

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1021

By: Bice

6 AS INTRODUCED

7 An Act relating to indigent defense; amending 19 O.S.
8 2011, Section 138.5, which relates to duties of the
9 office of the county indigent defender; deleting
10 certain application requirement; prohibiting court
11 from considering certain factor for eligibility
12 determination; amending 20 O.S. 2011, Section 55,
13 which relates to qualification rules for court-
14 appointed attorney; removing legislative intent;
15 amending 22 O.S. 2011, Section 1355A, which relates
16 to application for representation by the Oklahoma
17 Indigent Defense System; deleting certain application
18 requirement; prohibiting court from considering
19 certain factor for eligibility determination;
20 updating statutory language; and providing an
21 effective date.

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

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

25 Section 138.5. A. It shall be the duty of the office of the
26 county indigent defender to represent as counsel anyone who appears
27 for arraignment without aid of counsel, and who has been informed by
28 the judge that it is his right to have counsel, and who desires
29 counsel, but is unable to employ such aid; and upon order of a
30 district judge of such county he shall investigate any matter

1 pending before ~~said~~ the judge and report to him in the manner
2 prescribed by ~~said~~ the judge.

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

1 that the application is signed under oath and under the penalty of
2 perjury. A copy of the application shall be sent to the prosecuting
3 attorney or the Office of the Attorney General, whichever is
4 appropriate, for review, and, upon request, the court shall hold a
5 hearing on the issue of the eligibility for appointment of the
6 county indigent defender.

7 C. ~~If~~ The court shall not consider whether the defendant ~~is~~ has
8 been admitted to bail and ~~the defendant or another person on behalf~~
9 ~~of the defendant posts a bond, other than by personal recognizance,~~
10 ~~this fact shall constitute a rebuttable presumption that in~~
11 determining the eligibility of the defendant ~~is not indigent for~~
12 appointment of the county indigent defender.

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

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

19 ~~It is the intent of the Oklahoma Legislature that the payment of~~
20 ~~bail by a defendant or on behalf of a defendant shall be prima facie~~
21 ~~evidence that said defendant has funds to employ his own attorney~~
22 ~~and the Court shall then inquire into the financial status of the~~
23 ~~defendant prior to appointing an attorney.~~

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

3 Section 1355A. A. When an indigent requests representation by
4 the Oklahoma Indigent Defense System, such person shall submit an
5 appropriate application to the court clerk, which shall state that
6 the application is signed under oath and under the penalty of
7 perjury and that a false statement may be prosecuted as such. ~~The~~
8 ~~application shall state whether or not the indigent has been~~
9 ~~released on bond. In addition, if the indigent has been released on~~
10 ~~bond, the application shall include a written statement from the~~
11 ~~applicant that the applicant has contacted three named attorneys,~~
12 ~~licensed to practice law in this state, and the applicant has been~~
13 ~~unable to obtain legal counsel.~~ A nonrefundable application fee of
14 Forty Dollars (\$40.00) shall be paid to the court clerk at the time
15 the application is submitted, and no application shall be accepted
16 without payment of the fee; except that the court may, based upon
17 the financial information submitted, defer all or part of the fee if
18 the court determines that the person does not have the financial
19 resources to pay the fee at time of application, to attach as a
20 court fee upon conviction. Any fees collected pursuant to this
21 subsection shall be retained by the court clerk, deposited in the
22 Court Clerk's Revolving Fund, and reported quarterly to the
23 Administrative Office of the Courts.
24

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

7 2. Upon promulgation of the rules required by law, the
8 determination of indigency shall be subject to review by the
9 Presiding Judge of the Judicial Administrative District. Until such
10 rules become effective, the determination of indigency shall be
11 subject to review by the Court of Criminal Appeals.

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

22 D. ~~If~~ The court shall not consider whether the defendant ~~is~~ has
23 been admitted to bail ~~and the defendant or another person on behalf~~
24 ~~of the defendant posts a bond, other than by personal recognizance,~~

1 ~~this fact shall constitute a rebuttable presumption that in~~
2 ~~determining the eligibility of the defendant is not indigent for~~
3 ~~appointment of the System.~~

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

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

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