STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 763 By: Wilkerson

AS INTRODUCED

An Act relating to the Oklahoma Indigent Defense System; amending 22 O.S. 1991, Section 1355, as last amended by Section 3, Chapter 301, O.S.L. 1996 (22 O.S. Supp. 2000, Section 1355), which relates to creation of the Indigent Defense System; modifying reference; amending 22 O.S. 1991, Section 1355.1, as last amended by Section 1, Chapter 201, O.S.L. 1998 (22 O.S. Supp. 2000, Section 1355.1), which relates to the Oklahoma Indigent Defense System Board; changing frequency of meetings; amending 22 O.S. 1991, Section 1355.2, as amended by Section 3, Chapter 303, O.S.L. 1992 (22 O.S. Supp. 2000, Section 1355.2), which relates to definitions; clarifying language; modifying reference; amending 22 O.S. 1991, Section 1355.3, as last amended by Section 2, Chapter 328, O.S.L. 1994 (22 O.S. Supp. 2000, Section 1355.3), which relates to powers and duties of the Board; requiring Board to appoint an Executive Director and set the salary; requiring adoption of salary schedules; modifying duties of the Board; providing for vacancy in office of Executive Director; amending 22 O.S. 1991, Section 1355.4, as last amended by Section 1, Chapter 197, O.S.L. 1999 (22 O.S. Supp. 2000, Section 1355.4), which relates to Executive Director; modifying qualifications; modifying powers and duties of the Executive Director; providing for contracts; directing the Executive Director to set certain salaries; modifying language; providing for certain lists to include certain experts available to provide services; requiring fee schedule be submitted; requiring approval for excess fee; deleting certain provisions for requesting expert services; providing procedure for expert services; construing effect of certain action; deleting language; requiring application for certain representation; providing penalty of perjury for false statement; providing procedure for applying for representation while under bond; setting nonrefundable application fee; allowing for deferred payment of application fee under certain circumstances; providing for deposit of fee to certain account; requiring the Court of Criminal Appeals to promulgate rules for indigency; directing Chief Judge to make initial determination of indigency; providing for review of indigency determination; requiring copy of certain application be sent to district attorney or Attorney General; allowing hearing of indigency upon request; establishing certain rebuttable facts; prohibiting certain representation without completed application; 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 responsibility of System to defendant; clarifying language; deleting certain language; excluding certain civil proceedings; allowing representation in certain other proceedings when related to original case; prohibiting civil rights cases; providing an exception; authorizing selection of attorney from certain list; requiring certain proof and qualification for certain attorneys; providing for payment for representation; authorizing representation for Constitutional or other purpose when required; amending 22 O.S. 1991, Section 1355.7, as last amended by Section 3, Chapter 326, O.S.L. 1997 (22 O.S. Supp. 2000, Section 1355.7), which relates to conflicts of interest; allowing the Executive Director to determine whether a conflict exists; modifying language; amending 22 O.S. 1991, Section 1355.8, as last amended by Section 2, Chapter 201, O.S.L. 1998 (22 O.S. Supp. 2000, Section 1355.8), which relates to selection of attorneys and contracts; authorizing the Board to award contracts in noncapital trial cases; authorizing renewal of contracts; allowing selection of private attorneys when no offers for contracts exist; requiring attorneys meet certain qualifications; allowing for representation by attorneys of the System in certain instance; providing procedure for fiscal year contract that is terminated; allowing replacement contracts; prohibiting renewal; including representation for defendants under the Youthful Offender Act; clarifying language; allowing the court to appoint certain representation under certain instance; deleting pilot program in certain district; deleting language; amending 22 O.S. 1991, Section 1355.9, as amended by Section 9, Chapter 303, O.S.L. 1992 (22 O.S. Supp. 2000, Section 1355.9), which relates to main office and satellite offices; clarifying language; amending 22 O.S. 1991, Section 1355.13, as last amended by Section 3, Chapter 201, O.S.L. 1998 (22 O.S. Supp. 2000, Section 1355.13), which relates to death penalty cases; deleting language for details of compensation; requiring certain claim form to be filed as required by the System; amending Section 5, Chapter 229, O.S.L. 1994, as amended by Section 8, Chapter 301, O.S.L. 1996 (22 O.S. Supp. 2000, Section 1355.15), which relates to contempt citations and court costs; prohibiting the System from paying claims for contempt of court; amending 22 O.S. 1991, Section 1356, as last amended by Section 9, Chapter 301, O.S.L. 1996 (22 O.S. Supp. 2000, Section 1356), which relates to appeals and post-conviction; requiring representation in all appointed capital cases; providing for representation of appeals when defendant was not represented by county indigent defender; prohibiting the System from representing certain appeals when county indigent defender was used at trial; providing procedure for conflict of interest; limiting number of defendants to be represented by the System in conflict; deleting language; requiring judges to appoint the System in certain cases; amending 22 O.S. 1991, Section 1358, as last amended by Section 10, Chapter 301, O.S.L.

