

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 675

By: Smith

COMMITTEE SUBSTITUTE

An Act relating to indigent defense; amending 20 O.S. 1991, Section 1304, as last amended by Section 1, Chapter 78, O.S.L. 1996 (20 O.S. Supp. 1996, Section 1304), which relates to the court fund; clarifying language; allowing claim for certain expenses against court fund; amending 22 O.S. 1991, Sections 1355.4 and 1355.6, as last amended by Sections 4 and 5, Chapter 301, O.S.L. 1996, 1355.7, as last amended by Section 4, Chapter 328, O.S.L. 1994, and 1355.8 and 1363, as last amended by Sections 6 and 13, Chapter 301, O.S.L. 1996 (22 O.S. Supp. 1996, Sections 1355.4, 1355.6, 1355.7, 1355.8 and 1363), which relate to post-conviction relief in capital cases and the Indigent Defense Act; modifying powers of Executive Director; requiring Executive Director to operate a cost effective system; authorizing lists of certain expert witnesses; providing for approval and use of certain services; prohibiting representation by Indigent Defense System unless defendant has filed certain affidavit; requiring certain approval of attorneys fees; modifying language; prohibiting

acceptance of certain appeals; and providing an effective date.

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

SECTION 1. AMENDATORY 20 O.S. 1991, Section 1304, as last amended by Section 1, Chapter 78, O.S.L. 1996 (20 O.S. Supp. 1996, Section 1304), is amended to read as follows:

Section 1304. A. Claims against the court fund shall include only such expenses as may be lawfully incurred for the operation of the court in the county. Payment of the expenses may be made after the claim therefor is approved by the district judge who is a member of the governing board of the court fund and either the local court clerk or the local associate district judge who is a member of said governing board. No expenditures falling into any category listed in paragraphs 2, 6 and 7 of subsection B of this section, may be made without prior written approval of the Chief Justice of the Supreme Court. The Supreme Court may provide by rule the manner in which expenditures in the restricted categories shall be submitted for approval. When allowing the expenditures in paragraphs 6 and 7 of subsection B of this section, the Chief Justice shall direct that resort first be had to the surplus funds in the court fund in the county involved.

B. The term "expenses" shall include the following items and none others:

1. Principal and interest on bonds issued prior to January 1, 1968, pursuant to Sections 771 through 778 of Title 19 of the Oklahoma Statutes, ~~Sections 771 through 778;~~

2. Compensation of bailiffs and part-time help;

3. Juror fees and mileage, as well as overnight accommodation and food expense for jurors kept together as set out in Section 81 et seq. of Title 28 of the Oklahoma Statutes, ~~Section 81 et seq.~~;

4. Witness fees and mileage for witnesses subpoenaed by the defense as set out in Section 81 et seq. of Title 28 of the Oklahoma Statutes, except expert witnesses for county indigent defenders shall be paid a reasonable fee for their services;

5. Office supplies, books for records, postage and printing;

6. Furniture, fixtures and equipment;

7. Renovating, remodeling and maintenance of courtrooms, judge's chambers, clerk's offices and other areas primarily used for judicial functions;

8. Judicial robes;

9. Attorney's fees for indigents in the trial court and on appeal;

10. Compensation or reimbursement for services provided in connection with an adult guardianship proceeding as provided by Section 4-403 of Title 30 of the Oklahoma Statutes. Compensation from the court fund for attorneys appointed pursuant to the Oklahoma Guardianship Act, Section 1-102 et seq. of Title 30 of the Oklahoma Statutes, shall be substantially the same as for attorneys appointed in juvenile proceedings pursuant to Title 10 of the Oklahoma Statutes. The compensation, if any, for guardians ad litem appointed pursuant to the Oklahoma Guardianship Act shall not exceed One Hundred Dollars (\$100.00);

11. Transcripts ordered by the court;

12. Necessary telephone expenses, gas, water and electrical utilities for the part of the county courthouse occupied by the court and other areas used for court functions;

13. The cost of publication notice in juvenile proceedings as provided in Section 1105 of Title 10 of the Oklahoma Statutes and in

termination of parental rights proceedings brought by the state as provided in Section 1131 of Title 10 of the Oklahoma Statutes;

14. Interpreter fees;

15. Necessary travel expenses of the office of county indigent defender approved by the court fund governing board;

16. Rent for county indigent defender's office outside of the county courthouse;

17. Any other expenses now or hereafter expressly authorized by statute; ~~and~~

18. Necessary training for the judges and court personnel on the court integrated computer system; and

19. Reasonable compensation for expert, investigative, or other services authorized by the court for indigent defendants not represented by a county indigent defender or the Oklahoma Indigent Defense System.

