

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)
2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 895

By: Smith of the Senate

and

Steidley of the House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to legal services for indigent persons; amending 10 O.S. 1991, Section 24, as amended by Section 1, Chapter 340, O.S.L. 1994 (10 O.S. Supp. 1995, Section 24), which relates to appointment of counsel and compensation; providing for payment for certain cases by the local court fund; providing that legal representation for certain children shall not be a function of the Indigent Defense System, with exceptions; providing for representation by court-appointed attorneys; amending 22 O.S. 1991, Sections 1355, as amended by Section 1, Chapter 303, O.S.L. 1992, 1355.4, as last amended by Section 3, Chapter 328, O.S.L. 1994, 1355.6, as last amended by Section 3, Chapter 229, O.S.L. 1994, 1355.8, as last amended by Section 5, Chapter 328, O.S.L. 1994, 1355.14, as last amended by Section 2 of Enrolled Senate Bill No. 1061 of the 2nd Session of the 45th Oklahoma Legislature, Section 5, Chapter 229, O.S.L. 1994, 1356, as last amended by Section 6, Chapter 328, O.S.L. 1994, 1358, as last amended by Section 7, Chapter 328, O.S.L. 1994, 1360, as amended by Section 14, Chapter 303, O.S.L. 1992, 1362, as last amended by Section 9, Chapter 357, O.S.L. 1992, 1363, as amended by Section 16, Chapter 303, O.S.L. 1992 and 1364, as last amended by Section 8, Chapter 328, O.S.L. 1994 (22 O.S. Supp. 1995, Sections 1355, 1355.4, 1355.6, 1355.8, 1355.15, 1356, 1358, 1360, 1362, 1363 and 1364), which relate to the Oklahoma Indigent Defense System; correcting statutory cite; modifying authority of the Executive Director; removing duties to provide representation in certain cases; modifying application fees and providing for distribution of the fees; modifying procedure for contracting; providing for court appointments for legal representation for cases not within the scope of representation by the Oklahoma Indigent Defense System; requiring court-appointed attorneys to have professional liability insurance coverage; providing for compensation; providing limits of compensation, with exception; providing for a pilot program for indigent defense; providing for designation of pilot district; providing that in pilot district judges shall appoint attorneys to represent indigents; providing for appointment of volunteer attorneys who have liability insurance coverage; providing for compensation; providing limits of compensation; modifying procedure for collection of certain costs; modifying distribution; authorizing court

clerk to retain administrative fee; authorizing payment of certain contingent citations; removing requirement that System represent indigents in federal habeas corpus proceedings in death penalty cases; authorizing such representation if the System is appointed and if federal funds are designated for representation; authorizing contract for appeals; including certain juvenile appeals within the duties of the Oklahoma Indigent Defense System; requiring certain issues to be raised in first post-conviction application; requiring that certain copies be transmitted to the System rather than the Director; removing certain prohibition from accepting an appeal; changing notification requirement; creating the Task Force to Study Fees for Indigent Legal Services; providing for composition and appointment; providing for the calling of the first meeting; providing for election of a chair and vice-chair; providing for a quorum; providing for staffing; providing for travel reimbursement; requiring a report by a certain date; providing for codification; providing for noncodification; providing effective dates; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 24, as amended by Section 1, Chapter 340, O.S.L. 1994 (10 O.S. Supp. 1995, Section 24), is amended to read as follows:

Section 24. A. When it appears to the court that the minor or his parent or guardian desires counsel but is indigent and cannot for that reason employ counsel, the court shall appoint counsel. In any case in which it appears to the court that there is such a conflict of interest between a parent or guardian and child that one attorney could not properly represent both, the court may appoint counsel, in addition to counsel already employed by a parent or guardian or appointed by the court to represent the minor or parent or guardian, provided that in all counties having ~~public~~ county indigent defenders, ~~said public~~ the county indigent defenders assume the duties of representation in proceedings such as above.