1996 (22 O.S. Supp. 2000, Section 1358), which relates to assignment of cases; deleting language relating to appeals; providing for reassignment of a case when conflict exists; allowing the Executive Director to determine whether conflict exists; providing procedure to appoint and reassign cases when conflict exists; amending 22 O.S. 1991, Section 1360, as last amended by Section 4, Chapter 201, O.S.L. 1998 (22 O.S. Supp. 2000, Section 1360), which relates to post-conviction; requiring the System to represent indigents on post-conviction proceedings in capital cases; prohibiting System representation in noncapital cases; providing certain exception for related cases; deleting language relating to issues and merits to be raised; amending 22 O.S. 1991, Section 1363, as last amended by Section 5, Chapter 326, O.S.L. 1997 (22 O.S. Supp. 2000, Section 1363), which relates to filing jurisdictional documents; including filings required in the Court of Criminal Appeals; amending 22 O.S. 1991, Section 1365, which relates to costs and fees; requiring payment of certain costs and fees by System; amending Section 4, Chapter 381, O.S.L. 1998 (22 O.S. Supp. 2000, Section 1370), which relates to the Alfred P. Murrah Federal Building Revolving Fund; abolishing fund on certain date; transferring funds and obligations to certain fund; repealing Section 4, Chapter 381, O.S.L. 1998 (22 O.S. Supp. 2000, Section 1370), which relates to the Alfred P. Murrah Federal Building Revolving Fund; providing for codification; providing effective dates; and declaring an emergency.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 1355, as last amended by Section 3, Chapter 301, O.S.L. 1996 (22 O.S. Supp. 2000, Section 1355), is amended to read as follows:

Section 1355. A. Sections 1355 through ~~1368~~ 1369 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 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.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 1355.1, as last amended by Section 1, Chapter 201, O.S.L. 1998 (22 O.S. Supp. 2000, 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~~ at least 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~~ a successor has been appointed, qualified and confirmed by the Senate.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 1355.2, as amended by Section 3, Chapter 303, O.S.L. 1992 (22 O.S. Supp. 2000, 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, references to "public defender" shall mean a county indigent defender for a county subject to the provisions of Section ~~138.1~~ 138.1a of Title 19 of the Oklahoma Statutes, an attorney who represents indigents pursuant to a contract with the System or who ~~volunteers~~ agrees to accept assignments of cases from the System to represent indigents, or an attorney employed by the System.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 1355.3, as last amended by Section 2, Chapter 328, O.S.L. 1994 (22 O.S. Supp. 2000, Section 1355.3), is amended to read as follows:

Section 1355.3 A. The Indigent Defense System Board shall have the following powers and duties:

