

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2922

By: Morgan

COMMITTEE SUBSTITUTE

An Act relating to criminal procedure; amending 19 O.S. 2001, Section 215.34, which relates to assistant district attorneys; removing requirement that at least one assistant district attorney live in each county; providing that compensation of district attorney personnel shall be set by district attorney; stating criteria for basis of compensation; stating personnel serve at pleasure of district attorney; amending 22 O.S. 2001, Section 718, which relates to witness fees; specifying fee to be received by out-of-state witnesses; authorizing payment of travel expenses of parent or guardian under certain circumstances; amending 28 O.S. 2001, Section 81, which relates to witness fees; modifying fee and reimbursement rates; amending 74 O.S. 2001, Section 500.18 (Section 4, Chapter 355, O.S.L. 2001), which relates to actual and necessary travel expenses; authorizing district attorney and employees of the district attorney to be reimbursed for certain activities; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 19 O.S. 2001, Section 215.34, is amended to read as follows:

Section 215.34 A. All assistant district attorneys who are paid in excess of fifty percent (50%) of the salary of the district attorney shall not engage in the private practice of law, but may complete pending cases of a civil nature, not in conflict with the interests of any county of the district in which appointed. No assistant district attorney permitted to practice law shall accept employment in a case investigated by the office of the district attorney.

~~B. Each county in a district shall have at least one assistant district attorney who shall reside in the county.~~

~~C.~~ Each assistant district attorney shall: be at least twenty-one (21) years of age; be a resident of the district, if required by the district attorney; and have a license to practice law in the courts of record of this state at the time of appointment. All assistant district attorneys shall serve at the pleasure of the district attorney.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 215.35C of Title 19, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of law, the compensation of all district attorney personnel shall be determined by the district attorney of each district. On affixing the compensation, the district attorney shall base the compensation upon the responsibilities assigned to the position and the qualifications, training, experience, length of employment of each employee and budgetary considerations. All district attorney personnel shall serve at the pleasure of the district attorney.

SECTION 3. AMENDATORY 22 O.S. 2001, Section 718, is amended to read as follows:

Section 718. A witness who appears from another state to testify in this state in a criminal case or proceeding pursuant to a subpoena issued in accordance with the provisions of the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings, Section 721 et seq. of this title, shall be reimbursed as prescribed by law for travel and expenses at rates not to exceed those prescribed by law for reimbursement of state employees traveling interstate. Such witnesses shall receive the same fees as witnesses who appear from this state, pursuant to Section 81 of Title 28 of the Oklahoma Statutes. If the witness is under eighteen (18) years of age, or requires the assistance of a

guardian due to age or infirmity, the travel expenses of the one parent or guardian may be reimbursed also. The parent or guardian shall not be entitled to a witness fee. Upon conviction, such fees and mileage shall be taxed as costs, collected and deposited as other costs in the case.

SECTION 4. AMENDATORY 28 O.S. 2001, Section 81, is amended to read as follows:

Section 81. A. Whenever, under the laws of this state, a person may be compelled by order, subpoena, or other lawful compulsion to appear as a witness, whether or not testimony or other evidence is actually adduced, the witness shall receive the following:

1. For a witness who appears from another state or foreign country in a criminal proceeding in this state, the amount specified in Section 718 of Title 22 of the Oklahoma Statutes;

2. For a witness who appears from this state in a criminal proceeding in another state, the amount specified in Section 722 of Title 22 of the Oklahoma Statutes;

3. For a witness who appears from this state pursuant to an order, subpoena, or other lawful means for compelling the appearance of the witness,

- a. ~~if attendance is required at a place less than sixty (60) miles from the residence of the witness, Five Dollars (\$5.00)~~ Ten Dollars (\$10.00) for each day of attendance, plus ~~fifteen cents (\$0.15)~~ for each mile actually and necessarily traveled in going to and returning from the place of attendance, or
- b. ~~if attendance is required at a place more than sixty (60) miles from the residence of the witness, Twelve Dollars (\$12.00)~~ for each day of attendance, plus ~~fifteen cents (\$0.15)~~ for each mile actually and necessarily traveled in going to and returning from

~~the place of attendance~~ reimbursement as prescribed by law for travel expenses at rates not to exceed those prescribed by law for reimbursement for state employees.

B. In computing mileage allowances for witnesses, parts of a mile shall be rounded to the nearest whole number of miles. Where the total mileage actually and necessarily traveled is less than one and one-half miles, no mileage shall be allowed.

