

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2946

By: Steidley

AS INTRODUCED

An Act relating to the Oklahoma Juvenile Code; adding Article VIII to the Code; providing for legal representation for indigent juveniles; transferring duties and responsibilities for representation of indigent juveniles from the Oklahoma Indigent Defense System to the Oklahoma Commission on Children and Youth, with exceptions; defining terms; providing duties and powers of the Commission on Children and Youth; providing duties of the Director of the Commission on Children and Youth; requiring annual report; authorizing the Commission to award contracts for legal representation; providing that payment is from the budget of the Commission; amending 22 O.S. 1991, Sections 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 and 1358, as last amended by Section 7, Chapter 328, O.S.L. 1994 (22 O.S. Supp. 1995, Sections 1355.6, 1355.8 and 1358), which relate to the Oklahoma Indigent Defense System; removing duties to provide representation in juvenile cases; providing for codification; providing for noncodification;

providing an effective date; and declaring an emergency.

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

SECTION 1. This act shall constitute Article VIII of the Oklahoma Juvenile Code.

ARTICLE VIII. INDIGENT DEFENSE

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7308-1.1 of Title 10, unless there is created a duplication in numbering, reads as follows:

Effective July 1, 1996, the duties and responsibilities for legal representation of indigent juveniles who are subject to any proceeding provided for in the Oklahoma Juvenile Code or any criminal proceeding shall be transferred from the Oklahoma Indigent Defense System to the Oklahoma Commission on Children and Youth. The Indigent Defense System shall complete all cases and appeals for all cases assigned to the System prior to July 1, 1996, that are pending as of July 1, 1996.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7308-1.2 of Title 10, unless there is created a duplication in numbering, reads as follows:

As used in this article:

1. "Commission" means the Oklahoma Commission on Children and Youth; and

2. "Director" means the Director of the Oklahoma Commission on Children and Youth.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7308-1.3 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The Commission shall have the following powers and duties:

1. To establish policies for the representation of indigent juveniles as required by law;
2. To require annual reports of expenditures of funds, cases for which the Commission is providing representation, and status of such cases for the preceding fiscal year from the Director;
3. To approve a master budget for the representation of indigent juveniles, which shall be prepared and administered by the Director;
4. To authorize the acceptance of monies, gifts, grants, or services from any public or private source;
5. To review claims for expenditures of monies from whatever source, on a quarterly basis;
6. To authorize the Director to enter into contracts with individuals, educational institutions, or state or federal agencies and to approve or disapprove the provisions of any such contract;
7. To establish an equitable distribution plan for allocation of any funds or gifts received from public or private sources for representation of indigent juveniles and distribute such funds in accordance with such plan; and
8. To appoint an advisory council made up of defense lawyers who represent indigent juveniles pursuant to contract or who volunteer to represent indigent juveniles to discuss problems and hear recommendations concerning necessary research, minimum standards, educational needs, and other matters imperative to conducting representation of juveniles in a professional manner.

B. The Director shall:

1. Select attorneys to represent indigent juveniles 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 Commission for such appointments;

2. Enter into contracts as necessary with individuals to provide counsel in cases in which the juvenile is indigent and unable to employ counsel;

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

4. Prepare the annual reports required by subsection A of this section; and

5. Prepare and administer a master budget to be submitted to the Commission and to process claims, subject to the approval of the Commission.

C. The Commission shall make an annual report to 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 efforts of the Board to implement the purposes of this article.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7308-1.4 of Title 10, unless there is created a duplication in numbering, reads as follows:

The Commission shall have the authority to award contracts to provide legal representation for indigent juveniles for whom representation is required by the Constitution and laws of this state. Payments to attorneys who accept appointments to represent juveniles shall be made from the budget of the Commission.

SECTION 6. 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, 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.

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 7. 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 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, 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, the Executive Director shall cause notice to be published in the Oklahoma Bar Journal 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.

E. Only members in good standing of the Oklahoma Bar Association shall be eligible to submit bids pursuant to this section. In addition, all bids 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, as determined by the Board, from a qualified bidder or bidders. In determining whether a bid is the best bid, the Board shall take into consideration, among other factors, the following:

- a. whether the attorney or attorneys submitting the bid 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 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.

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 is received, the Board may accept the bid, readvertise or provide representation as otherwise authorized by this section. In the event that more than one qualified bid is received for a county or counties, the Board may accept one or more of the bids, readvertise if the Board determines that awarding a contract or contracts from the bids 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 are received, the Board 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 subsection G of this section.

7. In the event that no qualified bids 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 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 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, 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;~~
- ~~b.~~ mental health cases;
- ~~c.~~ b. post-conviction cases;
- ~~d.~~ c. grand jury cases;
- ~~e.~~ d. traffic cases punishable by incarceration;
- ~~f.~~ e. misdemeanor cases;
- ~~g.~~ f. guardianship cases; and
- ~~h.~~ g. 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 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 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 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,~~ 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 9. Section 1 of this act shall not be codified in the Oklahoma Statutes.

SECTION 10. This act shall become effective July 1, 1996.

SECTION 11. 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.

45-2-8297

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