

SHORT TITLE: Indigent defense; eliminating required appointment of Indigent Defense System for certain defendants; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 675

By: Smith

AS INTRODUCED

An Act relating to indigent defense; amending Section 20, Chapter 303, O.S.L. 1992, as last amended by Section 2, Chapter 298, O.S.L. 1993, and 22 O.S. 1991, Section 1359, as renumbered by Section 32, Chapter 303, O.S.L. 1992 and as last amended by Section 3, Chapter 298, O.S.L. 1993 (19 O.S. Supp. 1996, Sections 138.7 and 138.9), which relate to public defenders; eliminating authority to appoint Indigent Defense System for certain defendants at trial or on appeal; providing for appointments to represent indigent defendants; 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; allowing claim for certain expenses against court fund; amending 22 O.S. 1991, Sections 1089, as amended by Section 4, Chapter 256, O.S.L. 1995, 1355, as last amended by Section 3, Chapter 301, O.S.L. 1996, 1355.2, as amended by Section 3, Chapter 303, O.S.L. 1992, 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, 1355.14, 1356, 1358, 1360 and 1363, as last amended by Sections 6, 7, 9, 10, 11 and 13, Chapter 301, O.S.L. 1996 (22 O.S. Supp. 1996, Sections 1089,

1355, 1355.2, 1355.4, 1355.6, 1355.7, 1355.8, 1355.14, 1356, 1358, 1360 and 1363), which relate to post-conviction relief in capital cases and the Indigent Defense Act; modifying and clarifying language; clarifying statutory references; modifying definition; modifying powers of Executive Director; authorizing lists of certain expert witnesses; providing for approval and use of certain services; requiring payment for certain services from local court fund; prohibiting representation by Indigent Defense System unless defendant has filed certain affidavit; requiring certain approval of attorneys fees; requiring priority for collection of certain costs; eliminating discretion for Indigent Defense System representation of certain defendants and prohibiting representation under certain circumstances; modifying procedures for representation on applications for post-conviction relief and appeal; and providing an effective date.

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

SECTION 1. AMENDATORY Section 20, Chapter 303, O.S.L. 1992, as last amended by Section 2, Chapter 298, O.S.L. 1993 (19 O.S. Supp. 1996, Section 138.7), is amended to read as follows:

Section 138.7 In those counties subject to the provisions of Section 138.1 of Title 19 of the Oklahoma Statutes, if the court determines that a conflict of interest exists between a defendant and the county indigent defender, the case may be reassigned by the

court to another county indigent defender, an attorney who represents indigents pursuant to contract, or a private attorney who has agreed to accept such appointments. ~~In addition, in every case where the defendant is subject to the death penalty and a conflict of interest exists between the defendant and the county indigent defender, the court may appoint the Indigent Defense System to represent the defendant. However, in every case where multiple defendants exist in the case and more than one defendant is subject to the death penalty and a conflict of interest exists between one or more of the defendants that are subject to the death penalty and the county indigent defender, the court may appoint the Indigent Defense System to represent not more than one of the defendants in the case.~~

SECTION 2. AMENDATORY 22 O.S. 1991, Section 1359, as renumbered by Section 32, Chapter 303, O.S.L. 1992 and as last amended by Section 3, Chapter 298, O.S.L. 1993 (19 O.S. Supp. 1996, Section 138.9), is amended to read as follows:

Section 138.9 In those counties with a population in excess of two hundred thousand (200,000) under the latest Federal Decennial Census, the county indigent defenders, for those counties subject to the provisions of Section 138.1 of ~~Title 19 of the Oklahoma Statutes~~ this title, shall perfect appeals for those defendants which they represented in the trial court unless an appellate conflict exists between two or more such defendants, in which case the county indigent defender shall represent one defendant, ~~the Oklahoma Indigent Defense System shall represent one defendant,~~ and the court ~~may~~ shall assign the appeal of the case for any other defendants ~~in the same manner as provided for conflict at the trial level in Section 138.7 of this title~~ to another county indigent defender, an attorney who represents indigents pursuant to contract, or a private attorney who has agreed to accept such appointments. ~~The Oklahoma Indigent Defense System~~ county indigent defender shall also

represent all indigent defendants from such counties who were not represented at trial by the county public defenders unless a conflict of interest on appeal exists between defendants, in which case ~~the Oklahoma Indigent Defense System shall represent one defendant,~~ the county indigent defender shall represent one defendant and the court ~~may~~ shall assign the appeal of the case for any other defendants ~~in the same manner as provided for conflict at the trial level in Section 138.7 of this title~~ to another county indigent defender, an attorney who represents indigents pursuant to contract, or a private attorney who has agreed to accept such appointments.

