

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3120

By: Blancett

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8 COMMITTEE SUBSTITUTE

9 An Act relating to indigent defense; amending 19 O.S.
10 2011, Section 138.5, which relates to duties of the
11 office of the county indigent defender; removing
12 certain rebuttable presumption; prohibiting court
13 from considering certain factor as sole factor for
14 eligibility determination; amending 20 O.S. 2011,
15 Section 55, which relates to qualification rules for
16 court-appointed attorney; modifying legislative
17 intent; amending 22 O.S. 2011, Section 1355A, which
18 relates to application for representation by the
19 Oklahoma Indigent Defense System; removing certain
20 rebuttable presumption; prohibiting court from
21 considering certain factor as sole factor for
22 eligibility determination; updating statutory
23 language; and providing an effective date.

24 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

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

6 B. When a defendant or, if applicable, his parent or legal
7 guardian requests representation by the county indigent defender,
8 such person shall submit an appropriate application, the form of
9 which shall state that such application is signed under oath and
10 under the penalty of perjury and that a false statement may be
11 prosecuted as such. The application shall state whether or not the
12 defendant has been released on bond. In addition, if the defendant
13 has been released on bond, the application shall include a written
14 statement from the applicant that he or she has contacted three (3)
15 attorneys, licensed to practice law in this state, and the applicant
16 has been unable to obtain legal counsel. A nonrefundable
17 application fee of Fifteen Dollars (\$15.00) shall be paid to the
18 court clerk at the time the application is submitted, and no
19 application shall be accepted without payment of the fee; except
20 that the court may, based upon the financial information submitted,
21 waive the fee, if the person is in custody or if the court
22 determines that the person does not have the financial resources to
23 pay the fee. Any fee collected pursuant to this subsection shall be
24 retained by the court clerk as an administrative fee and deposited

1 in the court fund. Before the court appoints the county indigent
2 defender based on ~~said~~ the application, the court shall advise the
3 defendant or, if applicable, his or her parent or legal guardian
4 that the application is signed under oath and under the penalty of
5 perjury. A copy of the application shall be sent to the prosecuting
6 attorney or the Office of the Attorney General, whichever is
7 appropriate, for review, and, upon request, the court shall hold a
8 hearing on the issue of the eligibility for appointment of the
9 county indigent defender.

10 C. If the defendant is admitted to bail and the defendant or
11 another person on behalf of the defendant posts a bond, other than
12 by personal recognizance, ~~this fact shall constitute a rebuttable~~
13 ~~presumption that~~ the court may consider such fact in determining the
14 eligibility of the defendant is not indigent for appointment of the
15 county indigent defender; provided, however, such consideration
16 shall not be the sole factor in the determination of eligibility.

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

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

23 It is the intent of the Oklahoma Legislature that ~~the payment of~~
24 ~~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

1 court fee upon conviction. Any fees collected pursuant to this
2 subsection shall be retained by the court clerk, deposited in the
3 Court Clerk's Revolving Fund, and reported quarterly to the
4 Administrative Office of the Courts.

5 B. 1. The Court of Criminal Appeals shall promulgate rules
6 governing the determination of indigency pursuant to the provisions
7 of Section 55 of Title 20 of the Oklahoma Statutes. The initial
8 determination of indigency shall be made by the Chief Judge of the
9 Judicial District or a designee thereof, based on the defendant's
10 application and the rules provided herein.

11 2. Upon promulgation of the rules required by law, the
12 determination of indigency shall be subject to review by the
13 Presiding Judge of the Judicial Administrative District. Until such
14 rules become effective, the determination of indigency shall be
15 subject to review by the Court of Criminal Appeals.

16 C. Before the court appoints the System based on the
17 application, the court shall advise the indigent or, if applicable,
18 a parent or legal guardian, that the application is signed under
19 oath and under the penalty of perjury and that a false statement may
20 be prosecuted as such. A copy of the application shall be sent to
21 the prosecuting attorney or the Office of the Attorney General,
22 whichever is appropriate, for review. Upon request by any party
23 including, but not limited to, the attorney appointed to represent
24

1 the indigent, the court shall hold a hearing on the issue of
2 eligibility for appointment of the System.

3 D. If the defendant is admitted to bail and the defendant or
4 another person on behalf of the defendant posts a bond, other than
5 by personal recognizance, ~~this fact shall constitute a rebuttable~~
6 ~~presumption that~~ the court may consider such fact in determining the
7 eligibility of the defendant is not indigent for appointment of the
8 System; provided, however, such consideration shall not be the sole
9 factor in the determination of eligibility.

10 E. The System shall be prohibited from accepting an appointment
11 unless a completed application for court-appointed counsel as
12 provided by Form 13.3 of Section XIII of the Rules of the Court of
13 Criminal Appeals, 22 O.S. 2001, Ch. 18, App., has been filed of
14 record in the case.

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

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17 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03/01/2018 - DO
18 PASS, As Amended.