

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                   STATE OF OKLAHOMA

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

4   ENGROSSED SENATE  
5   BILL NO. 1021

By: Bice of the Senate

and

Osborn (Leslie) and  
Blancett of the House

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

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

SECTION 1.       AMENDATORY       19 O.S. 2011, Section 138.5, 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

1 for arraignment without aid of counsel, and who has been informed by  
2 the judge that it is his right to have counsel, and who desires  
3 counsel, but is unable to employ such aid; and upon order of a  
4 district judge of such county he shall investigate any matter  
5 pending before ~~said~~ the judge and report to him in the manner  
6 prescribed by ~~said~~ the judge.

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

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

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

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

20 Section 55. No later than August 1, 1993, the Court of Criminal  
21 Appeals shall establish qualification rules for determining when a  
22 defendant in a criminal case shall be entitled to a court-appointed  
23 attorney.  
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1        It is the intent of the Oklahoma Legislature that ~~the payment of~~  
2 ~~bail by a defendant or on behalf of a defendant shall be prima facie~~  
3 ~~evidence that said defendant has funds to employ his own attorney~~  
4 ~~and the Court shall then inquire into the financial status of the~~  
5 ~~defendant prior to appointing an attorney~~ a criminal defendant shall  
6 be entitled to an individualized determination of bail as guaranteed  
7 by the Oklahoma Constitution.

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

10        Section 1355A. A. When an indigent requests representation by  
11 the Oklahoma Indigent Defense System, such person shall submit an  
12 appropriate application to the court clerk, which shall state that  
13 the application is signed under oath and under the penalty of  
14 perjury and that a false statement may be prosecuted as such. The  
15 application shall state whether or not the indigent has been  
16 released on bond. In addition, if the indigent has been released on  
17 bond, the application shall include a written statement from the  
18 applicant that the applicant has contacted three named attorneys,  
19 licensed to practice law in this state, and the applicant has been  
20 unable to obtain legal counsel. A nonrefundable application fee of  
21 Forty Dollars (\$40.00) shall be paid to the court clerk at the time  
22 the application is submitted, and no application shall be accepted  
23 without payment of the fee; except that the court may, based upon  
24 the financial information submitted, defer all or part of the fee if

1 the court determines that the person does not have the financial  
2 resources to pay the fee at time of application, to attach as a  
3 court fee upon conviction. Any fees collected pursuant to this  
4 subsection shall be retained by the court clerk, deposited in the  
5 Court Clerk's Revolving Fund, and reported quarterly to the  
6 Administrative Office of the Courts.

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

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

18 C. Before the court appoints the System based on the  
19 application, the court shall advise the indigent or, if applicable,  
20 a parent or legal guardian, that the application is signed under  
21 oath and under the penalty of perjury and that a false statement may  
22 be prosecuted as such. A copy of the application shall be sent to  
23 the prosecuting attorney or the Office of the Attorney General,  
24 whichever is appropriate, for review. Upon request by any party

1 including, but not limited to, the attorney appointed to represent  
2 the indigent, the court shall hold a hearing on the issue of  
3 eligibility for appointment of the System.

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

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

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

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18 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04/11/2018 - DO  
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