B. In all cases of juvenile delinquency proceedings and appeals, adult certification proceedings and appeals, reverse certification proceedings and appeals, youthful offender proceedings and appeals and any other proceedings and appeals pursuant to the Oklahoma Juvenile Code, except mental health

proceedings and appeals and in-need-of-supervision proceedings and appeals, other than in counties where ~~public~~ the county indigent defenders are appointed, the court shall, where counsel is appointed and assigned, allow and direct to be paid by the Oklahoma Indigent Defense System, a reasonable and just compensation to the attorney or attorneys for such services as they may render. In all other cases pursuant to this title and in juvenile mental health proceedings and appeals and in-need-of-supervision proceedings and appeals, except in counties where county indigent defenders are appointed, the court shall, if counsel is appointed and assigned, allow and direct to be paid from the local court fund, a reasonable and just compensation to the attorney or attorneys for such services as they may render. Provided, that ~~such~~ any attorney appointed pursuant to this subsection shall not be paid a sum to exceed One Hundred Dollars (\$100.00) for services rendered in preliminary proceedings, and such compensation shall not exceed Five Hundred Dollars (\$500.00) for services rendered during trial and not to exceed One Hundred Dollars (\$100.00) for services rendered at each subsequent post-disposition hearing.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24.1 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Effective July 1, 1996, except as provided in subsection B of this section, the duties and responsibilities for legal representation to indigent children who are subject to any proceeding or appeal provided for in the Oklahoma Children's Code, mental health proceeding and appeal, guardianship proceeding and appeal, private termination of parental rights proceeding and appeal, family law proceeding and appeal addressing custody or visitation and appeal, civil case in which the child is a defendant, criminal proceeding for a crime in which the child was a victim, and in-need-of-supervision proceeding shall no longer be provided by the Indigent Defense System, but shall be provided by volunteer attorneys appointed by the court pursuant to subsection H of Section 1355.8 of Title 22 of the Oklahoma Statutes.

B. The Indigent Defense System shall complete all cases provided for in subsection A of this section and appeals for all such cases for which the System has been appointed prior to July 1, 1996, as follows:

1. For providing counsel at the district court level through the disposition hearing if a hearing has not been held as of July 1, 1996, or through the next significant proceeding scheduled on or after July 1, 1996, if a disposition hearing has already been held; and

2. For any pending nondelinquency appeal for which the System was appointed on or prior to June 30, 1996, until a decision and mandate are issued by the appropriate appellate court.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 1355, as amended by Section 1, Chapter 303, O.S.L. 1992 (22 O.S. Supp. 1995, Section 1355), is amended to read as follows:

Section 1355. A. Sections 1355 through 1368 of this title shall be known and may be cited as the "Indigent Defense Act".

B. The Oklahoma Indigent Defense System is hereby created, to provide counsel in cases, as provided in the Indigent Defense Act, in which the defendant is indigent and unable to employ counsel.

C. Unless otherwise provided, the provisions of the Indigent Defense Act shall not be applicable in counties subject to the provisions of Section ~~138.1~~ 138.1a of Title 19 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 1355.4, as last amended by Section 3, Chapter 328, O.S.L. 1994 (22 O.S. Supp. 1995, Section 1355.4), is amended to read as follows:

Section 1355.4 A. The chief executive officer of the Oklahoma Indigent Defense System shall be the Executive Director, who shall be appointed by the Board and serve at the pleasure of the Board. The Executive Director shall be an attorney who has been licensed to practice law in this state for at least four (4) years preceding the appointment, with experience in the representation of persons accused or convicted of crimes.

B. The Executive Director shall perform administrative functions which serve the Board.

C. The Executive Director shall have the following powers and duties:

1. To prepare and administer a master budget to be submitted to the Board and to process claims for the System, subject to approval by the Board;

2. To enter into contracts, as necessary, with individuals to provide counsel in cases in which the defendant is indigent and unable to employ counsel and to approve or disapprove the provisions of any such contract;

3. To review and approve or disapprove claims for expenditures of monies from whatever source, on a monthly basis;

4. To take such actions as shall strengthen the criminal justice system in this state;

5. To provide a professional organization for the education, training, and coordination of technical efforts of all attorneys representing indigent criminal defendants;

6. To maintain and improve defense efficiency and effectiveness in guaranteeing effective representation for the indigent criminal defendant;

7. To employ such personnel as necessary to carry out the duties imposed upon the System by law;

8. To solicit and maintain a current list of attorneys licensed to practice law in this state who are willing to accept court appointments and who meet any other qualifications as set by the Board;

9. To solicit and maintain a separate list of persons eligible for appointment to capital cases, who meet the qualifications set by the Board;

10. To determine when appointment of counsel is needed in pro se applications for post-conviction relief, ~~subject to the approval of the Board;~~

11. To establish ~~policies for the appointment of counsel in post-conviction cases~~ reasonable hourly rates of compensation for attorneys appointed in accordance with the Indigent Defense Act in any county, subject to approval by the Board;

