscal officer of any grant or fund received by the Council. The Executive Coordinator and the Assistant Coordinator shall receive compensation for ~~their~~ services within the pay scale limits for district attorneys.

- C. 1. The Council shall be composed of the following members:
- a. the Attorney General, or ~~his~~ a designated representative~~+~~

- b. the President of the Oklahoma District Attorneys Association~~†~~†
- c. the President-elect of the Oklahoma District Attorneys Association~~†~~†
- d. one district attorney selected by the Court of Criminal Appeals for a three-year term~~†~~† and
- e. one district attorney selected by the Board of Governors of the Oklahoma Bar Association for a three-year term.

2. A member of the Council shall vacate his or her appointment upon termination of ~~his official~~ the position as Attorney General or district attorney. A vacancy shall be filled in the same manner as the original appointment. A member appointed to fill a vacancy created other than by expiration of a term shall be appointed for the unexpired term of the member whom he or she is to succeed in the same manner as the original appointment. Any member may serve more than one term.

D. The Council shall designate from among its members a ~~Chairman~~ chair and ~~Vice-Chairman~~ vice-chair who shall serve for one-year terms and who may be reelected. Membership on the Council shall not constitute holding a public office. The Council shall not have the right to exercise any portion of the sovereign power of the state. A member of the Council shall not be disqualified from holding any public office or employment by reason of ~~his~~ appointment or membership on the Council, nor shall ~~he~~ a member forfeit the office or employment, by reason of ~~his~~ appointment hereunder.

E. The Council shall meet at least four times in each year and shall hold special meetings when called by the ~~Chairman~~ chair, or, in the absence of the ~~Chairman~~ chair, by the ~~Vice-Chairman~~ vice-chair or when called by the ~~Chairman~~ chair upon the written request of two members of the Council. The Council shall establish its own

procedures and requirements with respect to quorum, place and conduct of its meetings and other matters.

F. The members of the Council shall not receive a salary for duties performed as members ~~of the Council~~ but shall be entitled to be reimbursed for ~~their~~ travel expenses in accordance with the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes.

G. The Council shall make an annual report to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the President of the Oklahoma District Attorneys Association regarding its efforts to implement the purposes of this ~~act~~ section.

H. The Council shall have the power to perform such functions as ~~in its opinion~~ shall strengthen the criminal justice system in Oklahoma while conserving the state's prison beds for violent offenders, to provide a professional organization for the education, training and coordination of technical efforts of all state prosecutors and to maintain and improve prosecutor efficiency and effectiveness in enforcing the laws of this state including, but not limited to, the following:

1. Organize, supervise and perform functions consistent with this ~~act~~ section;

2. Convene regional or statewide conferences and training seminars for the purpose of implementing the provisions of this ~~act~~ section;

3. Accept and expend monies, gifts, grants or services from any public or private source; contract or enter into agreements with educational institutions or state or federal agencies; and employ personnel as the Council in its judgment finds necessary to effectively carry out the provisions of this ~~act~~ section. Such employees shall be in the unclassified service of the state;

4. Serve in an advisory capacity to the district attorneys of the state;

5. Provide and coordinate training and continuing legal education for district attorneys and their assistants, including participation in nationally recognized prosecutorial seminars conducted in other states;

6. Gather and disseminate information to district attorneys relative to their official duties, including changes in the law relative to their office;

7. Coordinate with law enforcement officers, the courts and corrections workers providing interdisciplinary seminars to augment the effectiveness of the criminal justice system;

8. Require statistical reports from district attorneys' offices relating to functions and workload performance;

9. Recommend additional legislation necessary to upgrade the Oklahoma District Attorneys System to professional status;

10. Establish ~~an equitable~~ a distribution plan for allocation of any funds or gifts received from public or private sources for state prosecution ~~and distribute such funds in accordance with such plan,~~ except for state-appropriated funds; and

11. Appoint a larger Advisory Council made up of district attorneys and assistant district attorneys to discuss problems and hear recommendations concerning necessary research, minimum standards, educational needs, and other matters imperative to upgrading Oklahoma prosecution to professional status.

