

ENGROSSED HOUSE
BILL NO. 3159

By: Steidley of the House
and
Smith of the Senate

(civil and criminal procedure - amending 22 O.S., Sections
1355.1, 1355.8, 1355.13 and 1360 - Indigent Defense Act -
amending sections in Titles 12, 25 and 74 - State Travel
Reimbursement Act - effective date - emergency)

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 1355.1, as
last amended by Section 1, Chapter 328, O.S.L. 1994 (22 O.S. Supp.
1997, Section 1355.1), is amended to read as follows:

Section 1355.1 There is hereby created the Oklahoma Indigent
Defense System Board. The Board shall govern the Oklahoma Indigent
Defense System. The Board shall be composed of five (5) members
appointed for five-year terms by the Governor with the advice and
consent of the Senate. At least three members shall be attorneys
licensed to practice law in the State of Oklahoma who have
experience through the practice of law in the defense of persons
accused of crimes. The Governor shall designate one Board member to
serve as chair. No congressional district shall be represented by
more than one member on the Board. No county shall be represented
by more than one member. The Board shall meet ~~bimonthly~~ every other
month upon the call of the chair. Board members shall serve without
compensation, but shall be reimbursed for their necessary travel

expenses as provided by the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes. The terms of office for the initial appointees to the Board shall be as follows:

1. The term for Position One shall expire on July 1, 1989;
2. The term for Position Two shall expire on July 1, 1990;
3. The term for Position Three shall expire on July 1, 1991;
4. The term for Position Four shall expire on July 1, 1992; and
5. The term for Position Five shall expire on July 1, 1993.

A Board member shall be eligible for reappointment and shall continue in office until his successor has been appointed, qualified and confirmed by the Senate.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 1355.8, as last amended by Section 4, Chapter 326, O.S.L. 1997 (22 O.S. Supp. 1997, 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 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 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 counteroffer~~ one or more counteroffers, 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 counteroffers to one or more of the offers received, 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. For purposes of discussing negotiating strategies in connection with making one or more counteroffers to one or more offers received, the Board may hold one or more executive sessions as necessary; provided, that any vote or

action on offers received and counteroffers made, if any, shall be taken in public meeting with the vote of each member publicly cast and recorded.

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. traffic cases punishable by incarceration, and
- 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 equaling 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 3. AMENDATORY 22 O.S. 1991, Section 1355.13, as last amended by Section 6, Chapter 357, O.S.L. 1992 (22 O.S. Supp. 1997, Section 1355.13), is amended to read as follows:

Section 1355.13 A. In every case in which the defendant is subject to the death penalty and an attorney or attorneys other than an attorney or attorneys employed by the Indigent Defense System are appointed to provide representation, an application for compensation shall be accompanied by an affidavit of each appointed attorney, detailing the hours spent on the case and the services rendered. The application shall also state if any amount awarded by the Executive Director shall be the sole source of compensation for the services provided. If other sources of compensation are also used, the other sources of compensation and amounts shall be specified in the application. Except as provided in subsection B of this section, total compensation for non-System attorneys who serve as lead counsel in capital cases shall not exceed Twenty Thousand Dollars (\$20,000.00) per case. Total compensation for a non-System attorney who is co-counsel with a System or non-System attorney in a capital case shall not exceed Five Thousand Dollars (\$5,000.00) per case.

B. The maximum statutory fee established in this section may be exceeded only upon a determination made by the Executive Director and approved by the Board that the case ~~was~~ is an exceptional one which ~~required~~ requires an extraordinary amount of time to litigate, and that the request for extraordinary attorney fees is reasonable.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 1360, as last amended by Section 11, Chapter 301, O.S.L. 1996 (22 O.S. Supp. 1997, 1360), is amended to read as follows:

Section 1360. A. The System may represent indigents in postconviction relief in all capital cases.

B. In noncapital cases, the System may represent indigents for postconviction 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~~ to obtain an appeal out of time on behalf of a System client in a case to which the System has been properly appointed.

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.

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

SECTION 5. AMENDATORY Section 1, Chapter 361, O.S.L. 1996 (12 O.S. Supp. 1997, Section 921.1), is amended to read as follows:

Section 921.1 A. The Supreme Court shall allocate funds from the Legal Services Revolving Fund to provide legal representation to indigent persons in this state in civil legal matters to the extent that funds are available from the Legal Services Revolving Fund. The Administrative Director of the Courts shall be responsible for

allocating these funds pursuant to contract with eligible regional or statewide organizations which ordinarily render legal services to indigent persons. The funds shall be allocated for the benefit of indigent clients in all seventy-seven (77) counties of Oklahoma on a pro rata basis, utilizing an allocation formula that distributes funds according to the number of residents whose incomes are less than the official United States federal poverty guidelines, based on the United States census data, as a percentage of the total number of these residents in this state and which reserves funds for services for specialized areas of law.

