

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 2284

By: O'Donnell

COMMITTEE SUBSTITUTE

An Act relating to legal practitioner training; amending 19 O.S. 2011, Section 138.1a, which relates to duties of the public defender; modifying duties to include certain training and continuing legal education requirements; amending 19 O.S. 2011, Section 215.28, as amended by Section 67, Chapter 304, O.S.L. 2012 (19 O.S. Supp. 2016, Section 215.28), which relates to the District Attorneys Council; modifying training and continuing legal education requirements to include certain topics; amending Section 4, Chapter 198, O.S.L. 2013 (22 O.S. Supp. 2016, Section 60.20), which relates to the Protection from Domestic Abuse Act; providing list of required training curriculum topics; amending 22 O.S. 2011, Section 1355.4, which relates to the Indigent Defense Act; modifying training and continuing legal education requirements to include certain topics; and providing an effective date.

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

SECTION 1. AMENDATORY 19 O.S. 2011, Section 138.1a, is amended to read as follows:

Section 138.1a A. In each county of this state possessing a population of over three hundred thousand (300,000) according to the

1 Federal Decennial Census of 1990, or any succeeding Federal
2 Decennial Census, there is hereby created the office of public
3 defender, and such office shall be charged upon the order of any
4 judge of a court of record of such county, with the protection of
5 the rights of any defendant to a criminal action. The board of
6 county commissioners of such county shall provide for necessary
7 office supplies and equipment and arrange for sufficient office
8 space in the county building, used by the courts of record of such
9 county, to permit the efficient and effective operation of the
10 office of public defender.

11 B. Subject to available funding, the board of county
12 commissioners, along with the office of the public defender, shall
13 provide and coordinate training and continuing legal education for
14 attorneys employed by the office of the public defender. Curriculum
15 for training required under this section shall include, but not be
16 limited to:

- 17 1. Nationally recognized defense seminars; and
18 2. Evidence-based practices regarding behavioral health and
19 treatment of defendants with substance abuse or mental health needs.

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

24

1 SECTION 2. AMENDATORY 19 O.S. 2011, Section 215.28, as
2 amended by Section 67, Chapter 304, O.S.L. 2012 (19 O.S. Supp. 2016,
3 Section 215.28), is amended to read as follows:

4 Section 215.28 A. There is hereby created the District
5 Attorneys Council which shall be organized and administered as
6 herein provided. Any reference in the Oklahoma Statutes to the
7 District Attorneys Training Coordination Council shall mean the
8 District Attorneys Council.

9 B. The chief executive officer of the office of the Council is
10 the Executive Coordinator who shall be appointed and supervised by
11 the Council. The Executive Coordinator shall serve at the pleasure
12 of the Council. The Executive Coordinator shall be licensed to
13 practice law in Oklahoma and shall have been a district attorney or
14 assistant district attorney or have held an equivalent position in
15 state or federal government for at least three (3) years prior to
16 appointment. The Executive Coordinator may appoint an Assistant
17 Coordinator, both of whom shall be in the unclassified service of
18 the state. The Executive Coordinator and the Assistant Coordinator,
19 who shall also be licensed to practice law in Oklahoma, shall devote
20 full time to their duties and shall not engage in the private
21 practice of law. The Executive Coordinator shall perform the
22 functions and duties as may be assigned by the Council. The
23 Executive Coordinator shall be named the project director and fiscal
24 officer of any grant or fund received by the Council. The Executive

1 Coordinator and the Assistant Coordinator shall receive compensation
2 for their services within the pay scale limits for district
3 attorneys.

4 C. 1. The Council shall be composed of the following members:

5 a. the Attorney General, or a designated representative
6 of the Attorney General,

7 b. the President of the Oklahoma District Attorneys
8 Association,

9 c. the President-elect of the Oklahoma District Attorneys
10 Association,

11 d. one district attorney selected by the Court of
12 Criminal Appeals for a three-year term, and

13 e. one district attorney selected by the Board of
14 Governors of the Oklahoma Bar Association for a three-
15 year term.

16 2. A member of the Council shall vacate the appointment upon
17 termination of the member's official position as Attorney General or
18 district attorney. A vacancy shall be filled in the same manner as
19 the original appointment. A member appointed to fill a vacancy
20 created other than by expiration of a term shall be appointed for
21 the unexpired term of the member whom the appointed member is to
22 succeed in the same manner as the original appointment. Any member
23 may serve more than one term.
24

1 D. The Council shall designate from among its members a
2 Chairman and Vice Chairman who shall serve for one-year terms and
3 who may be reelected. Membership on the Council shall not
4 constitute holding a public office. The Council shall not have the
5 right to exercise any portion of the sovereign power of the state.
6 A member of the Council shall not be disqualified from holding any
7 public office or employment by reason of appointment or membership
8 on the Council, nor shall the member forfeit the office or
9 employment, by reason of appointment to the Council.