1. To appoint the Executive Director and set his or her salary;

2. To adopt salary schedules for the System;

3. To establish policies for the ~~indigent defense programs~~ System as provided by law;

~~2.~~ 4. To require from the Executive Director ~~annual~~ reports ~~of expenditures of funds, cases involved in, and status of such cases for the preceding fiscal year from the Executive Director~~ as the Board deems necessary;

~~3.~~ 5. To approve ~~a master~~ an annual budget for the System, ~~which will be~~ prepared and administered by the Executive Director;

~~4.~~ 6. To authorize the acceptance of monies, gifts, grants, or services from any public or private source;

~~5.~~ 7. To review claims for expenditures of monies ~~from whatever source, on a bimonthly basis~~;

~~6.~~ 8. To authorize ~~entering into~~ contracts with individuals, educational institutions, or state or federal agencies ~~and to approve or disapprove the provisions of any such contract~~;

~~7.~~ 9. To ~~establish an equitable distribution plan for allocation of any~~ allocate and distribute funds or gifts received from public or private sources for indigent defense ~~and distribute such funds in accordance with such plan~~; and

~~8.~~ 10. To ~~appoint an advisory council made up of~~ consult with indigent defenders and defense lawyers who represent indigents pursuant to contract or who ~~volunteer to represent indigents~~ agree to accept indigent defense cases assigned by the System to discuss problems and hear recommendations concerning necessary research, minimum standards, educational needs, and other matters imperative to conducting Oklahoma criminal defense in a professional manner.

B. The Board shall make an annual report to 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 efforts of the Board to implement the purposes of the Indigent Defense Act.

C. If there is a vacancy or extended absence in the office of the Executive Director, the Board shall perform the duties or appoint an interim director to perform such duties until a new Executive Director is appointed.

SECTION 5. AMENDATORY 22 O.S. 1991, Section 1355.4, as last amended by Section 1, Chapter 197, O.S.L. 1999 (22 O.S. Supp. 2000, 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~~ its pleasure ~~of the Board~~. The Executive Director shall be an attorney who has ~~been licensed to practice~~ practiced law ~~in this state~~ for at least four

(4) years preceding the appointment and who is licensed to practice law in this state or is eligible to become so licensed within one (1) year of appointment. The Executive Director shall have 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~~ an annual budget ~~to be submitted to~~, approved by 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, to enter into contracts with individuals, educational institutions, or state or federal agencies for other purposes, 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~~ promote the education~~,~~ and 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 personnel as necessary to carry out the duties imposed upon the System by law and set the salaries of such personnel, subject to the salary schedules adopted by the Board;

8. To solicit and maintain a current list of attorneys licensed to practice law in this state who are willing to accept ~~court appointments~~ case assignments from the System 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~~ System;

10. 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;

11. To establish maximum caseloads for attorneys employed by the System, subject to approval by the Board;

12. To reduce caseloads through reassignment of cases to private attorneys, as necessary;

13. To approve the sharing of office space, equipment, or personnel among the separate indigent defense programs within the System;

14. To prepare and submit to the Board an annual report ~~of expenditures of funds, cases, and status of cases~~ for the preceding fiscal year regarding the efforts of the System to implement the purposes of the Indigent Defense Act, and file that 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;

15. To conduct regional or statewide conferences and training seminars for the purpose of implementing the provisions of the Indigent Defense Act;

16. To provide personnel who serve in an advisory capacity to the indigent defenders and defense attorneys who represent indigents pursuant to contract or who ~~volunteer~~ agree to accept cases assigned by the System to represent indigents of this state;

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~~;

18. To recommend ~~additional~~ legislation necessary to upgrade the Oklahoma Indigent Defense System or to improve the justice system; and

19. To operate a cost effective system by:

a. implementing procedures to track System expenditures to show costs by case and client and to track time and expenses by attorney if the attorney is employed by the System,

b. adopting written policies regarding when employees are to be in travel status ~~and making efforts~~ to ~~pool trips to~~ reduce costs, and

c. reviewing assignment of indigency status to identify clients who have available resources, and collecting costs of representation when feasible.

