

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 454

By: Smith

AS INTRODUCED

An Act relating to counties and county officers; amending Section 1, Chapter 240, O.S.L. 1995 (19 O.S. Supp. 2000, Section 138.1a), which relates to creating the office of public defender; amending 19 O.S. 1991, Section 138.4, as amended by Section 16, Chapter 343, O.S.L. 1994 (19 O.S. Supp. 2000, Section 138.4), which relates to compensation for public defender; amending Section 20, Chapter 303, O.S.L. 1992, as last amended by Section 2, Chapter 298, O.S.L. 1993 (19 O.S. Supp. 2000, Section 138.7), which relates to conflict of interest in case; amending Section 21, Chapter 303, O.S.L. 1992 (19 O.S. Supp. 2000, Section 138.8), which relates to expert witness compensation; amending 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. 2000, Section 138.9), which relates to appeals of certain cases; changing the population requirements for having a county office of public defender; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 1, Chapter 240, O.S.L. 1995 (19 O.S. Supp. 2000, Section 138.1a), is amended to read as follows:

Section 138.1a A. In each county of this state possessing a population of over ~~two hundred thousand (200,000)~~ three hundred thousand (300,000) according to the Federal Decennial Census of 1990, or any succeeding Federal Decennial Census, there is hereby created the office of public defender, and such office shall be charged upon the order of any judge of a court of record of such county, with the protection of the rights of any defendant to a criminal action. The board of county commissioners of such county shall provide for necessary office supplies and equipment and

arrange for sufficient office space in the county building, used by the courts of record of such county, to permit the efficient and effective operation of the office of public defender.

B. For purposes of liability under the Governmental Tort Claims Act, any public defender, assistant public defender or employee thereof, who is employed under this section shall be deemed a state employee.

SECTION 2. AMENDATORY 19 O.S. 1991, Section 138.4, as amended by Section 16, Chapter 343, O.S.L. 1994 (19 O.S. Supp. 2000, Section 138.4), is amended to read as follows:

Section 138.4 In counties subject to the provisions of ~~this act~~, Section ~~138.1~~ 138.1a et seq. of this title, wherein the district judges have determined, in accordance with Section 138.3 of this title that the protection of the unfortunate and poverty-stricken defendants subject to criminal action in such county require the employment of a county indigent defender on a full-time basis, such person so appointed shall not engage in any practice of law except in the performance of ~~his~~ the duties as county indigent defender, and shall receive a salary commensurate with the salary received by the district attorney in said district, payable monthly, from the court fund of such county, provided such salaries shall not apply to counties of less than ~~two hundred thousand (200,000)~~ three hundred thousand (300,000) population; provided that if additional assistance is required by the county indigent defender to properly fulfill the duties of ~~his~~ the office ~~he~~, the indigent defender may authorize the employment of and appoint assistant defenders on a full-time or part-time basis, which assistants shall be under the same restrictions as to the practice of law as the county indigent defender of such county, and each shall receive a salary commensurate with the range of salaries of assistant district attorneys in their districts, payable monthly,

out of the court fund of the county as determined by the county indigent defender.

SECTION 3. 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. 2000, Section 138.7), is amended to read as follows:

Section 138.7 In those counties subject to the provisions of Section ~~138.1~~ 138.1a of ~~Title 19 of the Oklahoma Statutes~~ this title, 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 4. AMENDATORY Section 21, Chapter 303, O.S.L. 1992 (19 O.S. Supp. 2000, Section 138.8), is amended to read as follows:

Section 138.8 In counties subject to the provisions of Section ~~138.1~~ 138.1a of ~~Title 19 of the Oklahoma Statutes~~ this title, expert witness compensation for indigent defense shall be paid by the court fund pursuant to procedures established by the governing board of the court fund.

SECTION 5. 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. 2000, 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)~~ three hundred thousand (300,000) under the latest Federal Decennial Census, the county indigent defenders, for those counties subject to the provisions of Section ~~138.1~~ 138.1a 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 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. The Oklahoma Indigent Defense System 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 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.

SECTION 6. This act shall become effective July 1, 2001.

SECTION 7. 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.