

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1647

By: Brooks

AS INTRODUCED

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 the judge that it is his right to have counsel, and who desires

1 counsel, but is unable to employ such aid; and upon order of a
2 district judge of such county he shall investigate any matter
3 pending before the judge and report to him in the manner prescribed
4 by the judge.

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

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

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

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

23 Section 1355A. A. When an indigent requests representation by
24 the Oklahoma Indigent Defense System, such person shall submit an

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

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

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

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

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

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