C. No county courthouse building commission shall be created after March 1, 1968, and no disbursements shall be permitted from any court fund under the provisions of Sections 771 through 778 of Title 19 of the Oklahoma Statutes, ~~Sections 771 through 778~~, except by county courthouse commissions created prior to March 1, 1968; and provided, nothing in Section 1301 et seq. of this title shall prevent the construction of additional courtrooms within existing courthouse facilities, from funds other than the court fund.

D. Items of equipment, furniture, fixtures, printing or supplies that are available in the quantities desired from a contract vendor's list for order or purchase by the court fund through the facilities of the Central Purchasing Office of the State of Oklahoma may not be purchased by any court fund at prices higher than those approved by the Central Purchasing Office.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 1355.4, as last amended by Section 4, Chapter 301, O.S.L. 1996 (22 O.S. Supp. 1996, 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;~~

~~11.~~ To establish 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.~~ 11. To establish maximum caseloads for attorneys employed by the System, subject to approval by the Board;

~~13.~~ 12. To require reduction of caseloads through reassignment of cases to private attorneys, as necessary;

~~14.~~ 13. To approve the sharing of office space, equipment, or personnel among the separate indigent defense programs within the System;

~~15.~~ 14. 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.~~ 15. To convene regional or statewide conferences and training seminars for the purpose of implementing the provisions of the Indigent Defense Act;

~~17.~~ 16. 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.~~ 17. 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.~~ 18. To recommend additional legislation necessary to upgrade the Oklahoma Indigent Defense System or to improve the justice system; and

19. To operate a cost effective system by:

- a. implementing procedures to track System expenditures to show costs by case and client and to track time and expenses by attorney, whether the attorney is employed by the System, or appointed by the court,
- b. adopting written policies regarding when employees are to be in travel status and making efforts to pool trips to reduce costs, including but not limited to, policies for travel of court appointed attorneys, and
- c. reviewing assignment of indigency status to identify clients who have available resources and collecting costs of representation when feasible.

D. 1. The Executive Director is hereby authorized to develop and maintain lists of approved contractors that will be available to serve as expert witnesses. In developing such lists, the Director shall solicit bids for those types of services that the Director reasonably believes will need to be provided. The Director shall provide notification to as many potential contractors as possible so as to generate the maximum possible number of bidders. For each type of expert service to be contracted for, the Director may accept or reject, as the Director deems appropriate, any bid submitted. On a form provided by the Director, attorneys appointed in accordance with the Indigent Defense Act must request and have pre-approved expert witness services from the Director. Attorneys may request approval of specific experts from the appropriate list of approved contractors and the Director has the authority to approve the

request or to appoint another contractor from the approved list.
Attorneys may also request, for specified reasons, specific experts
not on the approved list of contractors in which case the Director
may approve such request or appoint a contractor from the approved
list of contractors. If the Director determines that either no
contractor on the approved list is timely able to provide the
requested services, no contractor on the approved list is qualified
to provide the requested services, or a less expensive alternative
is available, the Director may approve the use of a witness not on
the approved list and may authorize compensation at a reasonable
hourly rate, subject to funds budgeted and available to the Oklahoma
Indigent Defense System. The procedures to be used to implement the
provisions of this subsection shall be approved by the Central
Purchasing Director.

2. Attorneys appointed in accordance with the Indigent Defense
Act must request and have pre-approved investigative or other
nonexpert witness services from the Executive Director on a form
provided by the Executive Director. The Director may, subject to
funds budgeted and available to the System, authorize such services
at a reasonable hourly rate of compensation.