10 E. The Council shall meet at least four times in each year and
11 shall hold special meetings when called by the Chairman, or, in the
12 absence of the Chairman, by the Vice Chairman or when called by the
13 Chairman upon the written request of two members of the Council.
14 The Council shall establish its own procedures and requirements with
15 respect to quorum, place and conduct of its meetings and other
16 matters.

17 F. The members of the Council shall not receive a salary for
18 duties performed as members of the Council but shall be entitled to
19 be reimbursed for their travel expenses in accordance with the State
20 Travel Reimbursement Act.

21 G. The Council shall make an annual report to the Governor, the
22 President Pro Tempore of the Senate, the Speaker of the House of
23 Representatives, and the President of the Oklahoma District
24

1 Attorneys Association regarding its efforts to implement the
2 purposes of this section.

3 H. The Council shall have the power to perform such functions
4 as in its opinion shall strengthen the criminal justice system in
5 Oklahoma, to provide a professional organization for the education,
6 training and coordination of technical efforts of all state
7 prosecutors and to maintain and improve prosecutor efficiency and
8 effectiveness in enforcing the laws of this state including, but not
9 limited to, the following:

10 1. Organize, supervise and perform functions consistent with
11 this ~~act~~ section;

12 2. Convene regional or statewide conferences and training
13 seminars for the purpose of implementing the provisions of this ~~act~~
14 section;

15 3. Accept and expend monies, gifts, grants or services from any
16 public or private source; contract or enter into agreements with
17 educational institutions or state or federal agencies; and employ
18 personnel as the Council in its judgment finds necessary to
19 effectively carry out the provisions of this ~~act~~ section. Such
20 employees shall be in the unclassified service of the state;

21 4. Serve in an advisory capacity to the district attorneys of
22 the state;

23 5. Provide and coordinate training and continuing legal
24 education for district attorneys and their assistants, including

1 participation in nationally recognized prosecutorial seminars
2 conducted in other states. Subject to available funding, curriculum
3 for training required under this paragraph shall include, but not be
4 limited to:

- 5 a. dynamics of domestic violence,
- 6 b. the impact of domestic violence to victims and their
7 children including victim trauma and the neurobiology
8 of trauma,
- 9 c. identifying dominant aggressor,
- 10 d. tactics and behavior of batterers,
- 11 e. victim protection orders and full faith and credit
12 under the Violence Against Women Act of 1994,
- 13 f. rights of victims, and
- 14 g. evidence-based practices regarding behavioral health
15 and treatment of those with substance abuse or mental
16 health needs;

17 6. Gather and disseminate information to district attorneys
18 relative to their official duties, including changes in the law
19 relative to their office;

20 7. Coordinate with law enforcement officers, the courts and
21 corrections workers providing interdisciplinary seminars to augment
22 the effectiveness of the criminal justice system;

23 8. Require statistical reports from district attorneys' offices
24 relating to functions and workload performance;

1 9. Recommend additional legislation necessary to upgrade the
2 Oklahoma District Attorneys System to professional status;

3 10. Establish an equitable distribution plan for allocation of
4 any funds or gifts received from public or private sources for state
5 prosecution and distribute such funds in accordance with such plan;
6 and

7 11. Appoint a larger Advisory Council made up of district
8 attorneys and assistant district attorneys to discuss problems and
9 hear recommendations concerning necessary research, minimum
10 standards, educational needs, and other matters imperative to
11 upgrading Oklahoma prosecution to professional status.

12 I. There is hereby created in the State Treasury a revolving
13 fund for the Council, to be designated the "District Attorneys
14 Council Revolving Fund". The fund shall consist of all monies
15 received by the Council other than appropriated funds. The
16 revolving fund shall be a continuing fund not subject to fiscal year
17 limitations and shall be under the control and management of the
18 Council. Expenditures from this fund shall be made pursuant to the
19 purposes of this act and without legislative appropriation.
20 Warrants for expenditures shall be drawn by the State Treasurer
21 based on claims signed by the authorized employee or employees of
22 the Council and approved for payment by the Director of the Office
23 of Management and Enterprise Services.

1 J. The Council may accept operation and supervision of the Law
2 Enforcement Assistance Administration grants presently being
3 administered by the Oklahoma District Attorneys Association.

