

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 HOUSE BILL 2284

By: O'Donnell

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5
6 AS INTRODUCED

7 An Act relating to legal practitioner training;
8 amending 19 O.S. 2011, Sections 138.1a and 138.5,
9 which relate to duties of the public defender;
10 modifying duties to include certain training and
11 continuing legal education requirements; amending 19
12 O.S. 2011, Section 215.28, as amended by Section 67,
13 Chapter 304, O.S.L. 2012 (19 O.S. Supp. 2016, Section
14 215.28), which relates to the District Attorneys
15 Council; modifying training and continuing legal
16 education requirements to include certain topics;
17 amending Section 4, Chapter 198, O.S.L. 2013 (22 O.S.
18 Supp. 2016, Section 60.20), which relates to the
19 Protection from Domestic Abuse Act; providing list of
20 required training curriculum topics; amending 22 O.S.
21 2011, Section 1355.4, which relates to the Indigent
22 Defense Act; modifying training and continuing legal
23 education requirements to include certain topics; and
24 providing an effective date.

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

SECTION 1. AMENDATORY 19 O.S. 2011, Section 138.1a, is
amended to read as follows:

Section 138.1a A. In each county of this state possessing a
population of over three hundred thousand (300,000) according to the
Federal Decennial Census of 1990, or any succeeding Federal
Decennial Census, there is hereby created the office of public

1 defender, and such office shall be charged upon the order of any
2 judge of a court of record of such county, with the protection of
3 the rights of any defendant to a criminal action. The board of
4 county commissioners of such county shall provide for necessary
5 office supplies and equipment and arrange for sufficient office
6 space in the county building, used by the courts of record of such
7 county, to permit the efficient and effective operation of the
8 office of public defender.

9 B. The board of county commissioners, along with the office of
10 the public defender, shall provide and coordinate training and
11 continuing legal education for attorneys employed by the office of
12 the public defender. Training curriculum required under this
13 section shall include, but not be limited to:

- 14 1. Nationally recognized defense seminars; and
15 2. Evidence-based practices regarding behavioral health and
16 treatment of defendants with substance abuse or mental health needs.

17 C. For purposes of liability under the Governmental Tort Claims
18 Act, any public defender, assistant public defender or employee
19 thereof, who is employed under this section shall be deemed a state
20 employee.

21 SECTION 2. AMENDATORY 19 O.S. 2011, Section 138.5, is
22 amended to read as follows:

23 Section 138.5 A. It shall be the duty of the office of the
24 county indigent defender to represent as counsel anyone who appears

1 for arraignment without aid of counsel, and who has been informed by
2 the judge that it is his right to have counsel, and who desires
3 counsel, but is unable to employ such aid; and upon order of a
4 district judge of such county he shall investigate any matter
5 pending before said judge and report to him in the manner prescribed
6 by said judge.

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

1 retained by the court clerk as an administrative fee and deposited
2 in the court fund. Before the court appoints the county indigent
3 defender based on said application, the court shall advise the
4 defendant or, if applicable, his or her parent or legal guardian
5 that the application is signed under oath and under the penalty of
6 perjury. A copy of the application shall be sent to the prosecuting
7 attorney or the Office of the Attorney General, whichever is
8 appropriate, for review, and, upon request, the court shall hold a
9 hearing on the issue of the eligibility for appointment of the
10 county indigent defender.

11 C. If the defendant is admitted to bail and the defendant or
12 another person on behalf of the defendant posts a bond, other than
13 by personal recognizance, this fact shall constitute a rebuttable
14 presumption that the defendant is not indigent.

15 D. It shall be the duty of the office of the county indigent
16 defender to provide and coordinate training and continuing legal
17 education for attorneys within the office. Training shall include
18 nationally recognized defense seminars as well as behavioral health
19 and treatment needs of defendants.

20 SECTION 3. AMENDATORY 19 O.S. 2011, Section 215.28, as
21 amended by Section 67, Chapter 304, O.S.L. 2012 (19 O.S. Supp. 2016,
22 Section 215.28), is amended to read as follows:

23 Section 215.28 A. There is hereby created the District
24 Attorneys Council which shall be organized and administered as

1 herein provided. Any reference in the Oklahoma Statutes to the
2 District Attorneys Training Coordination Council shall mean the
3 District Attorneys Council.

