

SHORT TITLE: Indigent Defense System; requiring literacy program as condition of representation; effective date.

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

SENATE BILL NO. 1132

By: Shedrick

AS INTRODUCED

An Act relating to representation of indigents; amending 19 O.S. 1991, Section 138.5, as last amended by Section 1, Chapter 298, O.S.L. 1993 (19 O.S. Supp. 1995, Section 138.5), which relates to duties of county indigent defenders; modifying language; amending 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), which relates to responsibilities of Indigent Defense System; requiring literary testing of certain defendants; authorizing certain literacy programs as a condition of representation; and providing an effective date.

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

SECTION 1. AMENDATORY 19 O.S. 1991, Section 138.5, as last amended by Section 1, Chapter 298, O.S.L. 1993 (19 O.S. Supp. 1995, Section 138.5), is amended to read as follows:

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

B. When a defendant or, if applicable, his or her parent or legal guardian requests representation by the county indigent defender, such person shall submit an appropriate application, the form of which shall state that such application is signed under oath and under the penalty of perjury and that a false statement may be

prosecuted as such. The application shall state whether or not the defendant has been released on bond. In addition, if the defendant has been released on bond, the application shall include a written statement from the applicant that he or she has contacted three (3) attorneys, licensed to practice law in this state, and the applicant has been unable to obtain legal counsel. A nonrefundable application fee of Fifteen Dollars (\$15.00) shall be paid to the court clerk at the time the application is submitted, and no application shall be accepted without payment of the fee; except that the court may, based upon the financial information submitted, waive the fee, if the person is in custody or if the court determines that the person does not have the financial resources to pay the fee. Any fee collected pursuant to this subsection shall be retained by the court clerk as an administrative fee and deposited in the court fund. Before the court appoints the county indigent defender based on said application, the court shall advise the defendant or, if applicable, his or her parent or legal guardian that the application is signed under oath and under the penalty of perjury. The court shall further require the defendant to take a test for adult basic education to determine his or her current literacy level before a county indigent defender may be appointed. A copy of the application shall be sent to the prosecuting attorney or the Office of the Attorney General, whichever is appropriate, for review, and, upon request, the court shall hold a hearing on the issue of the eligibility for appointment of the county indigent defender.

C. If the defendant is admitted to bail and the defendant or another person on behalf of the defendant posts a bond, other than by personal recognizance, this fact shall constitute a rebuttable presumption that the defendant is not indigent.

D. If it is determined by testing that the defendant has literacy skills below the twelfth-grade reading level, the court may order the defendant to participate in a literacy program or to complete a graduate high school equivalent degree (GED) as a condition of representation by a county indigent defender.

SECTION 2. 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. The court shall further require the defendant to take a test for adult basic education to determine his or her current literacy level before appointing the System to represent the defendant. 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.

H. If it is determined by testing that the defendant has literacy skills below the twelfth-grade reading level, the court may order the defendant to participate in a literacy program or complete a graduate high school equivalent degree (GED) as a condition of representation by the System.

SECTION 3. This act shall become effective November 1, 1996.

45-2-2318

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