C. No witness shall receive per diem or mileage in more than one case covering the same period of time, or the same travel, and each witness shall be required to make oath that the fees claimed have not been claimed or received in any other case, and no juror while serving as a juror or party to a civil action shall receive compensation as a witness.

D. The fees and expenses allowed by this section shall be paid as follows:

1. In civil cases, the fees for one day's attendance shall be paid pursuant to Section 2004.1 of Title 12 of the Oklahoma Statutes and fees for subsequent attendance shall be paid on the day before each additional day of attendance unless the witness agrees to another time for payment;

2. In criminal cases, the witness shall be paid at the conclusion of each day of attendance unless the witness agrees to another time for payment; or

3. In all other cases, the witness shall be paid at the conclusion of attendance unless the witness agrees to another time for payment.

E. Any error in computing the number of miles allowable shall not be sufficient grounds for failure to obey the order, subpoena, or other lawful compulsion if a per diem has been tendered to the witness.

SECTION 5. AMENDATORY 74 O.S. 2001, Section 500.18

(Section 4, Chapter 355, O.S.L. 2001), is amended to read as follows:

Section 500.18 A. Except for members of the Legislature, the Governor and the Lieutenant Governor, provisions of Sections 500.1 through 500.18 of this title shall be mandatory for all officials and employees of all departments, boards, commissions and institutions of the state, regardless of the provisions of any other act of the Legislature, except as provided by this section. The enactment of any measure in the future providing for travel reimbursement of state officers and employees on the basis of "actual and necessary" expenses or in any other manner inconsistent with Sections 500.1 through 500.18 of this title shall be deemed to provide for reimbursement in accordance with Sections 500.1 through 500.18 of this title unless a contrary intent is explicitly expressed in this section. Sections 500.1 through 500.18 of this title shall not apply, however, to travel reimbursements made by political subdivisions of this state, except as otherwise provided by law.

B. The agencies listed below are authorized certain exceptions and/or exemptions to the provisions of Sections 500.1 through 500.18 of this title to the extent specified:

1. State Department of Agriculture:

The actual and reasonable expenses of travel and subsistence in pursuing and developing markets for Oklahoma agricultural products incurred by the Commissioner, Deputy Commissioner and such employees designated by the State Board of Agriculture within the marketing development programs of the State Department of Agriculture shall be reimbursed to the employee incurring such expenses. Reimbursement of such expenses shall be in accordance with rules adopted by the Board. Expenses claimed shall, prior to reimbursement, be reviewed

by the Board at a regular meeting and individually approved or disapproved.

2. Wheat Utilization, Research and Market Development

Commission:

The actual and reasonable expenses of travel, lodging and subsistence in pursuing and developing markets for Oklahoma wheat and wheat products incurred by the Commission, staff and such persons authorized by the Commission shall be reimbursed to the person incurring such expenses. Expenses of wheat trade officials on wheat trade missions from foreign countries and from other states can be reimbursed to the person previously authorized by the Commission to incur the expense. No actual and reasonable expenses shall be paid except for time spent working with wheat trade officials on wheat trade missions. Reimbursement of such expenses shall be made in accordance with rules adopted by the Commission. Expenses claimed shall, prior to reimbursement, be reviewed by the Commission at each regular meeting and individually approved or disapproved.

3. Department of Public Safety:

When traveling with the Governor or at the Governor's request, personnel assigned by the Commissioner for executive security and pilots on executive assignment shall be allowed their actual and necessary traveling expenses, upon claims approved by the Commissioner.

4. Department of Corrections:

The Department of Corrections shall be exempt from limitations of reimbursement for rented automobiles, as set forth in Section 500.5 of Title 74 of the Oklahoma Statutes, when the rental is by a Correctional Officer or Transportation Officer for the limited purpose of transporting inmates. Reimbursement for the expense shall be on the basis of actual cost.

5. Oklahoma Tourism and Recreation Department:

The Oklahoma Tourism and Recreation Commission and Department staff who promote in-state and out-of-state business for Oklahoma's state-operated or state-owned parks, lodges and golf courses and the tourism and recreation industry, may be reimbursed for the actual and necessary expense of travel, subsistence and entertainment for this purpose. The Director of the Oklahoma Tourism and Recreation Department may reimburse the Publisher of Oklahoma Today magazine and its staff for expenses for meals and other entertainment in order to gain advertising and promotion for Oklahoma Today magazine. The Oklahoma Tourism and Recreation Department may reimburse the Director of the Oklahoma Film and Music Office and staff for the actual and necessary expenses for meals and other entertainment in order to promote the film and music industries in this state. Reimbursement of all actual and necessary expenses shall be in accordance with rules adopted by the Oklahoma Tourism and Recreation Commission.

