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February 24, 2020

SENATE BILL NO. 1647

By: Brooks of the Senate

and

Baker of the House

An Act relating to indigent defense; amending 19 O.S. 2011, Section 138.5, as amended by Section 1, Chapter 194, O.S.L. 2018 (19 O.S. Supp. 2019, Section 138.5), which relates to duties of the office of the county indigent defender; creating rebuttable presumption for determination of indigency; establishing requirements for certain presumption; amending 22 O.S. 2011, Section 1355A, as amended by Section 3, Chapter 194, O.S.L. 2018 (22 O.S. Supp. 2019, Section 1355A), which relates to application for representation by the Oklahoma Indigent Defense System; creating rebuttable presumption for determination of indigency; establishing requirements for certain presumption; clarifying statutory 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, as amended by Section 1, Chapter 194, O.S.L. 2018 (19 O.S. Supp. 2019, 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 the judge and report to him in the manner prescribed
5 by 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 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. A rebuttable presumption of indigency
10 shall exist for a person whose household income does not exceed one
11 hundred percent (100%) of the federal poverty guidelines, whose sole
12 source of income is from Social Security disability benefits or who
13 is currently receiving benefits through a cash public assistance
14 program such as Temporary Assistance for Needy Families.

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

21 SECTION 2. AMENDATORY 22 O.S. 2011, Section 1355A, as
22 amended by Section 3, Chapter 194, O.S.L. 2018 (22 O.S. Supp. 2019,
23 Section 1355A), is amended to read as follows:
24

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

22 B. 1. The Court of Criminal Appeals shall promulgate rules
23 governing the determination of indigency pursuant to the provisions
24 of Section 55 of Title 20 of the Oklahoma Statutes. The initial

1 determination of indigency shall be made by the Chief Judge of the
2 Judicial District or a designee thereof, based on the defendant's
3 application and the rules provided herein.

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

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

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

1 E. A rebuttable presumption of indigency shall exist for a
2 person whose household income does not exceed one hundred percent
3 (100%) of the federal poverty guidelines, whose sole source of
4 income is from Social Security disability benefits or who is
5 currently receiving benefits through a cash public assistance
6 program such as Temporary Assistance for Needy Families.

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

12 SECTION 3. This act shall become effective November 1, 2020.

13 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY
14 February 24, 2020 - DO PASS
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