4 B. The chief executive officer of the office of the Council is
5 the Executive Coordinator who shall be appointed and supervised by
6 the Council. The Executive Coordinator shall serve at the pleasure
7 of the Council. The Executive Coordinator shall be licensed to
8 practice law in Oklahoma and shall have been a district attorney or
9 assistant district attorney or have held an equivalent position in
10 state or federal government for at least three (3) years prior to
11 appointment. The Executive Coordinator may appoint an Assistant
12 Coordinator, both of whom shall be in the unclassified service of
13 the state. The Executive Coordinator and the Assistant Coordinator,
14 who shall also be licensed to practice law in Oklahoma, shall devote
15 full time to their duties and shall not engage in the private
16 practice of law. The Executive Coordinator shall perform the
17 functions and duties as may be assigned by the Council. The
18 Executive Coordinator shall be named the project director and fiscal
19 officer of any grant or fund received by the Council. The Executive
20 Coordinator and the Assistant Coordinator shall receive compensation
21 for their services within the pay scale limits for district
22 attorneys.

23 C. 1. The Council shall be composed of the following members:
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- 1 a. the Attorney General, or a designated representative
- 2 of the Attorney General,
- 3 b. the President of the Oklahoma District Attorneys
- 4 Association,
- 5 c. the President-elect of the Oklahoma District Attorneys
- 6 Association,
- 7 d. one district attorney selected by the Court of
- 8 Criminal Appeals for a three-year term, and
- 9 e. one district attorney selected by the Board of
- 10 Governors of the Oklahoma Bar Association for a three-
- 11 year term.

12 2. A member of the Council shall vacate the appointment upon
13 termination of the member's official position as Attorney General or
14 district attorney. A vacancy shall be filled in the same manner as
15 the original appointment. A member appointed to fill a vacancy
16 created other than by expiration of a term shall be appointed for
17 the unexpired term of the member whom the appointed member is to
18 succeed in the same manner as the original appointment. Any member
19 may serve more than one term.

20 D. The Council shall designate from among its members a
21 Chairman and Vice Chairman who shall serve for one-year terms and
22 who may be reelected. Membership on the Council shall not
23 constitute holding a public office. The Council shall not have the
24 right to exercise any portion of the sovereign power of the state.

1 A member of the Council shall not be disqualified from holding any
2 public office or employment by reason of appointment or membership
3 on the Council, nor shall the member forfeit the office or
4 employment, by reason of appointment to the Council.

5 E. The Council shall meet at least four times in each year and
6 shall hold special meetings when called by the Chairman, or, in the
7 absence of the Chairman, by the Vice Chairman or when called by the
8 Chairman upon the written request of two members of the Council.

9 The Council shall establish its own procedures and requirements with
10 respect to quorum, place and conduct of its meetings and other
11 matters.

12 F. The members of the Council shall not receive a salary for
13 duties performed as members of the Council but shall be entitled to
14 be reimbursed for their travel expenses in accordance with the State
15 Travel Reimbursement Act.

16 G. The Council shall make an annual report to the Governor, the
17 President Pro Tempore of the Senate, the Speaker of the House of
18 Representatives, and the President of the Oklahoma District
19 Attorneys Association regarding its efforts to implement the
20 purposes of this section.

21 H. The Council shall have the power to perform such functions
22 as in its opinion shall strengthen the criminal justice system in
23 Oklahoma, to provide a professional organization for the education,
24 training and coordination of technical efforts of all state

1 prosecutors and to maintain and improve prosecutor efficiency and
2 effectiveness in enforcing the laws of this state including, but not
3 limited to, the following:

4 1. Organize, supervise and perform functions consistent with
5 this act;

6 2. Convene regional or statewide conferences and training
7 seminars for the purpose of implementing the provisions of this act;

8 3. Accept and expend monies, gifts, grants or services from any
9 public or private source; contract or enter into agreements with
10 educational institutions or state or federal agencies; and employ
11 personnel as the Council in its judgment finds necessary to
12 effectively carry out the provisions of this act. Such employees
13 shall be in the unclassified service of the state;

14 4. Serve in an advisory capacity to the district attorneys of
15 the state;

16 5. Provide and coordinate training and continuing legal
17 education for district attorneys and their assistants, including
18 participation in nationally recognized prosecutorial seminars
19 conducted in other states. Training curriculum required under this
20 paragraph shall include, but not be limited to:

