

1 ENGROSSED SENATE  
2 BILL NO. 1647

By: Brooks of the Senate

3 and

4 Baker of the House

5  
6 An Act relating to indigent defense; amending 19 O.S.  
7 2011, Section 138.5, as amended by Section 1, Chapter  
8 194, O.S.L. 2018 (19 O.S. Supp. 2019, Section 138.5),  
9 which relates to duties of the office of the county  
10 indigent defender; creating rebuttable presumption  
11 for determination of indigency; establishing  
12 requirements for certain presumption; amending 22  
13 O.S. 2011, Section 1355A, as amended by Section 3,  
14 Chapter 194, O.S.L. 2018 (22 O.S. Supp. 2019, Section  
15 1355A), which relates to application for  
16 representation by the Oklahoma Indigent Defense  
17 System; creating rebuttable presumption for  
18 determination of indigency; establishing requirements  
19 for certain presumption; clarifying statutory  
20 language; and providing an effective date.

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

22 SECTION 1. AMENDATORY 19 O.S. 2011, Section 138.5, as  
23 amended by Section 1, Chapter 194, O.S.L. 2018 (19 O.S. Supp. 2019,  
24 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  
the judge that it is his right to have counsel, and who desires  
counsel, but is unable to employ such aid; and upon order of a

1 district judge of such county he shall investigate any matter  
2 pending before the judge and report to him in the manner prescribed  
3 by the judge.

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

1 defendant or, if applicable, his or her parent or legal guardian  
2 that the application is signed under oath and under the penalty of  
3 perjury. A copy of the application shall be sent to the prosecuting  
4 attorney or the Office of the Attorney General, whichever is  
5 appropriate, for review, and, upon request, the court shall hold a  
6 hearing on the issue of the eligibility for appointment of the  
7 county indigent defender. A rebuttable presumption of indigency  
8 shall exist for a person whose household income does not exceed one  
9 hundred percent (100%) of the federal poverty guidelines, whose sole  
10 source of income is from Social Security disability benefits or who  
11 is currently receiving benefits through a cash public assistance  
12 program such as Temporary Assistance for Needy Families.

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

19 SECTION 2. AMENDATORY 22 O.S. 2011, Section 1355A, as  
20 amended by Section 3, Chapter 194, O.S.L. 2018 (22 O.S. Supp. 2019,  
21 Section 1355A), is amended to read as follows:

22 Section 1355A. A. When an indigent requests representation by  
23 the Oklahoma Indigent Defense System, such person shall submit an  
24 appropriate application to the court clerk, which shall state that

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

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

1        2. Upon promulgation of the rules required by law, the  
2 determination of indigency shall be subject to review by the  
3 Presiding Judge of the Judicial Administrative District. Until such  
4 rules become effective, the determination of indigency shall be  
5 subject to review by the Court of Criminal Appeals.

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

16        D. If the defendant is admitted to bail and the defendant or  
17 another person on behalf of the defendant posts a bond, other than  
18 by personal recognizance, the court may consider such fact in  
19 determining the eligibility of the defendant for appointment of the  
20 System; provided, however, such consideration shall not be the sole  
21 factor in the determination of eligibility.

22        E. A rebuttable presumption of indigency shall exist for a  
23 person whose household income does not exceed one hundred percent  
24 (100%) of the federal poverty guidelines, whose sole source of

1 income is from Social Security disability benefits or who is  
2 currently receiving benefits through a cash public assistance  
3 program such as Temporary Assistance for Needy Families.

4 F. 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 3. This act shall become effective November 1, 2020.

10 Passed the Senate the 3rd day of March, 2020.

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12 \_\_\_\_\_  
13 Presiding Officer of the Senate

14 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
15 2020.

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18 Presiding Officer of the House  
19 of Representatives  
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