D. 1. The Executive Director is hereby authorized to develop, establish, and maintain lists of ~~approved~~ contractors ~~that will be available~~ who have agreed to provide expert services~~. An~~ to the agency. The lists shall include any expert who desires to furnish services to the agency and who has filed a schedule of fees for services with, and on a form approved by, the Executive Director. Any deviation in excess of the published schedule of fees shall require the prior written approval of the Executive Director. Any attorney appointed or assigned cases in accordance with the Indigent Defense Act may ~~select and have preapproved an~~ request expert ~~or experts~~ services from the list of experts maintained by the Executive Director. ~~An attorney may request to contract for expert services from one or more experts not on the list only when there is no expert on the list capable of providing the specific services needed and only with the prior approval of the Executive Director.~~

~~The list shall include any expert who desires to furnish services to the agency and who has filed a schedule of fees for services with, and on a form approved by, the Executive Director. An attorney may agree to deviate from the schedule of fees only with the prior written approval of the Executive Director~~ The Executive Director or designee may, in his or her sole discretion, approve requests for expert services; provided, however, that nothing contained in the Indigent Defense Act shall be construed to render the Executive Director a member of the defense team in any System client's case for strategic purposes.

2. Attorneys appointed or assigned cases in accordance with the Indigent Defense Act may request ~~and must have pre-approved~~ investigative or other nonexpert witness services from the Executive Director on a form provided by the Executive Director. The Executive Director or designee may, in his or her sole discretion, ~~subject to funds budgeted and available to the System, authorize~~ approve requests for such services at a reasonable hourly rate of compensation; provided, however, that nothing contained in the Indigent Defense Act shall be construed to render the Executive Director a member of the defense team in any System client's case for strategic purposes.

3. Services obtained under this section may be obtained as sole source contracts ~~and are specifically exempt from the requirements of soliciting no less than three quotations found in paragraph 7 of subsection A of Section 85.45j of Title 74 of the Oklahoma Statutes~~.

E. Each individual performing the services provided for in subsection D of this section may, with the approval of the Executive Director, be reimbursed for necessary travel expenses up to the amount permitted 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 the duties or appoint an interim director to perform such duties until a new Executive Director is appointed.~~

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1355.5A of Title 22, unless there is created a duplication in numbering, reads as follows:

A. When an indigent requests representation by the Oklahoma Indigent Defense System, the 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 a crime. 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 applicant shall include a written statement from the applicant that the applicant has contacted three 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, 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 the time of the application, to attach as a court fee upon conviction. Any fee 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.

B. 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 promulgated.

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 the rules become effective, the determination of indigency shall be subject to review by the Court of Criminal Appeals.

C. Before the court appoints the Indigent Defense System based on the application, the court shall advise the indigent or, if applicable, a parent or legal guardian of the indigent, that the application is signed under oath and penalty of perjury and that a false statement may be prosecuted as a crime. 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.

D. If the indigent is admitted to bail and the defendant or another person on behalf of the defendant posts a bond with personal funds, other than by personal recognizance, this fact shall constitute a rebuttable presumption that the defendant is not indigent.

E. 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, Chapter 18 of Title 22 of the Oklahoma Statutes, has been filed of record in the case.

SECTION 7. 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 capital and felony~~,~~ cases and in all 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 Youthful Offender Act and the Oklahoma Juvenile Code, other than mental health cases ~~and appeals and~~, in-need-of-supervision proceedings ~~and appeals~~, and any other juvenile proceedings that are civil in nature.

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~~ Upon prior approval by the Executive Director, the System may also represent the indigent in other state proceedings, if such representation is related to the case for which the original appointment of the System 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, unless approval is granted 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, 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. 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~~ The Executive Director may select attorneys to handle indigent criminal cases from a list of attorneys who have agreed to accept assignments of such cases, who provide proof of professional liability insurance coverage, and who meet the qualifications established by the System for such assignments. Payment to such attorneys shall be made from the budget of the System.