12. To establish maximum caseloads for attorneys employed by the System, subject to approval by the Board;

13. To require reduction of caseloads through reassignment of cases to private attorneys, as necessary, ~~subject to approval by the Board;~~

14. To approve the sharing of office space, equipment, or personnel among the separate indigent defense programs within the System;

15. To prepare and submit to the Board an annual report of expenditures of funds, cases involved in, and status of such cases for the preceding fiscal year and file such report with the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Oklahoma Supreme Court, and the Presiding Judge of the Oklahoma Court of Criminal Appeals regarding the implementation of the Indigent Defense Act;

16. To convene regional or statewide conferences and training seminars for the purpose of implementing the provisions of the Indigent Defense Act;

17. To serve in an advisory capacity to the indigent defenders and defense attorneys who represent indigents pursuant to contract or who volunteer to represent indigents of the state;

18. To gather and disseminate information to indigent defenders relative to their official duties, including, but not limited to, changes in the law relative to their office; and

19. To recommend additional legislation necessary to upgrade the Oklahoma Indigent Defense System or to improve the justice system.

D. When an attorney has been appointed in accordance with the Indigent Defense Act, in any county, and needs investigative, expert, or other services, a request for compensation for such services shall be made to the Executive Director on a form provided by the Executive Director. The Executive Director may authorize compensation at a reasonable hourly rate, subject to funds budgeted and available to the Oklahoma Indigent Defense System.

E. Each individual performing the services provided for in subsection D of this section shall be reimbursed for their necessary travel expenses as provided by the State Travel Reimbursement Act.

F. Requests for expenses not included in subsections D and E of this section shall require pre-approval by the Executive Director.

G. If there is a vacancy or extended absence in the Office of Executive Director, the Board shall perform said duties or appoint an interim director to perform such duties until a new Executive Director is appointed.

SECTION 5. AMENDATORY 22 O.S. 1991, Section 1355.6, as last amended by Section 3, Chapter 229, O.S.L. 1994 (22 O.S. Supp. 1995, 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, ~~and~~ and 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~~ indigent juveniles, 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~~ juvenile delinquency proceedings and appeals, adult certification proceedings and appeals, reverse certification proceedings and appeals, and any other cases and appeals pursuant to the Oklahoma Juvenile Code, other than mental health cases and appeals and in-need-of-supervision proceedings and appeals.

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.~~ C. 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~~ the applicant 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)~~ Forty Dollars (\$40.00) 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 all or part of 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. The first Twenty Dollars (\$20.00) of any fee collected pursuant to this subsection shall be transmitted monthly to the Oklahoma Indigent Defense System no later than the tenth working day of the month following the month in which the fee was collected. The balance of any fees collected pursuant to this subsection shall be retained by the court clerk and deposited in the Court Clerk's Revolving Fund.

~~E.~~ D. 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.~~ E. 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.~~ Upon request by any party including, but not limited to, the attorney appointed to represent the indigent, the court shall hold a hearing on the issue of eligibility for appointment of the System.

~~G.~~ F. 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 6. AMENDATORY 22 O.S. 1991, Section 1355.8, as last amended by Section 5, Chapter 328, O.S.L. 1994 (22 O.S. Supp. 1995, 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~~ criminal cases from 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. 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~~ indigent juveniles in cases for which the System must provide representation, including, but not limited to, renewing any existing contract or contracts for the next fiscal year or soliciting new bids, whichever the Board determines to be in the best interests of the state, the System and the clients represented by the System. 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.

D. For those counties in which a prior fiscal year contract is not renewed for the succeeding fiscal year or in which the Board elects to solicit new ~~bids~~ offers to contract, the Executive Director shall cause notice to be published in the Oklahoma Bar Journal that ~~bids~~ offers to contract 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~~ make an offer to contract;
3. The period covered by the contract; and
4. A general description of the services required.

E. Only members in good standing of the Oklahoma Bar Association shall be eligible to submit ~~bids~~ offers to contract pursuant to this section. In addition, all ~~bids~~ offers to contract must be accompanied by a written statement of the manner in which representation shall be made available as needed.

F. 1. The Board shall accept the ~~best bid or bids~~ offer or offers, as determined by the Board, from a qualified ~~bidder~~ attorney or bidders attorneys. In determining whether ~~a bid~~ an offer is the best ~~bid~~ offer, the Board shall take into consideration, among other factors, the following:

- a. whether the attorney or attorneys submitting the ~~bid~~ offer maintain an office within that county;
- b. whether any such office is the attorney's primary office;
- c. whether the attorney or attorneys submitting the ~~bid~~ offer have been awarded a contract in another county;
- d. whether sufficient attorneys are included in the ~~bid~~ offer to competently address the number of cases to be covered under the ~~bid~~ contract; and
- e. the accessibility of the attorney or attorneys to the clients to be served if the ~~bidder is awarded~~ Board awards a contract on the basis of the offer.