SECTION 3. 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 4. AMENDATORY 22 O.S. 1991, Section 1089, as amended by Section 4, Chapter 256, O.S.L. 1995 (22 O.S. Supp. 1996, Section 1089), is amended to read as follows:

Section 1089. A. The application for post-conviction relief of a defendant who is under the sentence of death in one or more counts and whose death sentence has been affirmed or is being reviewed by the Court of Criminal Appeals in accordance with the provisions of Section 701.13 of Title 21 of the Oklahoma Statutes shall be expedited as provided in this section. The provisions of this section also apply to noncapital sentences in a case in which the defendant has received one or more sentences of death.

B. ~~The~~ Except in counties subject to the provisions of Section 138.1a of Title 19 of the Oklahoma Statutes, the Oklahoma Indigent Defense System shall represent all indigent defendants in capital cases seeking post-conviction relief upon appointment by the appropriate district court after a hearing determining the indigency of any such defendant. When the Oklahoma Indigent Defense System, a county indigent defender in those counties subject to the provisions of Section 138.1a of Title 19 of the Oklahoma Statutes, or another attorney has been appointed to represent an indigent defendant in an application for post-conviction relief, the Clerk of the Court of Criminal Appeals shall include in its notice to the district court clerk, as required by Section 1054 of this title, that an additional certified copy of the appeal record is to be transmitted to the Oklahoma Indigent Defense System, the county indigent defender, or the other attorney.

C. The only issues that may be raised in an application for post-conviction relief are those that:

1. Were not and could not have been raised in a direct appeal;
and

2. Support a conclusion either that the outcome of the trial would have been different but for the errors or that the defendant is factually innocent.

The applicant shall state in the application specific facts explaining as to each claim why it was not or could not have been raised in a direct appeal and how it supports a conclusion that the outcome of the trial would have been different but for the errors or that the defendant is factually innocent.

D. 1. The application for post-conviction relief shall be filed in the Court of Criminal Appeals within ninety (90) days from the date the appellee's brief on direct appeal is filed or, if a reply brief is filed, ninety (90) days from the filing of that reply brief with the Court of Criminal Appeals on the direct appeal. Where the appellant's original brief on direct appeal has been filed prior to November 1, 1995, and no application for post-conviction relief has been filed, any application for post-conviction relief must be filed in the Court of Criminal Appeals within one hundred eighty (180) days of November 1, 1995. The Court of Criminal Appeals may issue orders establishing briefing schedules or enter any other orders necessary to extend the time limits under this section in cases where the original brief on direct appeal has been filed prior to November 1, 1995.

2. All grounds for relief that were available to the applicant before the last date on which an application could be timely filed not included in a timely application shall be deemed waived.

No application may be amended or supplemented after the time specified under this section. Any amended or supplemental application filed after the time specified under this section shall be treated by the Court of Criminal Appeals as a subsequent application.

3. Subject to the specific limitations of this section, the Court of Criminal Appeals may issue any orders as to discovery or any other orders necessary to facilitate post-conviction review.

4. a. The Court of Criminal Appeals shall review the application to determine:

(1) whether controverted, previously unresolved factual issues material to the legality of the applicant's confinement exist,

(2) whether the applicant's grounds were or could have been previously raised, and

(3) whether relief may be granted under this act.

b. For purposes of this subsection, a ground could not have been previously raised if:

(1) it is a claim of ineffective assistance of trial counsel which requires factfinding outside the direct appeal record, or

(2) it is a claim contained in an original timely application for post-conviction relief relating to ineffective assistance of appellate counsel and the Court of Criminal Appeals first finds that if the allegations in the application were true, the performance of appellate counsel constitutes the denial of reasonably competent assistance of appellate counsel under prevailing professional norms. If the court makes this finding the court may consider the claim during the post-conviction proceeding or, if appropriate, during the direct appeal.

If the Court of Criminal Appeals determines that controverted, previously unresolved factual issues material to the legality of the applicant's confinement do not exist, or that the claims were or could have been previously raised, or that relief may not be granted

under this act and enters an order to that effect, the Court shall make findings of fact and conclusions of law or may order the parties to file proposed findings of fact and conclusions of law for the Court to consider on or before a date set by the Court that is not later than thirty (30) days after the date the order is issued. The Court of Criminal Appeals shall make appropriate written findings of fact and conclusions of law not later than fifteen (15) days after the date the parties filed proposed findings.

5. If the Court of Criminal Appeals determines that controverted, previously unresolved factual issues material to the legality of the applicant's confinement do exist, and that the application meets the other requirements of paragraph 4 of this subsection, the Court shall enter an order to the district court that imposed the sentence designating the issues of fact to be resolved and the method by which the issues shall be resolved.

The district court shall not permit any amendments or supplements to the issues remanded by the Court of Criminal Appeals except upon motion to and order of the Court of Criminal Appeals subject to the limitations of this section.

The Court of Criminal Appeals shall retain jurisdiction of all cases remanded pursuant to this act.

