CS for SB 1399

THE STATE SENATE
Tuesday, February 17, 2004

Committee Substitute for

Senate Bill No. 1399

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1399 - By: WILKERSON of the Senate and ASKINS of the House.

[criminal procedure - Oklahoma Indigent Defense System - fee schedule - laboratory examination reports – emergency]

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 1355.14, is amended to read as follows:

Section 1355.14 A. At the time of pronouncing the judgment and sentence or other final order, the court shall order any person represented by an attorney employed by the Oklahoma Indigent Defense System or a defense attorney who contracts or volunteers to represent indigents pursuant to the provisions of the Indigent Defense Act to pay the costs for representation in total or in installments and, in the case of installment payments, set the amount and due date of each installment. ~~The attorney representing the indigent person shall document for the court the total costs for representation.~~

B. Costs assessed pursuant to this section shall be collected by the court clerk and when collected paid monthly to the Oklahoma

(Bold face denotes Committee Amendments)

Indigent Defense System for deposit to the Indigent Defense System Revolving Fund.

C. Costs of representation shall be a debt against the person represented until paid and shall be subject to any method provided by law for the collection of debts.

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

E. The court shall assess the following fees as the cost of representation:

1. For any misdemeanor case in which a plea of guilty or stipulation to revocation or imposition of sentence has been entered.....$150.00

2. For any felony case in which a plea of guilty or stipulation to revocation or imposition of sentence has been entered.....$250.00

3. For any misdemeanor case tried to a jury.....$500.00

4. For any felony case tried to a jury.....$1,000.00

5. For any merit hearing on an application to revoke a suspended sentence or accelerate a deferred sentence in a misdemeanor case.....$200.00

6. For any merit hearing on an application to revoke a suspended sentence or accelerate a deferred sentence in a felony case.....$300.00

The fees shall be assessed unless ordered waived upon good cause shown by the indigent person, or unless another amount is specifically requested by counsel for the indigent person and is approved by the court. In cases or proceedings other than those set forth in paragraphs 1 through 6 of this subsection, the court shall assess the cost of representation not to exceed Two Hundred Fifty Dollars ($250.00), except upon a showing by counsel of the actual costs or representation in excess of said amount.

SECTION 2. AMENDATORY 22 O.S. 2001, Section 1371.1, is amended to read as follows:

Section 1371.1 A. A DNA Forensic Testing Program shall be created within the Oklahoma Indigent Defense System to investigate, screen, and present to the appropriate prosecutorial agency claims that scientific evidence will demonstrate indigent persons convicted of, and presently incarcerated on, any felony offense upon which the testing is sought are factually innocent. Factual innocence requires the defendant to establish by clear and convincing evidence that no reasonable jury would have found the defendant guilty beyond a reasonable doubt in light of the new evidence. The System's

services shall be available only upon the submission of an affidavit of indigency to the System signed by an incarcerated person convicted of a felony and upon a preliminary determination by the System that the claim has a reasonable basis in fact. Determinations of indigency shall be made at the sole discretion of the System based on rules for determining indigency promulgated by the Court of Criminal Appeals pursuant to the Indigent Defense Act. Determinations of ~~reasonabless~~ reasonableness and acceptance of cases for which DNA testing will be performed shall be within the sole discretion of the System and shall not be subject to judicial review.

B. The System shall employ such attorneys, investigators, and other employees as may be necessary to process and present claims of factual innocence to the appropriate prosecuting agency in an efficient manner.

C. The System shall give priority to claims based on certain factors, including but not limited to:

1. The opportunity for conclusive or near conclusive proof that the person is factually innocent by reason of scientific evidence; and

2. A lengthy sentence of imprisonment or a death sentence.

D. The System is authorized to investigate cases and arrange for the forensic testing of evidence to determine whether evidence

of factual innocence exists. Samples must be of sufficient quantity to allow testing by both the prosecution and the defense. Neither the prosecution nor defense shall consume the entire sample in testing in the absence of a court order allowing the sample to be entirely consumed in testing. The System shall request the Oklahoma State Bureau of Investigation or the city in which the offense upon which the testing is sought was committed to perform the testing. The Bureau or the city may decline for any reason at their discretion in writing within thirty (30) days of receipt of the request. In those cases where the Bureau or city declines or fails to respond within thirty (30) days, or cannot perform the testing within a reasonable time, the System may request the professional services of experts under contract with the System as necessary for testing and presentation of such claims to the appropriate prosecuting agency.

E. All municipal, county and state forensic laboratories shall provide copies to the System of laboratory examination reports regarding cases accepted for investigation by the DNA Forensic Testing Program administered by the Oklahoma Indigent Defense System. The reports shall be confidential and not subject to the Oklahoma Open Records Act. The reports shall be used only for investigating, screening, and presenting claims pursuant to the provisions of the DNA Forensic Testing Act.

1 F. Nothing in the DNA Forensic Testing Act shall require any
2 person other than an incarcerate to provide a sample from their body
3 for purposes of testing.
4 SECTION 3. It being immediately necessary for the preservation
5 of the public peace, health and safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.
8 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-11-04 - DO
9 PASS, As Amended and Coauthored.