4 SECTION 3. AMENDATORY Section 4, Chapter 198, O.S.L.
5 2013 (22 O.S. Supp. 2016, Section 60.20), is amended to read as
6 follows:

7 Section 60.20 The Administrative Office of the Courts shall
8 provide annual domestic violence, substance abuse, addiction and
9 mental health educational training for members of the judiciary.
10 Subject to available funding, curriculum for training required under
11 this section shall include, but not be limited to:

- 12 1. Dynamics of domestic violence;
- 13 2. The impact of domestic violence to victims and their
14 children including trauma and the neurobiology of trauma;
- 15 3. Identifying dominant aggressor;
- 16 4. Tactics and behavior of batterers;
- 17 5. Victim protection orders and full faith and credit under the
18 Violence Against Women Act of 1994;
- 19 6. Rights of victims; and
- 20 7. Evidence-based practices regarding behavioral health and
21 treatment of those with substance abuse or mental health needs.

22 SECTION 4. AMENDATORY 22 O.S. 2011, Section 1355.4, is
23 amended to read as follows:

1 Section 1355.4 A. The chief executive officer of the Oklahoma
2 Indigent Defense System shall be the Executive Director, who shall
3 be appointed by the Board and serve at the pleasure of the Board.
4 The Executive Director shall be an attorney who has practiced law
5 for at least four (4) years preceding the appointment and who is
6 licensed to practice law in this state or is eligible to become so
7 licensed within one (1) year of the appointment. The Executive
8 Director shall have experience in the representation of persons
9 accused or convicted of crimes.

10 B. The Executive Director shall perform administrative
11 functions which serve the Board.

12 C. The Executive Director shall have the following powers and
13 duties:

14 1. To prepare and administer an annual budget approved by the
15 Board and to process claims for the System;

16 2. To enter into contracts to provide counsel in cases in which
17 the defendant is indigent and unable to employ counsel, to enter
18 into contracts with individuals, educational institutions, or state
19 or federal agencies for other purposes, and to approve or disapprove
20 the provisions of any such contract;

21 3. To review and approve or disapprove claims for expenditures
22 of monies;

23 4. To take such actions as shall strengthen the criminal
24 justice system in this state;

1 5. To promote the education and training of all attorneys
2 representing indigent criminal defendants including, subject to
3 available funding, nationally recognized defense seminars and
4 evidence-based practices regarding behavioral health and treatment
5 of defendants with substance abuse or mental health needs;

6 6. To maintain and improve effective representation for the
7 indigent criminal defendant;

8 7. To employ personnel as necessary to carry out the duties
9 imposed upon the System by law and to set the salaries of such
10 personnel, subject to the salary schedules adopted by the Board;

11 8. To solicit and maintain a current list of attorneys licensed
12 to practice law in this state who are willing to accept case
13 assignments from the System and who meet any other qualifications as
14 set by the Board;

15 9. To solicit and maintain a separate list of persons eligible
16 for appointment to capital cases, who meet the qualifications set by
17 the System;

18 10. To establish reasonable hourly rates of compensation for
19 attorneys appointed in accordance with the Indigent Defense Act,
20 subject to approval by the Board;

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

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

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

4 14. To prepare and submit to the Board an annual report for the
5 preceding fiscal year regarding the efforts of the System to
6 implement the purposes of the Indigent Defense Act, and to file that
7 report with the Governor, the President Pro Tempore of the Senate,
8 the Speaker of the House of Representatives, the Chief Justice of
9 the Oklahoma Supreme Court, and the Presiding Judge of the Oklahoma
10 Court of Criminal Appeals;

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

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

18 17. To gather and disseminate information to indigent
19 defenders, including, but not limited to, changes in the law;

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

23 19. To operate a cost-effective system by:
24

- 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 reduce travel 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 who have agreed to provide expert services to the System. The lists shall include any expert who desires to furnish services to the System 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 request expert services from the list of experts maintained by the Executive Director. The Executive Director or designee may, in said person's sole discretion, approve requests for expert services; provided, however, that nothing contained in the Indigent Defense Act shall be

1 construed to render the Executive Director a member of the defense
2 team in any System client's case for strategic purposes.

3 2. Attorneys appointed or assigned cases in accordance with the
4 Indigent Defense Act may request investigative or other nonexpert
5 witness services from the Executive Director on a form provided by
6 the Executive Director. The Executive Director or designee may, in
7 said person's sole discretion, approve requests for such services at
8 a reasonable hourly rate of compensation; provided, however, that
9 nothing contained in the Indigent Defense Act shall be construed to
10 render the Executive Director a member of the defense team in any
11 System client's case for strategic purposes.

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

16 E. Each individual performing the services provided for in
17 subsection D of this section may, with the approval of the Executive
18 Director, be reimbursed for necessary travel expenses up to the
19 amount permitted by the State Travel Reimbursement Act.

20 F. Requests for expenses not included in subsections D and E of
21 this section shall require ~~pre-approval~~ preapproval by the Executive
22 Director.

SECTION 5. This act shall become effective November 1, 2017.

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