6. Oklahoma Department of Commerce:

- a. The actual and necessary expenses incurred by the Director and other employees of the Department authorized by the Director for the purpose of business recruitment shall be reimbursed. Reimbursement of expenses shall be in accordance with rules adopted by the Director of the Oklahoma Department of Commerce. Expenses claimed shall, prior to reimbursement, be reviewed by the Director and individually approved or disapproved.
- b. The Department, at the discretion of the Director, may charter aircraft for the purposes of carrying out its duties and responsibilities related to business recruitment and performing the duties of the Director. The cost of such charter shall be exempt from the provisions of Section 500.6 of this title. Claims

filed with the Office of State Finance shall bear the following certification:

The best interests of the citizens of Oklahoma were better served in that conventional ground transportation was not practical or feasible for this trip, aircraft from the Department of Public Safety were not available for this trip, and no other claim has been or will be filed as a payment for the cost of transportation in connection with this trip.

7. Department of Central Services:

The actual and necessary expenses of travel and subsistence incurred by the Director, any state employee approved by his or her appointing authority, or state officials, for travel outside the state in performance of duties related to bond financing shall be reimbursed to the employee or state official incurring such expenses. Reimbursement for lodging expenses shall be supported by three telephone bids from hotels within a reasonable distance of the activity for which the travel was approved.

8. Oklahoma Futures:

The actual and necessary expenses incurred by the members of Oklahoma Futures in the performance of their duties shall be reimbursed to the members incurring such expenses. Reimbursement of all actual and necessary expenses shall be in accordance with rules adopted by Oklahoma Futures.

9. Oklahoma Development Finance Authority:

The actual and necessary expenses incurred by the members and employees of the Oklahoma Development Finance Authority in the performance of their duties shall be reimbursed to the person incurring such expenses. Reimbursement of all actual and necessary expenses shall be in accordance with the bylaws of the Authority.

10. Oklahoma Center for the Advancement of Science and Technology:

The actual and necessary expenses incurred by the members and employees of the Oklahoma Center for the Advancement of Science and Technology in the performance of their duties shall be reimbursed to the person incurring such expenses. Reimbursement of all actual and necessary expenses shall be in accordance with the bylaws of the Center.

11. Center for International Trade Development:

The actual and necessary expenses of travel, lodging and subsistence incurred by the Director and authorized employees of the Center for International Trade Development for performance of their duties for the purpose of business recruitment and assistance shall be reimbursed to the person incurring such expenses. Reimbursement of such expenses shall be in accordance with the rules adopted by the Director of the Center for International Trade Development. Expenses claimed shall be reviewed and individually approved or disapproved, prior to reimbursement, first by the Director, and finally by either the Vice President, Business and Finance of Oklahoma State University or the President of Oklahoma State University.

12. Oklahoma State Bureau of Investigation:

The actual and necessary expenses incurred by the Director and other employees of the Bureau authorized by the Director as a result of conducting investigations shall be reimbursed to each such employee incurring the expenses. Reimbursement of the expenses shall be in accordance with rules adopted by the Director of the Oklahoma State Bureau of Investigation. Prior to reimbursement, expenses claimed shall be reviewed by the Director and individually approved or disapproved.

13. Department of Human Services:

- a. The actual and necessary expenses of travel, lodging and subsistence incurred by employees of the Legal Division in the performance of their duties for the

purpose of representing the Department of Human Services or any of its officials, employees, institutions or hospitals at any proceeding, including depositions, held before any court, administrative body or representative thereof, shall be reimbursed to the employee incurring such expenses. Expenses claimed shall be approved by the General Counsel and the Director of Human Services prior to reimbursement.

- b. The Department, at the discretion of the Director, may charter aircraft when determined by the Director such charter would be more practical or less expensive than normal modes of transportation and when aircraft of the Department of Public Safety are unavailable. The costs of such charter shall be exempt from the provisions of Section 500.6 of this title.

14. Oklahoma Health Care Authority:

The actual and necessary expenses of travel, lodging and subsistence incurred by employees of the Legal Division in the performance of their duties for the purpose of representing the Authority or any of its officials or employees, at any proceeding, including depositions, held before any court, administrative body or representative thereof, shall be reimbursed to the employee incurring such expenses. Expenses claimed shall be approved by the Administrator prior to reimbursement.

