

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1930

By: Rice

AS INTRODUCED

An Act relating to indigent defendants; amending 21 O.S. 1991, Section 565, which relates to contempt; prohibiting citing defendant for contempt for failure to have attorney; amending 22 O.S. 1991, Section 1355.6, as last amended by Section 2, Chapter 326, O.S.L. 1997 (22 O.S. Supp. 2000, Section 1355.6), which relates to the Indigent Defense Act; providing for refund of application fee if defendant is determined not to be indigent for purposes of the Indigent Defense Act; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 565, is amended to read as follows:

Section 565. Contempts of court shall be divided into direct and indirect contempts. Direct contempts shall consist of disorderly or insolent behavior committed during the session of the court and in its immediate view, and presence, and of the unlawful and willful refusal of any person to be sworn as a witness, and the refusal to answer any legal or proper question; and any breach of the peace, noise or disturbance, so near to it as to interrupt its proceedings, shall be deemed direct contempt of court, and may be summarily punished as hereinafter provided for. Indirect contempts of court shall consist of willful disobedience of any process or order lawfully issued or made by court, ~~or~~ or resistance willfully offered by any person to the execution of a lawful order or process of a court. A person shall not be held to be in contempt for failing to have an attorney representing the person in any criminal court proceeding, if the person is unable to afford an attorney and

does not qualify for representation pursuant to the Indigent Defense Act.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 1355.6, as last amended by Section 2, Chapter 326, O.S.L. 1997 (22 O.S. Supp. 2000, 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, 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~~
An 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, defer all or part of the fee, if the court determines that the person does not have the financial resources to pay the fee at time of application, to attach as a court fee upon conviction. If the applicant is determined not to be indigent, the application fee shall be refunded. Any fees collected pursuant to this subsection shall be retained by the court clerk, deposited in the Court Clerk's Revolving Fund, and separately reported to the Administrative Office of the Courts.

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 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 application for court-appointed counsel as provided by Form 13.3 of Section XIII of the Rules of the Court of Criminal Appeals, 22 O.S. Supp. 1996, Ch. 18, App., has been filed of record in the case.

SECTION 3. This act shall become effective November 1, 2001.

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