

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 3120

By: Blancett

6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22
8 O.S. 2001, Section 1355A, which relates to the
9 Indigent Defense Act; removing rebuttable presumption
10 standard for indigency determinations; and providing
11 an effective date.

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

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

15 Section 1355A. A. When an indigent requests representation by
16 the Oklahoma Indigent Defense System, such person shall submit an
17 appropriate application to the court clerk, which shall state that
18 the application is signed under oath and under the penalty of
19 perjury and that a false statement may be prosecuted as such. The
20 application shall state whether or not the indigent has been
21 released on bond. In addition, if the indigent has been released on
22 bond, the application shall include a written statement from the
23 applicant that the applicant has contacted three named attorneys,
24 licensed to practice law in this state, and the applicant has been

1 unable to obtain legal counsel. A nonrefundable application fee of
2 Forty Dollars (\$40.00) shall be paid to the court clerk at the time
3 the application is submitted, and no application shall be accepted
4 without payment of the fee; except that the court may, based upon
5 the financial information submitted, defer all or part of the fee if
6 the court determines that the person does not have the financial
7 resources to pay the fee at time of application, to attach as a
8 court fee upon conviction. Any fees collected pursuant to this
9 subsection shall be retained by the court clerk, deposited in the
10 Court Clerk's Revolving Fund, and reported quarterly to the
11 Administrative Office of the Courts.

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

18 2. Upon promulgation of the rules required by law, the
19 determination of indigency shall be subject to review by the
20 Presiding Judge of the Judicial Administrative District. Until such
21 rules become effective, the determination of indigency shall be
22 subject to review by the Court of Criminal Appeals.

23 C. Before the court appoints the System based on the
24 application, the court shall advise the indigent or, if applicable,

1 a parent or legal guardian, that the application is signed under
2 oath and under the penalty of perjury and that a false statement may
3 be prosecuted as such. A copy of the application shall be sent to
4 the prosecuting attorney or the Office of the Attorney General,
5 whichever is appropriate, for review. Upon request by any party
6 including, but not limited to, the attorney appointed to represent
7 the indigent, the court shall hold a hearing on the issue of
8 eligibility for appointment of the System.

9 D. If the defendant is admitted to bail and the defendant or
10 another person on behalf of the defendant posts a bond, other than
11 by personal recognizance, this fact shall ~~constitute a rebuttable~~
12 ~~presumption that~~ not be taken into consideration by the court when
13 determining whether the defendant is ~~not~~ indigent.

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

19 SECTION 2. This act shall become effective November 1, 2018.

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21 56-2-9112 GRS 12/28/17
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