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~~ The Board shall have the authority to provide for representation by attorneys employed by the System for indigent criminal defendants and others

for whom representation is required by either the Constitution or laws of this state.

~~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 8. AMENDATORY 22 O.S. 1991, Section 1355.7, as last amended by Section 3, Chapter 326, O.S.L. 1997 (22 O.S. Supp. 2000, Section 1355.7), is amended to read as follows:

Section 1355.7 A. If the ~~court~~ Executive Director 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~~ attorneys as provided in subsection C of this section.

B. If the ~~court~~ Executive Director 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~~ assigned by the System, 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~~ assignments pursuant to subsection C of this section.

C. ~~Appointment of~~ Assignment of a case by the System to 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~~ such assignments and who meet the qualifications established by the ~~Board~~ System for such ~~appointments~~ assignments.

D. Payment to such private attorneys shall be made by the System and shall be at ~~the~~ rates approved by the ~~Board~~ System, subject to the statutory limits established in Sections 1355.8 and 1355.13 of this title for cases at the trial level.

SECTION 9. AMENDATORY 22 O.S. 1991, Section 1355.8, as last amended by Section 2, Chapter 201, O.S.L. 1998 (22 O.S. Supp. 2000, 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~~ In addition to the methods of providing counsel as set forth in subsection C and D of Section 1355.6 of this title, the Board shall have the authority to award contracts to provide ~~legal~~ noncapital trial 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.~~ B. 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~~ noncapital trial 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.~~ C. 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.~~ D. 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~~ System 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~~ System. No contract shall be effective until proof of such insurance is provided to the ~~Board~~ System.

5. In the event that only one qualified offer is received, the Board may accept the offer, make one or more counteroffers, readvertise or provide representation as otherwise authorized by ~~this section~~ the Indigent Defense Act. 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~~ the Indigent Defense Act. 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~~ direct the Executive Director to assign cases from the relevant counties to private attorneys selected from a list of qualified ~~volunteer~~ attorneys~~,~~ who ~~provide~~ have agreed to accept assignments of such cases and have provided proof of professional liability insurance coverage~~, to provide representation to indigent criminal defendants and indigent juveniles~~ and who meet the qualifications established by the System for such assignments. Compensation for such attorneys shall be as provided in subsection ~~G~~ F of this section.

7. In the event that no qualified offers are received, and in lieu of ~~creating~~ assigning cases to private attorneys on a list of qualified ~~volunteer~~ attorneys pursuant to paragraph 6 of this subsection, the Board may, pursuant to subsection ~~B~~ D of ~~this section or~~ Section 1355.6 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.

E. If a fiscal year contract is terminated before the end of the fiscal year, the Executive Director shall not be required to solicit offers to contract but may instead award one or more replacement contracts for the affected county or counties to a qualified attorney or attorneys to represent persons in cases for which the System is obligated to provide counsel; provided, that such replacement contract or contracts shall not be renewable for the next fiscal year.

~~G.~~ F. 1. Except as provided in paragraph 3 of this subsection, total compensation for a case which is not covered by ~~an annual~~ a fiscal year noncapital trial contract awarded or renewed pursuant to subsection A of 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 Youthful Offender Act and the Oklahoma Juvenile Code, ~~other than mental health cases and appeals, and in-need-of-supervision proceedings and appeals~~ in which the System is required to provide representation pursuant to subsection A of Section 1355.6 of this title,

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~~ a fiscal year noncapital trial contract awarded or renewed pursuant to subsection A of this section shall not exceed Three Thousand Five Hundred Dollars ($3,500.00) in noncapital 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 is an exceptional one which requires an extraordinary amount of time to litigate, and that the request for extraordinary attorney fees is reasonable.