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~~ an original of each offer to contract.

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.

4. Every contract awarded pursuant to the provisions of this subsection shall provide that every attorney who will be performing services pursuant to the contract shall carry professional liability insurance in an amount satisfactory to the Board. No contract shall be effective until proof of such insurance is provided to the Board.

5. In the event that only one qualified ~~bid~~ offer is received, the Board may accept the ~~bid~~ offer, make a counter-offer, readvertise or provide representation as otherwise authorized by this section. In the event that more than one qualified ~~bid~~ offer is received for a county or counties, the Board may accept one or more of the ~~bids~~ offers, make one or more counter-offers, readvertise if the Board determines that awarding

a contract or contracts ~~from~~ on the ~~bids~~ offers received would not be in the best interest of the System or the clients represented by the System, or provide representation as otherwise authorized by this section.

6. In the event that no qualified ~~bids~~ offers to contract are received, the Board may readvertise or 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~~ indigent juveniles. Compensation for such attorneys shall be as provided in subsection G of this section.

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

8. 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 or laws of this state~~ indigent juveniles, be appointed to represent an indigent person.

G. 1. Except as provided in paragraph 4 3 of this subsection, 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:

- a. juvenile cases; delinquency proceedings and appeals, adult certification proceedings and appeals, reverse certification proceedings and appeals, youthful offender proceedings and appeals, and any other proceedings and appeals, pursuant to the Oklahoma Juvenile Code, other than mental health cases and

appeals, and in-need-of-supervision proceedings and appeals,

- ~~b. mental health cases;~~
- e. post-conviction cases~~;~~,
- ~~d. grand jury cases;~~
- e. c. traffic cases punishable by incarceration~~;~~, and
- ~~f.~~ d. misdemeanor cases~~;~~
- ~~g. guardianship cases; and~~
- ~~h. contempt proceedings punishable by incarceration.~~

2. Except as provided in paragraph 4 3 of this subsection, 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.

3. The maximum statutory fees established in this 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.

H. 1. Attorneys paid for indigent defense on a contractual basis shall be paid an annual fee in twelve monthly installments each equalling seven and one-half percent (7.5%) 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 ten percent (10%) 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 Board, upon recommendation of the Executive Director, may, however, authorize partial payments on a quarterly basis of the amount retained as reasonable compensation for those matters which were completed during the prior quarter. 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 1369 of this title.

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

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.

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~~ shall allow an attorney to withdraw from ~~any~~ a case only if the attorney makes proper application to the ~~Board~~ Executive Director to withdraw from the case and ~~if~~ the application is approved by the Director in accordance with policies established by the Board.

L. In any case in which legal representation is not provided by the Oklahoma Indigent Defense System and in which indigents are entitled to legal representation by the Constitution and laws of this state, the court shall appoint legal representation, from a list of qualified volunteer attorneys who provide proof of professional liability insurance coverage, and direct to be payed from the local court fund a reasonable and just compensation not to exceed Eight Hundred Dollars (\$800.00) to the attorney or attorneys for services as they may render. The compensation limit may be exceeded if the court finds that the case required an extraordinary amount of time to litigate.

M. Beginning July 1, 1996, a pilot program shall be established for representation of indigents. The program shall be established in a District Court Judicial District designated by the Chief Justice of the Supreme Court. In the designated district, the judges of the district shall appoint attorneys from a list of attorneys who have volunteered to represent indigents in the district and who provide proof of professional liability insurance coverage. The attorneys that are appointed shall be

compensated from the court fund of each county of the district at an hourly rate established by the chief judge of the district. The total compensation paid for a case shall not exceed the total compensation set out in subsection G of this section.

SECTION 7. AMENDATORY 22 O.S. 1991, Section 1355.14, as last amended by Section 2 of Enrolled Senate Bill No. 1061 of the 2nd Session of the 45th Oklahoma Legislature, is amended to read as follows:

Section 1355.14 A. ~~The~~ At the time of pronouncing the judgment and sentence or other final order, the court shall order any person represented by an attorney employed by the Indigent Defense 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~~ attorney representing the indigent person shall document for the court the total costs for representation.