6. The district attorney's office shall have twenty (20) days after the issues are remanded to the district court within which to file a response. The district court may grant one extension of twenty (20) days for good cause shown and may issue any orders necessary to facilitate post-conviction review pursuant to the remand order of the Court of Criminal Appeals. Any applications for extension beyond the twenty (20) days shall be presented to the Court of Criminal Appeals. If the district court determines that an evidentiary hearing should be held, that hearing shall be held within thirty (30) days from the date that the state filed its response. The district court shall file its decision together with

findings of fact and conclusions of law with the Court of Criminal Appeals within forty-five (45) days from the date that the state filed its response or within forty-five (45) days from the date of the conclusion of the evidentiary hearing.

7. Either party may seek review by the Court of Criminal Appeals of the district court's determination of the issues remanded by the Court of Criminal Appeals within ten (10) days from the entry of judgment. Such party shall file a notice of intent to seek review and a designation of record in the district court within (10) days from the entry of judgment. A copy of the notice of intent to seek review and the designation of the record shall be served on the court reporter, the petitioner, the district attorney, and the Attorney General, and shall be filed with the Court of Criminal Appeals. A petition in error shall be filed with the Court of Criminal Appeals by the party seeking review within thirty (30) days from the entry of judgment. If an evidentiary hearing was held, the court reporter shall prepare and file all transcripts necessary for the appeal within sixty (60) days from the date the notice and designation of record are filed. The petitioner's brief-in-chief shall be filed within forty-five (45) days from the date the transcript is filed in the Court of Criminal Appeals or, if no evidentiary hearing was held, within forty-five (45) days from the date of the filing of the notice. The respondent shall have twenty (20) days thereafter to file a response brief. The district court clerk shall file the records on appeal with the Court of Criminal Appeals on or before the date the petitioner's brief-in-chief is due. The Court of Criminal Appeals shall issue an opinion in the case within one hundred twenty (120) days of the filing of the response brief or at the time the direct appeal is decided. If no review is sought within the time specified in this section, the Court of Criminal Appeals may adopt the findings of the district court and enter an order within fifteen (15) days of the time

specified for seeking review or may order additional briefing by the parties.

8. If an original application for post-conviction relief is untimely or if a subsequent application for post-conviction relief is filed after filing an original application, the Court of Criminal Appeals may not consider the merits of or grant relief based on the subsequent or untimely original application unless the application contains sufficient specific facts establishing that the current claims and issues have not been and could not have been presented previously in a timely original application or in a previously considered application filed under this section, because the factual or legal basis for the claim was unavailable.

9. For purposes of this act, a legal basis of a claim is unavailable on or before a date described by this subsection if the legal basis:

- a. was not recognized by or could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this state on or before that date, or
- b. is a new rule of constitutional law that was given retroactive effect by the United States Supreme Court or a court of appellate jurisdiction of this state and had not been announced on or before that date.

For purposes of this subsection, a factual basis of a claim is unavailable on or before a date described by this subsection if the factual basis was not ascertainable through the exercise of reasonable diligence on or before that date.

E. All matters not specifically governed by the provisions of this section shall be subject to the provisions of the Post-Conviction Procedure Act. If the provisions of this act conflict

with the provisions of the Post-Conviction Procedure Act, the provisions of this act shall govern.

SECTION 5. AMENDATORY 22 O.S. 1991, Section 1355, as last amended by Section 3, Chapter 301, O.S.L. 1996 (22 O.S. Supp. 1996, Section 1355), is amended to read as follows:

Section 1355. A. Sections 1355 through 1368 of this title shall be known and may be cited as the "Indigent Defense Act".

B. The Oklahoma Indigent Defense System is hereby created, to provide counsel in cases, as provided in the Indigent Defense Act, in which the defendant is indigent and unable to employ counsel.

C. ~~Unless otherwise provided, the~~ The provisions of the Indigent Defense Act shall not be applicable in counties subject to the provisions of Section 138.1a of Title 19 of the Oklahoma Statutes, to cases arising in those counties, or to defendants from those counties.

SECTION 6. AMENDATORY 22 O.S. 1991, Section 1355.2, as amended by Section 3, Chapter 303, O.S.L. 1992 (22 O.S. Supp. 1996, Section 1355.2), is amended to read as follows:

Section 1355.2 A. As used in the Indigent Defense Act:

1. "Board" means the Oklahoma Indigent Defense System Board;
2. "Executive Director" means the chief executive officer of the Oklahoma Indigent Defense System; and
3. "System" means the Oklahoma Indigent Defense System.

B. As used ~~in the Oklahoma Statutes herein,~~ references to "public indigent defender" shall mean ~~a county indigent defender for a county subject to the provisions of Section 138.1 of Title 19 of the Oklahoma Statutes,~~ an attorney who represents indigents pursuant to a contract with the System or who volunteers to represent indigents, or an attorney employed by the System.