~~H.~~ G. 1. Attorneys paid for indigent defense ~~on a contractual basis~~ pursuant to a fiscal year noncapital trial contract awarded or renewed pursuant to this section shall be paid an annual fee in twelve monthly installments each equaling seven and one-half percent ~~(7.5%)~~ (7 1/2%) 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.~~ H. To receive payment in a case assigned pursuant to subsection C of Section 1355.6 of this title, an attorney must submit a claim in accordance with the provisions of the Indigent Defense Act.

~~J.~~ I. 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~~ System.

~~K.~~ J. Any attorney providing services pursuant to ~~a~~ any contract with the System shall continue to provide representation

~~for all cases~~ at the trial level in each case 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~~ after the attorney ~~makes~~ has made proper application ~~to the Executive Director~~ to withdraw from the case and the application ~~is~~ has been approved by the Executive Director ~~in accordance with policies established by the Board~~.

~~L.~~ K. In ~~any case~~ all cases in which legal representation ~~is not provided~~ by the Oklahoma Indigent Defense System is not authorized by other provisions of the Indigent Defense Act 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 10. AMENDATORY 22 O.S. 1991, Section 1355.9, as amended by Section 9, Chapter 303, O.S.L. 1992 (22 O.S. Supp. 2000, Section 1355.9), is amended to read as follows:

Section 1355.9 The Board shall establish one main office and as many satellite offices as necessary for the proper representation of ~~all indigents in this state~~ the System's clients.

SECTION 11. AMENDATORY 22 O.S. 1991, Section 1355.13, as last amended by Section 3, Chapter 201, O.S.L. 1998 (22 O.S. Supp. 2000, 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~~ assigned cases by the System 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~~ attorney must submit a claim in accordance with the provisions of the Indigent Defense Act in such detail as required by the System. Except as provided in subsection B of this section, total compensation for non-System attorneys 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 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 an exceptional one which required an extraordinary amount of time to litigate, and that the request for extraordinary attorney fees is reasonable.

SECTION 12. AMENDATORY Section 5, Chapter 229, O.S.L. 1994, as amended by Section 8, Chapter 301, O.S.L. 1996 (22 O.S. Supp. 2000, Section 1355.15), is amended to read as follows:

Section 1355.15 The ~~Indigent Defense Board~~ System shall not approve payment of any claims for fines resulting from contempt citations issued to attorneys defending indigent clients. The ~~Indigent Defense~~ Board may, upon recommendation of the Executive Director, approve payment of reasonable court costs resulting from contempt citations issued to attorneys appointed in accordance with the Indigent Defense Act.

SECTION 13. AMENDATORY 22 O.S. 1991, Section 1356, as last amended by Section 9, Chapter 301, O.S.L. 1996 (22 O.S. Supp. 2000, Section 1356), is amended to read as follows:

Section 1356. A. The System shall perfect all direct appeals and capital post-conviction proceedings ~~in all state courts~~ for all ~~capital~~ cases ~~assigned~~ to which the System is appointed by Oklahoma district courts~~, except for direct appeals for indigent defendants represented by the county indigent defender in~~ at the time the appeal is initiated, except as hereafter provided. 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~~ the System shall perfect direct appeals for indigent defendants who were not represented at trial by the county indigent defender. The System shall not be appointed to perfect direct appeals for indigents represented at trial by the county indigent defender, unless a conflict of interest

on appeal exists between defendants, in which case the System may be appointed to represent not more than one defendant.

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~~ Judges of the district courts shall appoint the System at the time the appeal is initiated, where the indigent defendant is subject to incarceration or the death penalty, to perfect all indigent criminal appeals which are felony or misdemeanor appeals, appeals by petition for writ of certiorari, juvenile criminal appeals pursuant to the Youthful Offender Act and the Oklahoma Juvenile Code, appeals from revocation of a suspended sentence, and appeals from acceleration of deferred judgments.

