

1 **SENATE FLOOR VERSION**

2 April 12, 2017

3 **AS AMENDED**

4 ENGROSSED HOUSE
5 BILL NO. 2284

6 By: O'Donnell of the House

7 and

8 Treat and Pittman of the
9 Senate

10 **[legal practitioner training - duties of the public
11 defender - District Attorneys Council - Protection
12 from Domestic Abuse Act - effective date]**

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

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

16 Section 138.1a A. In each county of this state possessing a
17 population of over three hundred thousand (300,000) according to the
18 Federal Decennial Census of 1990, or any succeeding Federal
19 Decennial Census, there is hereby created the office of public
20 defender, and such office shall be charged upon the order of any
21 judge of a court of record of such county, with the protection of
22 the rights of any defendant to a criminal action. The board of
23 county commissioners of such county shall provide for necessary
24 office supplies and equipment and arrange for sufficient office

1 space in the county building, used by the courts of record of such
2 county, to permit the efficient and effective operation of the
3 office of public defender.

4 B. Subject to available funding, the board of county
5 commissioners, along with the office of the public defender, shall
6 provide and coordinate training and continuing legal education for
7 attorneys employed by the office of the public defender. Curriculum
8 for training required under this section shall include, but not be
9 limited to:

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

13 C. For purposes of liability under the Governmental Tort Claims
14 Act, any public defender, assistant public defender or employee
15 thereof, who is employed under this section shall be deemed a state
16 employee.

17 SECTION 2. AMENDATORY 19 O.S. 2011, Section 215.28, as
18 amended by Section 67, Chapter 304, O.S.L. 2012 (19 O.S. Supp. 2016,
19 Section 215.28), is amended to read as follows:

20 Section 215.28 A. There is hereby created the District
21 Attorneys Council which shall be organized and administered as
22 herein provided. Any reference in the Oklahoma Statutes to the
23 District Attorneys Training Coordination Council shall mean the
24 District Attorneys Council.

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

20 C. 1. The Council shall be composed of the following members:
21 a. the Attorney General, or a designated representative
22 of the Attorney General,
23 b. the President of the Oklahoma District Attorneys
24 Association,

- 1 c. the President-elect of the Oklahoma District Attorneys
2 Association,
3 d. one district attorney selected by the Court of
4 Criminal Appeals for a three-year term, and
5 e. one district attorney selected by the Board of
6 Governors of the Oklahoma Bar Association for a three-
7 year term.

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

16 D. The Council shall designate from among its members a
17 Chairman and Vice Chairman who shall serve for one-year terms and
18 who may be reelected. Membership on the Council shall not
19 constitute holding a public office. The Council shall not have the
20 right to exercise any portion of the sovereign power of the state.
21 A member of the Council shall not be disqualified from holding any
22 public office or employment by reason of appointment or membership
23 on the Council, nor shall the member forfeit the office or
24 employment, by reason of appointment to the Council.

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

5 The Council shall establish its own procedures and requirements with
6 respect to quorum, place and conduct of its meetings and other
7 matters.

8 F. The members of the Council shall not receive a salary for
9 duties performed as members of the Council but shall be entitled to
10 be reimbursed for their travel expenses in accordance with the State
11 Travel Reimbursement Act.

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

17 H. The Council shall have the power to perform such functions
18 as in its opinion shall strengthen the criminal justice system in
19 Oklahoma, to provide a professional organization for the education,
20 training and coordination of technical efforts of all state
21 prosecutors and to maintain and improve prosecutor efficiency and
22 effectiveness in enforcing the laws of this state including, but not
23 limited to, the following:

24

1 1. Organize, supervise and perform functions consistent with
2 this ~~act~~ section;

3 2. Convene regional or statewide conferences and training
4 seminars for the purpose of implementing the provisions of this ~~act~~
5 section;

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

12 4. Serve in an advisory capacity to the district attorneys of
13 the state;

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

20 a. dynamics of domestic violence,

21 b. the impact of domestic violence on victims and their
22 children including victim trauma and the neurobiology
23 of trauma,

24 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,
- f. rights of victims, and
- g. evidence-based practices regarding behavioral health and treatment of those with substance abuse or mental health needs;

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

1 standards, educational needs, and other matters imperative to
2 upgrading Oklahoma prosecution to professional status.