21 a. dynamics of domestic violence,

22 b. the impact of domestic violence to victims and their

23 children including victim trauma and the neurobiology

24 of trauma,

- c. identifying dominant aggressor,
- d. tactics and behavior of batterers,
- e. victim protection orders and full faith and credit
under the Violence Against Women Act of 1994, and
- f. rights of victims;

6. Gather and disseminate information to district attorneys relative to their official duties, including changes in the law relative to their office;

7. Coordinate with law enforcement officers, the courts and corrections workers providing interdisciplinary seminars to augment the effectiveness of the criminal justice system;

8. Require statistical reports from district attorneys' offices relating to functions and workload performance;

9. Recommend additional legislation necessary to upgrade the Oklahoma District Attorneys System to professional status;

10. Establish an equitable distribution plan for allocation of any funds or gifts received from public or private sources for state prosecution and distribute such funds in accordance with such plan;
and

11. Appoint a larger Advisory Council made up of district attorneys and assistant district attorneys to discuss problems and hear recommendations concerning necessary research, minimum standards, educational needs, and other matters imperative to upgrading Oklahoma prosecution to professional status.

1 I. There is hereby created in the State Treasury a revolving
2 fund for the Council, to be designated the "District Attorneys
3 Council Revolving Fund". The fund shall consist of all monies
4 received by the Council other than appropriated funds. The
5 revolving fund shall be a continuing fund not subject to fiscal year
6 limitations and shall be under the control and management of the
7 Council. Expenditures from this fund shall be made pursuant to the
8 purposes of this act and without legislative appropriation.
9 Warrants for expenditures shall be drawn by the State Treasurer
10 based on claims signed by the authorized employee or employees of
11 the Council and approved for payment by the Director of the Office
12 of Management and Enterprise Services.

13 J. The Council may accept operation and supervision of the Law
14 Enforcement Assistance Administration grants presently being
15 administered by the Oklahoma District Attorneys Association.

16 SECTION 4. AMENDATORY Section 4, Chapter 198, O.S.L.
17 2013 (22 O.S. Supp. 2016, Section 60.20), is amended to read as
18 follows:

19 Section 60.20 The Administrative Office of the Courts shall
20 provide annual domestic violence educational training for members of
21 the judiciary. Training curriculum required under this section
22 shall include, but not be limited to:

23 1. Dynamics of domestic violence;
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- 1 2. The impact of domestic violence to victims and their
- 2 children including trauma and the neurobiology of trauma;
- 3 3. Identifying dominant aggressor;
- 4 4. Tactics and behavior of batterers;
- 5 5. Victim protection orders and full faith and credit under the
- 6 Violence Against Women Act of 1994; and
- 7 6. Rights of victims.

8 SECTION 5. AMENDATORY 22 O.S. 2011, Section 1355.4, is
9 amended to read as follows:

10 Section 1355.4 A. The chief executive officer of the Oklahoma
11 Indigent Defense System shall be the Executive Director, who shall
12 be appointed by the Board and serve at the pleasure of the Board.
13 The Executive Director shall be an attorney who has practiced law
14 for at least four (4) years preceding the appointment and who is
15 licensed to practice law in this state or is eligible to become so
16 licensed within one (1) year of the appointment. The Executive
17 Director shall have experience in the representation of persons
18 accused or convicted of crimes.

19 B. The Executive Director shall perform administrative
20 functions which serve the Board.

21 C. The Executive Director shall have the following powers and
22 duties:

23 1. To prepare and administer an annual budget approved by the
24 Board and to process claims for the System;

1 2. To enter into contracts to provide counsel in cases in which
2 the defendant is indigent and unable to employ counsel, to enter
3 into contracts with individuals, educational institutions, or state
4 or federal agencies for other purposes, and to approve or disapprove
5 the provisions of any such contract;

6 3. To review and approve or disapprove claims for expenditures
7 of monies;

8 4. To take such actions as shall strengthen the criminal
9 justice system in this state;

10 5. To promote the education and training of all attorneys
11 representing indigent criminal defendants, including nationally
12 recognized defense seminars and evidence-based practices regarding
13 behavioral health and treatment of defendants with substance abuse
14 or mental health needs;

15 6. To maintain and improve effective representation for the
16 indigent criminal defendant;