~~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 14. AMENDATORY 22 O.S. 1991, Section 1358, as last amended by Section 10, Chapter 301, O.S.L. 1996 (22 O.S. Supp. 2000, 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 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~~ If the Executive Director determines that a conflict exists after evaluating a case assigned under Section 1356 of this title, 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, unless the case is from a county subject to the provisions of Section 138.1a of Title 19 of the Oklahoma Statutes and the indigent defendant was not represented at trial by the county indigent defender. If the Executive Director determines a conflict exists in a case from a county subject to the provisions of Section 138.1a of Title 19 of the Oklahoma Statutes and the indigent defendant was not represented at trial by the county indigent defender, the county indigent defender shall be appointed to represent the indigent defendant. The appointment of the county shall be made by the district attorney at the time the appeal is initiated or by the Court of Criminal Appeals afterward. If the district court, at the time the appeal has been initiated, or the Court of Criminal Appeals, after the appeal has been initiated, determines that the

county indigent defender also has a conflict of interest in such case, the district attorney, initially or on remand from the Court of Criminal Appeals, 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 by reassigning the case to another county indigent defender, an attorney who represents indigents pursuant to contract, or a private attorney who has agreed to accept such appointments. An appeal case shall not be reassigned to the System after the Executive Director has determined that a conflict of interest exists that prohibits the System from representing the indigent.

SECTION 15. AMENDATORY 22 O.S. 1991, Section 1360, as last amended by Section 4, Chapter 201, O.S.L. 1998 (22 O.S. Supp. 2000, Section 1360), is amended to read as follows:

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

B. In noncapital cases, the System ~~may~~ shall not be appointed to represent indigents in proceedings for post-conviction relief~~,~~; provided, however, the System may represent indigents in post-conviction proceedings if the representation is related to another pending case in which the System has been appointed, or the proceeding is necessary 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.

D. After a mandate has been ~~rendered~~ issued 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 and cases accepted under the DNA Forensic Testing Act. 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 post-conviction application. Any issue not so raised and decided shall be dismissed from any subsequent application for post-conviction relief, unless the accused shows good cause why the issue was not raised previously.~~

SECTION 16. AMENDATORY 22 O.S. 1991, Section 1363, as last amended by Section 5, Chapter 326, O.S.L. 1997 (22 O.S. Supp. 2000, 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~~ and the Court of Criminal Appeals to ~~perfect~~ initiate 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 17. AMENDATORY 22 O.S. 1991, Section 1365, is amended to read as follows:

Section 1365. All necessary transcript costs and court fees required for perfecting appeals for indigents under ~~this act~~ the Oklahoma Indigent Defense System shall be paid by the defendant if ~~he~~ the defendant is financially able to do so. Otherwise, the costs shall be paid from the court fund of the county in which the defendant was convicted.

SECTION 18. AMENDATORY Section 4, Chapter 381, O.S.L. 1998 (22 O.S. Supp. 2000, Section 1370), is amended to read as follows:

Section 1370. There is hereby created in the State Treasury a revolving fund for the Oklahoma Indigent Defense System, to be designated the "Alfred P. Murrah Federal Building Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Oklahoma Indigent Defense System for the purpose of providing for the defense required by the United States and Oklahoma Constitutions of defendants charged in Oklahoma in a court of this state with the bombing of the Alfred P. Murrah Federal Building. Appropriations to and expenditures from said fund shall not be counted against this agency's budget limits. Expenditures 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.

<u>The Alfred P. Murrah Federal Building Revolving Fund is abolished on July 1, 2001. Any funds and obligations remaining on that date shall be transferred to the Indigent Defense System Revolving Fund, created by Section 1368 of this title.</u>

SECTION 19. REPEALER Section 4, Chapter 381, O.S.L. 1998 (22 O.S. Supp. 2000, Section 1370), is hereby repealed.

SECTION 20. The provisions of Sections 1 through 18 of this act shall become effective July 1, 2001.

SECTION 21. The provisions of Section 19 of this act shall become effective November 1, 2001.

SECTION 22. 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.

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