I. There is hereby created in the State Treasury a revolving fund for the Council, to be designated the "District Attorneys Council Revolving Fund". The fund shall consist of all monies received by the Council other than appropriated funds. The revolving fund shall be a continuing fund not subject to fiscal year limitations and shall be under the control and management of the Council. Expenditures from this fund shall be made pursuant to the

purposes of this ~~act~~ section and without legislative appropriation. Warrants for expenditures shall be drawn by the State Treasurer based on claims signed by the authorized employee or employees of the Council and approved for payment by the Director of State Finance.

J. The Council may accept operation and supervision of the Law Enforcement Assistance Administration grants presently being administered by the Oklahoma District Attorneys Association.

K. Effective July 1, 1996, the Legislature shall appropriate state funds for the district attorneys of this state to the Attorney General. The Attorney General shall allocate and distribute the state appropriated funds to individual district attorney districts based upon the following two-part formula:

Part One. Base funding for each district attorney district for each fiscal year shall be ninety-five percent (95%) of the district's allocated share of the 1996 fiscal year appropriation. An additional five percent (5%) shall be added to this base funding amount if the district is successful in reducing, by at least five percent (5%), the total number of persons committed to the Lexington Reception and Assessment Center for custody in the Department of Corrections. The percent of reduction for each district shall be based upon the total number of receptions from the district for the fiscal year beginning July 1, 1995 to June 30, 1996. Records of receptions shall be made available to the Attorney General from both the district attorney's district and the Department of Corrections, and any discrepancy in the records shall be resolved by the Attorney General.

Part Two. (A) Each district attorney district shall be required to report for each fiscal year the total number of felony cases prosecuted for which a sentence and conviction were imposed. The Attorney General shall keep accurate records of the total number of felony cases prosecuted for which a sentence and conviction were

imposed for each district by fiscal year, and the statewide total of felony cases prosecuted for which a sentence and conviction were imposed for each fiscal year. For purposes of calculating this formula beginning July 1, 1996, if additional money is appropriated above the 1996 fiscal year amount, the report data shall be calculated from the fiscal year beginning July 1, 1995 and ending June 30, 1996.

(B) From each district's cases reported as required in subsection (A), the district attorney of each district shall identify to the Attorney General the total number of those cases which were committed to the Lexington Reception and Assessment Center for custody in the Department of Corrections and the total number of those cases which were first time offenders not incarcerated.

(C) (1) The Attorney General shall for each district attorney district take the total number of cases reported as required in subsection (A) and subtract both the total number of cases committed to the Department of Corrections and the total number of cases identified as first time offenders not incarcerated to arrive at a number of cases which were neither committed to the Department of Corrections nor first time non-incarcerated offenders. This number shall be referred to as the after former pool or AF pool for a district.

(2) Once the AF pool is determined for a district, the Attorney General shall divide that number by the total number of cases reported for that district pursuant to subsection (A) to arrive at a percentage of AF cases for that district. This process shall be repeated for each district attorney's district.

(3) The Attorney General shall then add together all the AF percentages for all districts as determined by paragraph (2) of this subsection.

(4) Next, for each district the Attorney General shall divide the AF percentage determined for that district by the sum total of AF percentages for all districts to arrive at the percentage of allocation of state appropriated funds that the district shall be entitled to receive pursuant to Part Two.

(D) (1) The Attorney General shall take the total state appropriated funds and subtract all applicable Part One base funding for each district.

(2) Next the Attorney General shall multiply the total remaining state appropriated funds by the allocation percentage for each district to determine the actual Part Two dollar amount to be distributed to a district in addition to the Part One funds.

(3) The Attorney General shall add the Part One and Part Two dollar amounts calculated for each district to arrive at the total state funding for that district.

(4) Following all calculations the Attorney General shall make the distribution of state funds.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 583, is amended to read as follows:

Section 583. Every grand juror, district attorney, witness, clerk, judge or other officer who, except when required by a court, willfully discloses any evidence adduced before the grand jury or anything which ~~he himself~~ such person or any member of the grand jury may have said, or in what manner any grand juror may have voted on a matter before ~~him~~ the grand jury, is guilty of a misdemeanor. In no event may a witness be prevented from disclosing the testimony of the witness to the attorney of the witness. The prohibition against the witness disclosing the testimony shall cease upon issuance of the final report of the grand jury.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 701.10, as amended by Section 1, Chapter 67, O.S.L. 1992 (21 O.S. Supp. 1995, Section 701.10), is amended to read as follows:

Section 701.10 A. Upon conviction or adjudication of guilt of a defendant of murder in the first degree, ~~the~~:

1. If a bill of particulars has been filed, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death, life imprisonment without parole or life imprisonment; and

2. If no bill of particulars has been filed prior to the commencement of trial, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to life imprisonment without parole or life imprisonment.