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

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

18 SECTION 3. AMENDATORY Section 4, Chapter 198, O.S.L.
19 2013 (22 O.S. Supp. 2016, Section 60.20), is amended to read as
20 follows:

21 Section 60.20 The Administrative Office of the Courts shall
22 provide annual domestic violence, substance abuse, addiction and
23 mental health educational training for members of the judiciary.

24

1 Subject to available funding, curriculum for training required under
2 this section shall include, but not be limited to:

3 1. Dynamics of domestic violence;

4 2. The impact of domestic violence on victims and their
5 children including trauma and the neurobiology of trauma;

6 3. Identifying dominant aggressor;

7 4. Tactics and behavior of batterers;

8 5. Victim protection orders and full faith and credit under the
9 Violence Against Women Act of 1994;

10 6. Rights of victims; and

11 7. Evidence-based practices regarding behavioral health and
12 treatment of those with substance abuse or mental health needs.

13 SECTION 4. AMENDATORY 22 O.S. 2011, Section 1355.4, is
14 amended to read as follows:

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

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1 B. The Executive Director shall perform administrative
2 functions which serve the Board.

3 C. The Executive Director shall have the following powers and
4 duties:

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

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

12 3. To review and approve or disapprove claims for expenditures
13 of monies;

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

16 5. To promote the education and training of all attorneys
17 representing indigent criminal defendants including, subject to
18 available funding, nationally recognized defense seminars and
19 evidence-based practices regarding behavioral health and treatment
20 of defendants with substance abuse or mental health needs;

21 6. To maintain and improve effective representation for the
22 indigent criminal defendant;

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

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

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

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

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

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

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

21 14. To prepare and submit to the Board an annual report for the
22 preceding fiscal year regarding the efforts of the System to
23 implement the purposes of the Indigent Defense Act, and to file that
24 report with the Governor, the President Pro Tempore of the Senate,

1 the Speaker of the House of Representatives, the Chief Justice of
2 the Oklahoma Supreme Court, and the Presiding Judge of the Oklahoma
3 Court of Criminal Appeals;

4 15. To conduct regional or statewide conferences and training
5 seminars for the purpose of implementing the provisions of the
6 Indigent Defense Act;

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

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

13 18. To recommend additional legislation necessary to upgrade
14 the Oklahoma Indigent Defense System or to improve the justice
15 system; and

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

17 a. implementing procedures to track System expenditures
18 to show costs by case and client and to track time and
19 expenses by attorney if the attorney is employed by
20 the System,

21 b. adopting written policies regarding when employees are
22 to be in travel status and making efforts to reduce
23 travel costs, and

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1 c. reviewing assignment of indigency status to identify
2 clients who have available resources, and collecting
3 costs of representation when feasible.

4 D. 1. The Executive Director is hereby authorized to develop,
5 establish, and maintain lists of approved contractors who have
6 agreed to provide expert services to the System. The lists shall
7 include any expert who desires to furnish services to the System and
8 who has filed a schedule of fees for services with, and on a form
9 approved by, the Executive Director. Any deviation in excess of the
10 published schedule of fees shall require the prior written approval
11 of the Executive Director. Any attorney appointed or assigned cases
12 in accordance with the Indigent Defense Act may request expert
13 services from the list of experts maintained by the Executive
14 Director. The Executive Director or designee may, in said person's
15 sole discretion, approve requests for expert services; provided,
16 however, that nothing contained in the Indigent Defense Act shall be
17 construed to render the Executive Director a member of the defense
18 team in any System client's case for strategic purposes.

19 2. Attorneys appointed or assigned cases in accordance with the
20 Indigent Defense Act may request investigative or other nonexpert
21 witness services from the Executive Director on a form provided by
22 the Executive Director. The Executive Director or designee may, in
23 said person's sole discretion, approve requests for such services at
24 a reasonable hourly rate of compensation; provided, however, that

1 nothing contained in the Indigent Defense Act shall be construed to
2 render the Executive Director a member of the defense team in any
3 System client's case for strategic purposes.

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

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

12 F. Requests for expenses not included in subsections D and E of
13 this section shall require ~~pre-approval~~ preapproval by the Executive
14 Director.

15 SECTION 5. This act shall become effective November 1, 2017.

16 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
17 April 12, 2017 - DO PASS AS AMENDED
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