

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2284

By: O'Donnell

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9 COMMITTEE SUBSTITUTE

10 An Act relating to legal practitioner training;
11 amending 19 O.S. 2011, Section 138.1a, which relates
12 to duties of the public defender; modifying duties to
13 include certain training and continuing legal
14 education requirements; amending 19 O.S. 2011,
15 Section 215.28, as amended by Section 67, Chapter
16 304, O.S.L. 2012 (19 O.S. Supp. 2016, Section
17 215.28), which relates to the District Attorneys
18 Council; modifying training and continuing legal
19 education requirements to include certain topics;
20 amending Section 4, Chapter 198, O.S.L. 2013 (22 O.S.
21 Supp. 2016, Section 60.20), which relates to the
22 Protection from Domestic Abuse Act; providing list of
23 required training curriculum topics; amending 22 O.S.
24 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:

1 Section 138.1a A. In each county of this state possessing a
2 population of over three hundred thousand (300,000) according to the
3 Federal Decennial Census of 1990, or any succeeding Federal
4 Decennial Census, there is hereby created the office of public
5 defender, and such office shall be charged upon the order of any
6 judge of a court of record of such county, with the protection of
7 the rights of any defendant to a criminal action. The board of
8 county commissioners of such county shall provide for necessary
9 office supplies and equipment and arrange for sufficient office
10 space in the county building, used by the courts of record of such
11 county, to permit the efficient and effective operation of the
12 office of public defender.

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

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

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

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

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

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

1 Executive Coordinator shall be named the project director and fiscal
2 officer of any grant or fund received by the Council. The Executive
3 Coordinator and the Assistant Coordinator shall receive compensation
4 for their services within the pay scale limits for district
5 attorneys.

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

7 a. the Attorney General, or a designated representative
8 of the Attorney General,

9 b. the President of the Oklahoma District Attorneys
10 Association,

11 c. the President-elect of the Oklahoma District Attorneys
12 Association,

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

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

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

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

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

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

23 G. The Council shall make an annual report to the Governor, the
24 President Pro Tempore of the Senate, the Speaker of the House of

1 Representatives, and the President of the Oklahoma District
2 Attorneys Association regarding its efforts to implement the
3 purposes of this section.

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

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

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

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

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

1 5. Provide and coordinate training and continuing legal
2 education for district attorneys and their assistants, including
3 participation in nationally recognized prosecutorial seminars
4 conducted in other states. Subject to available funding, curriculum
5 for training required under this paragraph shall include, but not be
6 limited to:

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

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

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

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

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

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

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

14 I. There is hereby created in the State Treasury a revolving
15 fund for the Council, to be designated the "District Attorneys
16 Council Revolving Fund". The fund shall consist of all monies
17 received by the Council other than appropriated funds. The
18 revolving fund shall be a continuing fund not subject to fiscal year
19 limitations and shall be under the control and management of the
20 Council. Expenditures from this fund shall be made pursuant to the
21 purposes of this act and without legislative appropriation.

22 Warrants for expenditures shall be drawn by the State Treasurer
23 based on claims signed by the authorized employee or employees of
24

1 the Council and approved for payment by the Director of the Office
2 of Management and Enterprise Services.

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

6 SECTION 3. AMENDATORY Section 4, Chapter 198, O.S.L.
7 2013 (22 O.S. Supp. 2016, Section 60.20), is amended to read as
8 follows:

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

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

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

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

12 B. The Executive Director shall perform administrative
13 functions which serve the Board.

14 C. The Executive Director shall have the following powers and
15 duties:

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

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

23 3. To review and approve or disapprove claims for expenditures
24 of monies;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 19. To operate a cost-effective system by:

- 2 a. implementing procedures to track System expenditures
3 to show costs by case and client and to track time and
4 expenses by attorney if the attorney is employed by
5 the System,
- 6 b. adopting written policies regarding when employees are
7 to be in travel status and making efforts to reduce
8 travel costs, and
- 9 c. reviewing assignment of indigency status to identify
10 clients who have available resources, and collecting
11 costs of representation when feasible.

12 D. 1. The Executive Director is hereby authorized to develop,
13 establish, and maintain lists of approved contractors who have
14 agreed to provide expert services to the System. The lists shall
15 include any expert who desires to furnish services to the System and
16 who has filed a schedule of fees for services with, and on a form
17 approved by, the Executive Director. Any deviation in excess of the
18 published schedule of fees shall require the prior written approval
19 of the Executive Director. Any attorney appointed or assigned cases
20 in accordance with the Indigent Defense Act may request expert
21 services from the list of experts maintained by the Executive
22 Director. The Executive Director or designee may, in said person's
23 sole discretion, approve requests for expert services; provided,
24 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.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL AND
ENVIRONMENTAL, dated 02/21/2017 - DO PASS, As Amended.