SECTION 7. 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.

D. ~~When an attorney has been appointed in accordance with the Indigent Defense Act, in~~ 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.

3. In any county, and a defendant being represented by privately retained counsel who needs investigative, expert, or other services, a but is unable to afford the services, shall 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 from the district court. The court shall authorize compensation at a reasonable hourly rate, subject to funds budgeted and available to the Oklahoma Indigent Defense System for such services to be paid from the local court fund.

E. 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 8. 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 9. 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 10. 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,~~
- ~~c.~~ c. 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 11. AMENDATORY 22 O.S. 1991, Section 1355.14, as last amended by Section 7, Chapter 301, O.S.L. 1996 (22 O.S. Supp. 1996, Section 1355.14), is amended to read as follows:

Section 1355.14 A. At the time of pronouncing the judgment and sentence or other final order, the court shall order any person represented by an attorney employed by the Indigent Defense System or a defense attorney who contracts or volunteers to represent indigents pursuant to the provisions of the Indigent Defense Act 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 attorney representing the indigent person shall document for the court the total costs for representation. Collection and payment of this cost shall take priority over costs and penalties enumerated in Section 1313.2 et seq. of Title 20 of the Oklahoma Statutes.

B. Costs assessed pursuant to this section shall be collected by the court clerk and deposited in the Indigent Defense System Revolving Fund. The court clerk may retain not more than ten percent (10%) of all such costs collected as an administrative fee, which shall be deposited in the Court Clerk's Revolving Fund.

C. Costs of representation 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. Any order directing the defendant to pay costs of representation shall be a lien against all real and personal property of the defendant and may be filed against such property and foreclosed as provided by law for civil liens.

SECTION 12. AMENDATORY 22 O.S. 1991, Section 1356, as last amended by Section 9, Chapter 301, O.S.L. 1996 (22 O.S. Supp. 1996, Section 1356), is amended to read as follows:

Section 1356. A. The System shall perfect all direct appeals and post-conviction proceedings in all state courts for all capital cases assigned to the System by Oklahoma district courts, ~~except for direct appeals for indigent defendants represented by the county indigent defender in counties subject to the provisions of Section 138.1a of Title 19 of the Oklahoma Statutes,~~ and shall perfect or award contracts to perfect all other direct appeals to the Oklahoma Court of Criminal Appeals for the remaining cases assigned to the System by the Oklahoma district courts. ~~In addition, attorneys of the System may represent indigents who have been sentenced to death in federal habeas corpus proceedings in any United States Court when the System is appointed and adequate federal funds for such representation are designated by the federal court System for that purpose.~~

B. ~~The System shall perfect or award contracts to perfect all appeals for indigent defendants from counties subject to the provisions of Section 138.1a of Title 19 of the Oklahoma Statutes who were not represented at trial by the county indigent defenders, unless the Executive Director determines that a conflict of interest exists, in which case the county indigent defender shall be appointed to represent the indigent defendant. If the district court determines that the county indigent defender has a conflict of~~

~~interest, the court shall appoint counsel in the same manner as is provided for conflicts at the trial level in Section 138.7 of Title 19 of the Oklahoma Statutes.~~

C. The System also may represent the indigents for whom the System has been appointed in other proceedings, if such representation is related to the case for which the original appointment was made and if not otherwise prohibited by the Indigent Defense Act. The provisions of this subsection shall not authorize attorneys for the System to represent indigents in civil rights actions brought pursuant to state or federal law in any court or represent clients in any proceeding unless prior approval is granted by the Board.

SECTION 13. AMENDATORY 22 O.S. 1991, Section 1358, as last amended by Section 10, Chapter 301, O.S.L. 1996 (22 O.S. Supp. 1996, 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 138.1a of Title 19 of the Oklahoma Statutes, judges~~ 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 pursuant to the Oklahoma Juvenile Code other than appeals for in-need-of-supervision proceedings, 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 14. AMENDATORY 22 O.S. 1991, Section 1360, as last amended by Section 11, Chapter 301, O.S.L. 1996 (22 O.S. Supp. 1996, Section 1360), is amended to read as follows:

Section 1360. A. ~~The System may represent indigents in post-conviction relief in all capital cases.~~

~~B. In noncapital cases, the System may represent indigents for post-conviction 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.~~

~~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.

B. 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 noncapital cases, the provisions of Section 1082 of this title shall apply. 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.~~ C. All state and federal constitutional issues affecting guilt and/or sentence shall be raised and decided on the merits in the first post-conviction application. Any issue not so raised and decided shall be dismissed from any subsequent application for capital post-conviction relief, unless the accused shows good cause why the issue was not raised previously.

SECTION 15. 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 16. This act shall become effective November 1, 1997.

46-1-0987 KSM