B. Costs assessed pursuant to this section shall be collected by the court clerk and deposited in the ~~court fund~~ Indigent Defense System Revolving Fund. The court clerk may retain not more than ten percent (10%) of all such costs collected as an administrative fee, which shall be deposited in the Court Clerk's Revolving Fund.

C. Costs of representation 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.

D. Any order directing the defendant to pay costs of representation shall be a lien against all real and personal property of the defendant and may be filed against such property and foreclosed as provided by law for civil liens.

~~E. 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 8. AMENDATORY Section 5, Chapter 229, O.S.L. 1994 (22 O.S. Supp. 1995, Section 1355.15), is amended to read as follows:

Section 1355.15 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. The Indigent Defense Board may, upon recommendation of the Executive Director, approve payment of reasonable court costs resulting from contempt citations issued to attorneys appointed in accordance with the Indigent Defense Act.

SECTION 9. AMENDATORY 22 O.S. 1991, Section 1356, as last amended by Section 6, Chapter 328, O.S.L. 1994 (22 O.S. Supp. 1995, 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.~~ 138.1a of Title 19 of the Oklahoma Statutes, and shall perfect or award contracts to 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. In addition, attorneys of the System may represent indigents who have been sentenced to death in federal habeas corpus proceedings in any United States Court when the System is appointed and adequate federal funds for such representation are designated by the federal court System for that purpose.

B. The System shall perfect or award contracts to perfect all appeals for indigent defendants from counties subject to the provisions of Section ~~138.1~~ 138.1a of Title 19 of the Oklahoma

Statutes who were not represented at trial by the county ~~public~~ indigent defenders, unless the Executive Director determines that a conflict of interest exists, in which case the county indigent defender shall be appointed to represent the indigent defendant. If the district court determines that 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~~ indigents 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~~ indigents 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 10. AMENDATORY 22 O.S. 1991, Section 1358, as last amended by Section 7, Chapter 328, O.S.L. 1994 (22 O.S. Supp. 1995, Section 1358), is amended to read as follows:

Section 1358. 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.~~ 138.1a of Title 19 of the Oklahoma Statutes, judges of the district courts shall assign all indigent criminal appeals which are felony or misdemeanor appeals, appeals by petition for writ of certiorari, juvenile appeals pursuant to the Oklahoma Juvenile Code other than appeals for in-need-of-supervision proceedings, appeals from revocation of a parole, appeals from revocation of a suspended sentence and appeals from acceleration of deferred judgments to the System for the perfection of such appeals. If a judge of the district court finds that a conflict exists or if the Executive Director determines that a conflict exists after evaluating such an assigned case, the Executive Director shall reassign the case in the same manner as is provided for conflicts at the trial level in Section 1355.7 of this title.

SECTION 11. AMENDATORY 22 O.S. 1991, Section 1360, as amended by Section 14, Chapter 303, O.S.L. 1992 (22 O.S. Supp. 1995, Section 1360), is amended to read as follows:

Section 1360. A. The System may represent indigents in post-conviction relief in all capital cases.

B. In noncapital cases, the System may represent indigents for post-conviction relief, if the representation is related to another case in which the System has been appointed, or if representation is authorized by the Executive Director pursuant to policies established and adopted by the Board.

C. No attorney employed by the System or providing legal services for the System pursuant to contract shall be required to appear in the district courts of this state on issues of appellate counsel appointment and requests for exhibits, records and transcripts.

After a mandate has been rendered by the Oklahoma Court of Criminal Appeals in any case on direct appeal, the System is prohibited from appealing that case in any further proceedings in either a state or federal court, except in capital cases and in cases provided for in subsection B of this section. In such capital cases the System shall perfect all petitions for writ of certiorari to the United States Supreme Court and represent such appellants or appellees, as the case may be, in any appearance before that Court. ~~In addition, attorneys of the System may represent indigents who have been sentenced to death in federal habeas corpus proceedings in any United States Court when the System is appointed and adequate federal funds for such representation are designated by the federal court system for that purpose.~~

D. All state and federal constitutional issues affecting guilt and/or sentence shall be raised and decided on the merits in the first post-conviction application ~~and in the first habeas corpus petition.~~ Any issue not so raised and decided shall be dismissed from any subsequent application for post-conviction relief ~~and any subsequent habeas corpus petition,~~ unless the accused shows good cause why the issue was not raised previously.