B. As used in this section, "eligible organization" means an entity that:

1. Is organized as a not-for-profit corporation that is tax exempt pursuant to the provisions of paragraph (3) of subsection (c) of Section 501 of the United States Internal Revenue Code of 1986, as amended;

2. Has as its primary purpose the furnishing of legal assistance to eligible clients;

3. Has a board of directors or other governing body the majority of which is comprised of attorneys who are admitted to practice in this state and who are approved to serve on such body by the governing bodies of the state or county bar associations and has at least one-third of the membership who, when selected, are eligible clients; and

4. Is incorporated pursuant to any applicable laws of this state.

C. As a condition of the contract, the organization shall be required to determine the eligibility of any person seeking legal services pursuant to this section.

D. The Administrative Director of the Courts shall prepare annually and distribute to the Judiciary committees of the Senate and the House of Representatives, the Legal Services Committee of

the Oklahoma Bar Association, and the Supreme Court a report detailing expenditures of funds for representation to indigent persons in civil legal matters.

E. Each organization that contracts to provide legal services pursuant to subsection A of this section shall maintain books and records in accordance with generally accepted accounting principles. The books and records shall account for the receipt and expenditure of all funds paid pursuant to contract. Books and records shall be maintained for a period of five (5) years from the close of the fiscal year of the contract period. The State Auditor and Inspector shall audit each organization annually. The necessary expense of each audit, including, but not limited to, the cost of typing, printing, and binding, shall be paid from funds of the organization. In lieu of the audit by the State Auditor and Inspector, the organization may submit an audit prepared by an independent auditing firm for compliance with federal auditing requirements. A copy of the audit prepared by or submitted to the State Auditor and Inspector shall be submitted to the Administrative Director of the Courts.

~~G. For fiscal years 1997 and 1998, funds~~ F. Funds for representation of indigent persons in civil legal matters shall be limited to family law legal services with priority given to cases involving domestic and family violence and abuse. In no event shall such funds ever be used for any of the following activities:

1. Provision of legal services in a fee-generating case unless appropriate private representation is not available;
2. Provision of legal services in any criminal proceeding;
3. Provision of legal services collaterally attacking the validity of a criminal conviction;
4. Provision of legal services which seek to procure an abortion;

5. Provision of legal representation relating to the desegregation of any school or school system;

6. Provision of legal services involving any proceeding derived from the Military Selective Service Act;

7. Provision of legal services to advocate for or oppose any altering of a legislative, judicial, or elective district at any level of government; and

8. Provision of legal services to challenge a census of the United States of America.

~~H.~~ G. There is hereby created in the State Treasury a revolving fund for the Oklahoma Supreme Court to be designated the "Legal Services Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Oklahoma Supreme Court for indigent legal services from funds appropriated to the fund, federal funds, gifts, donations, and grants. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Administrative Director of the Courts for the purpose of providing legal services to indigent clients pursuant to the provisions of this section. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 6. AMENDATORY 25 O.S. 1991, Section 307, as last amended by Section 13, Chapter 384, O.S.L. 1994 (25 O.S. Supp. 1997, Section 307), is amended to read as follows:

Section 307. A. No public body shall hold executive sessions unless otherwise specifically provided in this section.

B. Executive sessions of public bodies will be permitted only for the purpose of:

1. Discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee;

2. Discussing negotiations concerning employees and representatives of employee groups;

3. Discussing the purchase or appraisal of real property;

4. Confidential communications between a public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest;

5. Permitting district boards of education to hear evidence and discuss the expulsion or suspension of a student when requested by the student involved or his parent, attorney or legal guardian;

6. Discussing matters involving a specific handicapped child;

7. Discussing any matter where disclosure of information would violate confidentiality requirements of state or federal law; or

8. Engaging in deliberations or rendering a final or intermediate decision in an individual proceeding pursuant to Article II of the Administrative Procedures Act.

C. Notwithstanding the provisions of subsection B of this section, the following public bodies may hold executive sessions:

1. The State Banking Board, as provided for under Section 306.1 of Title 6 of the Oklahoma Statutes;

2. The Oklahoma Industrial Finance Authority, as provided for in Section 854 of Title 74 of the Oklahoma Statutes;

3. The Oklahoma Development Finance Authority, as provided for in Section 5062.6 of Title 74 of the Oklahoma Statutes;

4. The Oklahoma Center for the Advancement of Science and Technology, as provided for in Section 5060.7 of Title 74 of the Oklahoma Statutes;

5. The Oklahoma Savings and Loan Board, as provided for under subsection A of Section 381.74 of Title 18 of the Oklahoma Statutes;

6. The Oklahoma Health Research Committee for purposes of conferring on matters pertaining to research and development of products, if public disclosure of the matter discussed would interfere with the development of patents, copyrights, products, or services;

7. A review committee, as provided for in Section 855 of Title 62 of the Oklahoma Statutes; ~~and~~

8. The Child Death Review Board for purposes of receiving and conferring on matters pertaining to materials declared confidential by law; and

9. The Oklahoma Indigent Defense System Board for purposes of discussing negotiating strategies in connection with making possible counteroffers to offers to contract to provide legal representation to indigent criminal defendants and indigent juveniles in cases for which the System must provide representation pursuant to the provisions of the Indigent Defense System Act, Section 1355 et seq. of Title 22 of the Oklahoma Statutes.