The proceeding shall be conducted by the trial judge before the same trial jury as soon as practicable without presentence investigation.

B. If the trial jury has been waived by the defendant and the state, or if the defendant pleaded guilty or nolo contendere, the sentencing proceeding shall be conducted before the court.

C. In the sentencing proceeding, whether or not a bill of particulars has been filed prior to the commencement of trial, evidence may be presented as to any mitigating circumstances or as to any of the aggravating circumstances enumerated in ~~Section~~ Sections 701.7 et seq. through 701.12 of this title. Only such evidence in aggravation as the state has made known to the defendant prior to ~~his~~ the trial shall be admissible. In addition, the state may introduce evidence about the victim and about the impact of the murder on the family of the victim.

D. This section shall not be construed to authorize the introduction of any evidence secured in violation of the Constitutions of the United States or of the State of Oklahoma. The state and the defendant or ~~his~~ for the defendant shall be permitted to present argument for or against sentence of death.

E. Only sentencing proceedings occurring after the effective date of this section shall be subject to the provisions of this section.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 355, is amended to read as follows:

Section 355. A. Disclosure of matters occurring before the multicounty grand jury other than its deliberations and the vote of any juror may be used by the Attorney General in the performance of his duties. The Attorney General may disclose so much of the multicounty grand jury's proceedings to law enforcement agencies as he considers essential to the public interest and effective law enforcement. Otherwise, a grand juror, attorney, interpreter, stenographer, operator of any recording device, or any typist who transcribes recorded testimony may disclose matters occurring before the multicounty grand jury only when so directed by the court. All such persons shall be sworn to secrecy and shall be in contempt of court if they reveal any information which they are sworn to keep secret.

B. 1. A witness subpoenaed to appear and testify before a multicounty grand jury or to produce documents, records, or other evidence shall be entitled to the assistance of counsel, including assistance during such time as the witness is questioned in the presence of the multicounty grand jury.

2. If counsel desired by the witness is not available, the witness shall obtain other counsel within a reasonable time in order that the multicounty grand jury may proceed with its investigation.

3. Such counsel may be retained by the witness or shall be appointed in the case of any person unable to procure sufficient funds to obtain legal representation.

4. Such counsel shall be allowed to be present in the grand jury room during the questioning of the witness and shall be allowed to advise the witness but shall make no objections or arguments or otherwise address the multicounty grand jury or its legal advisor. The presiding judge shall have the same power to remove such counsel from the grand jury room as a judge has with respect to an attorney

in any court proceeding. Violation of this subsection shall be punishable as contempt.

~~C. No witness shall be prohibited from disclosing his testimony before the multicounty grand jury except for cause shown in a hearing before the presiding judge. In no event may a witness be prevented from disclosing his testimony to his attorney.~~

SECTION 5. AMENDATORY 51 O.S. 1991, Section 94, is amended to read as follows:

Section 94. It shall be the duty of the Attorney General of this state, when directed by the Governor, or upon notice being received by ~~him~~ the Attorney General in writing and verified by ~~five~~ one hundred or more reputable citizens of the county before some officer authorized to administer oaths, that any officer herein mentioned has been guilty of any of the acts, omissions or offenses as set out in Section, ~~3~~ 93 of this ~~act~~ title, to forthwith investigate such complaint, and if on such investigation ~~he~~ the Attorney General shall find that there is reasonable cause for such complaint, ~~he~~ the Attorney General shall forthwith institute proceedings in the Supreme Court of the state, or any district court of the county of the residence of the accused, to oust such officer from office.

SECTION 6. This act shall become effective November 1, 1996."

Passed the Senate the 3rd day of April, 1996.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1996.

Speaker

of the House of
Representatives