SECTION 12. AMENDATORY 22 O.S. 1991, Section 1362, as last amended by Section 9, Chapter 357, O.S.L. 1992 (22 O.S. Supp. 1995, Section 1362), is amended to read as follows:

Section 1362. The district court clerks for each county shall transmit one certified copy of the original record for each appeal authorized by the Indigent Defense Act directly to the ~~Executive Director~~ Oklahoma Indigent Defense System as soon as possible after the filing of the notice of intent to appeal and the order appointing the System, unless additional copies are requested, not to exceed three copies. One certified copy of all transcripts, records and exhibits designated shall be transmitted for each authorized appeal by the district court clerk to the ~~Executive Director~~ Oklahoma Indigent Defense System within the time limits as established by the Rules of the Court of Criminal Appeals and applicable statutes, unless additional copies are requested, not to exceed three copies. The System attorney is hereby authorized to supplement the designation of record as filed by the trial counsel by filing a written supplemental designation of record. When a written supplemental designation of record is filed by the System attorney, it shall be the duty of the court clerk or the court reporter, as appropriate, to include the supplementary materials as part of the record on appeal.

SECTION 13. AMENDATORY 22 O.S. 1991, Section 1363, as amended by Section 16, Chapter 303, O.S.L. 1992 (22 O.S. Supp. 1995, Section 1363), is amended to read as follows:

Section 1363. It shall be the responsibility of the trial counsel to file all jurisdictional documents required to be filed in the district court in order to perfect the appeal. ~~The System shall be prohibited from accepting an appeal, unless trial counsel has filed all necessary documents or has pursued and been granted the authority for an appeal out of time on a defendant's behalf.~~

SECTION 14. AMENDATORY 22 O.S. 1991, Section 1364, as last amended by Section 8, Chapter 328, O.S.L. 1994 (22 O.S. Supp. 1995, Section 1364), is amended to read as follows:

Section 1364. It shall be the responsibility of the appropriate judge of the district court to notify the ~~Executive~~

~~Director~~ Oklahoma Indigent Defense System of any appointment of the System to perfect an appeal pursuant to the Indigent Defense Act within three (3) days after such appointment. The appointment order shall state the nature of the appeal. The appropriate judge of the district court shall send all necessary documents to insure perfection of the appeal to the ~~Executive Director~~ Oklahoma Indigent Defense System within the time prescribed in the Rules of the Court of Criminal Appeals or under applicable statutes.

SECTION 15. A. There is hereby created, until January 6, 1997, the Task Force to Study Fees for Indigent Legal Services. The task force shall study current methods of providing for indigent representation in civil legal matters and possible methods for funding such representation.

B. The task force shall be composed of eleven (11) members. Two of the members shall be members of the Senate, appointed by the President Pro Tempore of the Senate; two of the members shall be members of the House of Representatives, appointed by the Speaker of the House of Representatives; one member shall be a member of the Oklahoma Bar Association, to be appointed by the Oklahoma Bar Association; one member shall be appointed by the Speaker of the House of Representatives from an association or agency that deals with senior citizen issues; one member shall be appointed by the Speaker of the House of Representatives from an agency or association that deals with issues of domestic abuse; one member shall be appointed by the Speaker of the House of Representatives from a legal services agency that provides legal services to indigent persons; one member shall be appointed by the President Pro Tempore of the Senate from a child advocate association or agency; one member shall be appointed by the President Pro Tempore of the Senate from an association or agency that deals with issues of Native American Tribes; and one member shall be appointed by the President Pro Tempore of the Senate from a social justice or civic agency.

C. The first meeting of the task force shall be called by the Administrative Director of the Courts. At the first meeting, the task force shall elect a chair and vice-chair from the legislative

members of the task force. A majority of the members shall constitute a quorum. Staffing for the task force shall be provided by the House of Representatives and the Senate.

D. All members of the task force shall receive reimbursement for expenses for attending meetings of the task force. Legislative members shall receive reimbursement pursuant to Section 456 of Title 74 of the Oklahoma Statutes. Nonlegislative members shall receive reimbursement pursuant to the State Travel Reimbursement Act.

E. The task force shall file a written report of its recommendations to the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Governor by January 6, 1997.

SECTION 16. NONCODIFICATION Section 15 of this act shall not be codified in the Oklahoma Statutes.

SECTION 17. Section 6 of this act shall become effective June 1, 1996.

SECTION 18. Sections 1 through 5 and 7 through 16 of this act shall become effective July 1, 1996.

SECTION 19. 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.

45-2-3034

KSM