15. Oklahoma State Bureau of Narcotics and Dangerous Drugs Control:

The actual and necessary expenses incurred by the Director and other employees of the Bureau authorized by the Director as a result of conducting investigations shall be reimbursed to each employee incurring the expenses. Reimbursement of the expenses shall be in accordance with rules adopted by the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control. Prior to

reimbursement, expenses claimed shall be reviewed by the Director and individually approved or disapproved.

16. University Hospitals:

The actual and necessary expenses of travel, lodging and subsistence incurred by employees of the Legal Office in the performance of their duties for the purpose of representing the University Hospitals or any of its officials, employees, institutions or hospitals at any proceeding, including depositions, held before any court, administrative body or representative thereof, shall be reimbursed to the employee incurring such expenses. Expenses shall be approved by the Chief Executive Officer of the University Hospitals or by the University Hospitals Authority.

17. Oklahoma Historical Society:

The actual and necessary expenses of travel, subsistence and entertainment incurred by the Executive Director, Deputy Director and any employees designated by the Executive Committee of the Oklahoma Historical Society Board of Directors in pursuing and developing programs and projects for the preservation and marketing of Oklahoma history shall be reimbursed to the person incurring the expenses. Reimbursement of expenses shall be in accordance with rules adopted by the Oklahoma Historical Society Board of Directors. Prior to reimbursement, expenses claimed shall be reviewed by the Executive Committee at a regularly scheduled meeting and each claim shall be individually approved or disapproved.

18. The Oklahoma Department of Mines:

The actual and necessary expenses of travel, lodging and subsistence incurred by employees of the Department in the performance of their duties for the purpose of representing the Department or any of its officials or employees, at any proceeding, hearing or meeting with federal agencies, boards, commissions, congressional representatives, congressional committees or staff,

shall be reimbursed to the employee incurring such expenses. Expenses claimed shall be approved by the Executive Director prior to reimbursement.

19. The Office of Attorney General:

The actual and necessary expenses of travel, lodging and subsistence incurred by its employees in the performance of their duties for the purpose of representing the state, the Legislature, any state board, agency or commission, or any employee or official of the state entitled to representation, at any proceeding, including depositions, held before any court, administrative body or any representative thereof, and the actual and necessary expenses incurred by employees as a result of conducting investigations shall be reimbursed to the employee incurring the expenses. The expenses shall be approved by the Attorney General prior to reimbursement.

20. District Attorneys Council:

The actual and necessary expenses of travel, lodging and subsistence incurred by each district attorney and other employees of the district attorney authorized by the district attorney in the performance of their duties for the purpose of representing the state, any county or any employee or official of the state entitled to representation, at any proceeding, including depositions, held before any court, administrative body or any representative of a court or administrative body, and the actual and necessary expenses incurred as a result of conducting investigations shall be reimbursed to each employee incurring the expenses. Reimbursement of the expenses shall be in accordance with rules adopted by the District Attorneys Council. Prior to reimbursement, expenses claimed shall be reviewed by the Council and individually approved or disapproved.

21. The Department of Securities:

The actual and necessary expenses of travel, lodging and subsistence incurred by the Administrator and other employees of the

Department of Securities in the performance of their duties for the purpose of representing the Department of Securities, at any proceeding, including depositions, held before any court, administrative body or any representative thereof, conducting on-site examinations, or conducting investigations, shall be reimbursed to each employee incurring the expenses. The expenses shall be approved by the Administrator of the Department of Securities prior to reimbursement.

22. Corporation Commission:

The actual and necessary travel expenses incurred by the staff of the Public Utility Division as a result of conducting audits and/or reviews of utility service providers shall be reimbursed to each such employee incurring the expense. Reimbursement of the expenses shall be as set forth in procedures established by the appointing authority.

23. The Department of Human Services:

Employees of the Department of Human Services shall be reimbursed for their actual and necessary expenses of travel, lodging and subsistence incurred in the performance of their duties for the purpose of escorting and transporting children or adults in the care or custody of the Department:

- a. for out-of-state visitation, care, treatment and placement of a child welfare client,
- b. for out-of-state treatment for or placement of an adult protective services client,
- c. for out-of-state treatment for or placement of a resident of a state resource center, or
- d. for out-of-state treatment for or placement of an individual with a developmental disability who is living in the community in community residential services.

Expenses claimed shall be approved by the appropriate Division Administrator or Associate Director prior to reimbursement.

C. The agencies listed in subsection B of this section shall be required to report annually the actual expenses excepted or exempted from Sections 500.1 through 500.18 of this title to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives. The report shall be submitted no later than the first day of September following the end of each fiscal year.

SECTION 6. This act shall become effective November 1, 2002.

48-2-8652 LAC 6/12/15