

An Act

ENROLLED SENATE
BILL NO. 1021

By: Paxton of the Senate

and

Osborn (Leslie) and
Blancett of the House

An Act relating to indigent defense; amending 19 O.S. 2011, Section 138.5, which relates to duties of the office of the county indigent defender; removing certain rebuttable presumption; prohibiting court from considering certain factor as sole factor for eligibility determination; amending 20 O.S. 2011, Section 55, which relates to qualification rules for court-appointed attorney; modifying legislative intent; amending 22 O.S. 2011, Section 1355A, which relates to application for representation by the Oklahoma Indigent Defense System; removing certain rebuttable presumption; prohibiting court from considering certain factor as sole factor for eligibility determination; updating statutory language; and providing an effective date.

SUBJECT: Indigent defense

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

SECTION 1. AMENDATORY 19 O.S. 2011, Section 138.5, is amended to read as follows:

Section 138.5. A. It shall be the duty of the office of the county indigent defender to represent as counsel anyone who appears for arraignment without aid of counsel, and who has been informed by

the judge that it is his right to have counsel, and who desires counsel, but is unable to employ such aid; and upon order of a district judge of such county he shall investigate any matter pending before ~~said~~ the judge and report to him in the manner prescribed by ~~said~~ the judge.

B. When a defendant or, if applicable, his parent or legal guardian requests representation by the county indigent defender, such person shall submit an appropriate application, the form of which shall state that such 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 defendant has been released on bond. In addition, if the defendant has been released on bond, the application shall include a written statement from the applicant that he or she has contacted three (3) attorneys, licensed to practice law in this state, and the applicant has been unable to obtain legal counsel. A nonrefundable application fee of Fifteen Dollars (\$15.00) 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, waive the fee, if the person is in custody or if the court determines that the person does not have the financial resources to pay the fee. Any fee collected pursuant to this subsection shall be retained by the court clerk as an administrative fee and deposited in the court fund. Before the court appoints the county indigent defender based on ~~said~~ the application, the court shall advise the defendant or, if applicable, his or her parent or legal guardian that the application is signed under oath and under the penalty of perjury. A copy of the application shall be sent to the prosecuting attorney or the Office of the Attorney General, whichever is appropriate, for review, and, upon request, the court shall hold a hearing on the issue of the eligibility for appointment of the county indigent defender.

C. 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 court may consider such fact in determining the eligibility of the defendant is not indigent for appointment of the county indigent defender; provided, however, such consideration shall not be the sole factor in the determination of eligibility.

SECTION 2. AMENDATORY 20 O.S. 2011, Section 55, is amended to read as follows:

Section 55. No later than August 1, 1993, the Court of Criminal Appeals shall establish qualification rules for determining when a defendant in a criminal case shall be entitled to a court-appointed attorney.

~~It is the intent of the Oklahoma Legislature that the payment of bail by a defendant or on behalf of a defendant shall be prima facie evidence that said defendant has funds to employ his own attorney and the Court shall then inquire into the financial status of the defendant prior to appointing an attorney~~ a criminal defendant shall be entitled to an individualized determination of bail as guaranteed by the Oklahoma Constitution.

SECTION 3. AMENDATORY 22 O.S. 2011, Section 1355A, is amended to read as follows:

Section 1355A. A. When an indigent requests representation by the Oklahoma Indigent Defense 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 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 reported quarterly 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 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.

C. 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.

D. 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 court may consider such fact in determining the eligibility of the defendant is not indigent for appointment of the System; provided, however, such consideration shall not be the sole factor in the determination of eligibility.

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, 22 O.S. 2001, Ch. 18, App., has been filed of record in the case.

SECTION 4. This act shall become effective November 1, 2018.

Passed the Senate the 14th day of March, 2018.

Presiding Officer of the Senate

Passed the House of Representatives the 26th day of April, 2018.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____