

SHORT TITLE: Criminal procedure; requiring transmittal of certain fees into the Indigent Defense System Revolving Fund; emergency.

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

SENATE BILL NO. 895

By: Smith

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 1991, Sections 1355.6, as last amended by Section 3, Chapter 229, O.S.L. 1994, and 1355.14, as last amended by Section 4, Chapter 229, O.S.L. 1994 (22 O.S. Supp. 1995, Sections 1355.6 and 1355.14), which relate to the Indigent Defense Act; providing for retention of a portion of certain fees by the court clerk; requiring deposit of certain fees in the Indigent Defense System Revolving Fund; clarifying and conforming language; and declaring an emergency.

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

SECTION 1. 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 Oklahoma 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~~ 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~~ the 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~~ 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 and the balance shall be transmitted to the State Treasurer, who shall credit the same to the Indigent Defense System 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 2. AMENDATORY 22 O.S. 1991, Section 1355.14, as last amended by Section 4, Chapter 229, O.S.L. 1994 (22 O.S. Supp. 1995, Section 1355.14), is amended to read as follows:

Section 1355.14 A. The court shall order any person represented by an attorney employed by the Oklahoma 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 shall document for the court the total costs for representation.

~~Said costs~~ B. 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~~ C. 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.

D. 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 3. 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.