17 7. To employ personnel as necessary to carry out the duties
18 imposed upon the System by law and to set the salaries of such
19 personnel, subject to the salary schedules adopted by the Board;

20 8. To solicit and maintain a current list of attorneys licensed
21 to practice law in this state who are willing to accept case
22 assignments from the System and who meet any other qualifications as
23 set by the Board;

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1 9. To solicit and maintain a separate list of persons eligible
2 for appointment to capital cases, who meet the qualifications set by
3 the System;

4 10. To establish reasonable hourly rates of compensation for
5 attorneys appointed in accordance with the Indigent Defense Act,
6 subject to approval by the Board;

7 11. To establish maximum caseloads for attorneys employed by
8 the System, subject to approval by the Board;

9 12. To reduce caseloads through reassignment of cases to
10 private attorneys, as necessary;

11 13. To approve the sharing of office space, equipment, or
12 personnel among the separate indigent defense programs within the
13 System;

14 14. To prepare and submit to the Board an annual report for the
15 preceding fiscal year regarding the efforts of the System to
16 implement the purposes of the Indigent Defense Act, and to file that
17 report with the Governor, the President Pro Tempore of the Senate,
18 the Speaker of the House of Representatives, the Chief Justice of
19 the Oklahoma Supreme Court, and the Presiding Judge of the Oklahoma
20 Court of Criminal Appeals;

21 15. To conduct regional or statewide conferences and training
22 seminars for the purpose of implementing the provisions of the
23 Indigent Defense Act;

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1 16. To provide System personnel who serve in an advisory
2 capacity to the indigent defenders and defense attorneys who
3 represent indigents pursuant to contract or who agree to accept
4 cases assigned by the System to represent indigents of this state;

5 17. To gather and disseminate information to indigent
6 defenders, including, but not limited to, changes in the law;

7 18. To recommend additional legislation necessary to upgrade
8 the Oklahoma Indigent Defense System or to improve the justice
9 system; and

10 19. To operate a cost-effective system by:

11 a. implementing procedures to track System expenditures
12 to show costs by case and client and to track time and
13 expenses by attorney if the attorney is employed by
14 the System,

15 b. adopting written policies regarding when employees are
16 to be in travel status and making efforts to reduce
17 travel costs, and

18 c. reviewing assignment of indigency status to identify
19 clients who have available resources, and collecting
20 costs of representation when feasible.

21 D. 1. The Executive Director is hereby authorized to develop,
22 establish, and maintain lists of approved contractors who have
23 agreed to provide expert services to the System. The lists shall
24 include any expert who desires to furnish services to the System and

1 who has filed a schedule of fees for services with, and on a form
2 approved by, the Executive Director. Any deviation in excess of the
3 published schedule of fees shall require the prior written approval
4 of the Executive Director. Any attorney appointed or assigned cases
5 in accordance with the Indigent Defense Act may request expert
6 services from the list of experts maintained by the Executive
7 Director. The Executive Director or designee may, in said person's
8 sole discretion, approve requests for expert services; provided,
9 however, that nothing contained in the Indigent Defense Act shall be
10 construed to render the Executive Director a member of the defense
11 team in any System client's case for strategic purposes.

12 2. Attorneys appointed or assigned cases in accordance with the
13 Indigent Defense Act may request investigative or other nonexpert
14 witness services from the Executive Director on a form provided by
15 the Executive Director. The Executive Director or designee may, in
16 said person's sole discretion, approve requests for such services at
17 a reasonable hourly rate of compensation; provided, however, that
18 nothing contained in the Indigent Defense Act shall be construed to
19 render the Executive Director a member of the defense team in any
20 System client's case for strategic purposes.

21 3. Services obtained under this section may be obtained as sole
22 source contracts and are specifically exempt from the requirements
23 of soliciting no less than three quotations found in paragraph 7 of
24 subsection A of Section 85.45j of Title 74 of the Oklahoma Statutes.

1 E. Each individual performing the services provided for in
2 subsection D of this section may, with the approval of the Executive
3 Director, be reimbursed for necessary travel expenses up to the
4 amount permitted by the State Travel Reimbursement Act.

5 F. Requests for expenses not included in subsections D and E of
6 this section shall require pre-approval by the Executive Director.

7 SECTION 6. This act shall become effective November 1, 2017.

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