D. An executive session for the purpose of discussing the purchase or appraisal of real property shall be limited to members of the public body, the attorney for the public body, and the immediate staff of the public body. No landowner, real estate salesperson, broker, developer, or any other person who may profit directly or indirectly by a proposed transaction concerning real property which is under consideration may be present or participate in the executive session.

E. No public body may go into an executive session unless the following procedures are strictly complied with:

1. The proposed executive session is noted on the agenda as provided in Section 311 of this title;

2. The executive session is authorized by a majority vote of a quorum of the members present and the vote is a recorded vote; and

3. Except for matters considered in executive sessions of the State Banking Board and the Oklahoma Savings and Loan Board, and which are required by state or federal law to be confidential, any vote or action on any item of business considered in an executive session shall be taken in public meeting with the vote of each member publically cast and recorded.

F. A willful violation of the provisions of this section shall:

1. Subject each member of the public body to criminal sanctions as provided in Section 314 of this title; and

2. Cause the minutes and all other records of the executive session, including tape recordings, to be immediately made public.

SECTION 7. AMENDATORY 74 O.S. 1991, Section 500.2, as last amended by Section 1, Chapter 354, O.S.L. 1997 (74 O.S. Supp. 1997, Section 500.2), is amended to read as follows:

Section 500.2 A. Officials and employees of the state, traveling on authorized state business, may be reimbursed for expenses incurred in such travel in accordance with the provisions of this act and existing statutes relating to state travel. Persons who are not state employees, but who are performing substantial and necessary services to the state which have been directed or approved by the appropriate department official shall enjoy the protection of the sovereign immunity of the state to the same extent as a paid employee. Such persons may be reimbursed for expenses incurred during authorized official travel under these same statutory provisions, provided it is indicated on the claim the person is not a state employee, a description of services performed is entered, and the agency head by his approval of the claim certifies such services were substantial and necessary, and germane to the duties and functions of the reimbursing agency. Travel expenses incurred by a person during the course of seeking employment with a state

agency, unless such travel is performed at the request of the employing agency, shall not be considered expenses incurred in performing substantial and necessary services to the state and shall not be reimbursed under the provisions of this act.

B. The chief administrative officer of the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma Military Department, the Department of Corrections, the Department of Central Services, the Alcoholic Beverage Laws Enforcement Commission, the State Department of Agriculture, the Department of Civil Emergency Management, and the State Fire Marshal may arrange for and charge meals and lodging for a contingent of state personnel moved into an area for the purpose of preserving the public health, safety, or welfare or for the protection of life or property. The cost for meals or lodging so charged shall not exceed the amount authorized in this act. The chief administrative officer of each agency involved in such an operation shall require the vendor furnishing meals, lodging, or both meals and lodging to submit an itemized statement for payment. When a claim for lodging is made for a contingent of state personnel, individual members of the contingent may not submit a claim for lodging. When a claim for meals is made for a contingent of state personnel, individual members of the contingent may not submit a claim for meals.

C. The Oklahoma Department of Commerce and the Oklahoma Center for the Advancement of Science and Technology are hereby authorized to enter into contracts and agreements for the payment of food, lodging, meeting facility and beverage expenses as may be necessary for sponsoring seminars and receptions relating to economic development and science and technology issues. Such expenses may be paid directly to the contracting agency or business establishment. The Director of the Oklahoma Department of Commerce and the President of the Oklahoma Center for the Advancement of Science and

Technology shall each provide a quarterly report of such expenditures to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

D. For purposes of this section:

1. "State agency" means any constitutionally or statutorily created state board, commission, or department, including the Legislature and the Courts; and

2. State agencies are authorized to enter into contracts and agreements for the payment of food and lodging expenses as may be necessary for employees or other persons who are performing substantial and necessary services to the state attending official conferences, meetings, seminars, workshops, or training sessions or in the performance of their duties. Such expenses may be paid directly to the contracting agency or business establishment, provided the meeting qualifies for overnight travel for the employees and the cost for food and lodging for each employee shall not exceed the total daily rate as provided in the State Travel Reimbursement Act, Section 500.1 et seq. of this title.

E. State agencies are authorized to make direct purchases of commercial airline tickets for use by employees in approved out-of-state travel. Each claim or invoice submitted to the Director of State Finance for the payment of such purchase shall bear the airline identifying ticket number, the name of the airline, total cost of each ticket purchased, class of accommodation, social security number and name of the employee for whom the ticket was purchased, and shall be filed on claim forms as prescribed by the Director of State Finance. An affidavit shall state that said employee did use any direct purchase commercial airline ticket received for his or her approved out-of-state travel.

F. The Oklahoma Indigent Defense System is hereby authorized to enter into contracts and agreements for the payment of lodging as necessary for employees to carry out their duties in representing

any client whom the System has been properly appointed to represent.
Such expenses may be paid directly to the contracting agency or
business establishment. Provided, the cost for lodging for each
employee shall not exceed the daily rate as provided in the State
Travel Reimbursement Act.

SECTION 8. This act shall become effective July, 1, 1998.

SECTION 9. 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.

Passed the House of Representatives the 26th day of February, 1998.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1998.

President of the Senate