E. 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.~~ F. 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 3. AMENDATORY 22 O.S. 1991, Section 1355.6, as last amended by Section 5, Chapter 301, O.S.L. 1996 (22 O.S. Supp. 1996, 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 in all felony, misdemeanor and traffic cases punishable by incarceration. In addition, the System shall have the responsibility of defending all indigent juveniles, as determined in accordance with the provisions of the Indigent Defense Act, in 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 perfect appeals and to provide representation in capital 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.

C. When an indigent 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 the applicant has contacted three (3) named attorneys, licensed to practice law in this state, and the

applicant has been unable to obtain legal counsel. A nonrefundable application fee of 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 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.

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.

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~~ shall be sent to the prosecuting attorney or the Office of the Attorney General, whichever is appropriate, for review. 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.

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.

G. The System shall be prohibited from accepting an appointment unless a completed pauper's affidavit has been filed of record in the case.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 1355.7, as last amended by Section 4, Chapter 328, O.S.L. 1994 (22 O.S. Supp. 1996, Section 1355.7), is amended to read as follows:

Section 1355.7 A. If the court determines that a conflict of interest exists at the trial level between a defendant and an attorney employed by the System, the case may be reassigned by the Executive Director to another attorney employed by the System, or to a private attorney with whom the System has a contract for indigent defense or who is included in a list of volunteers as provided in subsection C of this section.

B. If the court determines that a conflict of interest exists at the trial level between a defendant and an attorney who represents indigents either pursuant to a contract with the System or as a volunteer, the case may be reassigned by the Executive Director to an attorney employed by the System, another attorney who represents indigents pursuant to a contract with the System, or another private attorney who has agreed to accept such appointments pursuant to subsection C of this section.

C. Appointment of a private attorney in all counties of this state served by the System shall be from a list of attorneys willing to accept court appointments and who meet the qualifications established by the Board for such appointments.

D. Payment to such private attorneys shall be made by the System and shall be at the rates ~~set forth in the contract between the System and the private attorney~~ approved by the Board, subject to the statutory limits established in Sections 1355.8 and 1355.13 of this title.

SECTION 5. AMENDATORY 22 O.S. 1991, Section 1355.8, as last amended by Section 6, Chapter 301, O.S.L. 1996 (22 O.S. Supp. 1996, 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 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 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~~ offers to contract, 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 be awarded 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 offers to contract, the Executive Director shall cause notice to be published in the Oklahoma Bar Journal that

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~~ offers to contract will be opened;

2. The qualifications required of those desiring to 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 offers to contract pursuant to this section. In addition, all 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 offer or offers, as determined by the Board, from a qualified attorney or attorneys. In determining whether an offer is the best offer, the Board shall take into consideration, among other factors, the following:

a. whether the attorney or attorneys submitting the 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 offer have been awarded a contract in another county;

d. whether sufficient attorneys are included in the offer to competently address the number of cases to be covered under the contract; and

e. the accessibility of the attorney or attorneys to the clients to be served if the Board awards a contract on the basis of the offer.

2. The Board shall maintain 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 offer is received, the Board may accept the offer, make a counter-offer, readvertise or provide representation as otherwise authorized by this section. In the event that more than one qualified offer is received for a county or counties, the Board may accept one or more of the offers, make one or more counter-offers, readvertise if the Board determines that awarding a contract or contracts on the 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 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 indigent juveniles. Compensation for such attorneys shall be as provided in subsection G of this section.

7. In the event that no qualified 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 or Section 1355.9 of this title, provide for representation for indigent criminal defendants and 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 indigent juveniles, be appointed to represent an indigent person.

G. 1. Except as provided in paragraph 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 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. ~~post-conviction cases,~~

~~e.~~ traffic cases punishable by incarceration, and

~~d.~~ c. misdemeanor cases.

2. Except as provided in paragraph 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 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 shall allow an attorney to withdraw from a case only if the attorney makes proper application to the Executive Director to withdraw from the case and 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 6. AMENDATORY 22 O.S. 1991, Section 1363, as last amended by Section 13, Chapter 301, O.S.L. 1996 (22 O.S. Supp. 1996, 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 any appeal, unless trial counsel has timely filed all necessary documents or has pursued and been granted the authority for an appeal out of time on the defendant's behalf.

SECTION 7. This act shall become effective November 1, 1997.

46-1-1113 KSM