

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 35

By: Brooks

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5  
6 AS INTRODUCED

7 An Act relating to indigent defense; amending 19 O.S.  
8 2011, Section 138.5, as amended by Section 1, Chapter  
9 194, O.S.L. 2018 (19 O.S. Supp. 2020, Section 138.5),  
10 which relates to duties of the office of the county  
11 indigent defender; creating rebuttable presumption  
12 for determination of indigency; establishing  
13 requirements for certain presumption; making language  
14 gender neutral; amending 22 O.S. 2011, Section 1355A,  
15 as amended by Section 3, Chapter 194, O.S.L. 2018 (22  
16 O.S. Supp. 2020, Section 1355A), which relates to  
17 application for representation by the Oklahoma  
18 Indigent Defense System; creating rebuttable  
19 presumption for determination of indigency;  
20 establishing requirements for certain presumption;  
21 clarifying statutory language; and providing an  
22 effective date.

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

24 SECTION 1. AMENDATORY 19 O.S. 2011, Section 138.5, as  
25 amended by Section 1, Chapter 194, O.S.L. 2018 (19 O.S. Supp. 2020,  
26 Section 138.5), is amended to read as follows:

27 Section 138.5. A. It shall be the duty of the office of the  
28 county indigent defender to represent as counsel anyone who appears  
29 for arraignment without aid of counsel, and who has been informed by  
30 the judge that it is his or her right to have counsel, and who

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

5 B. When a defendant or, if applicable, his or her parent or  
6 legal guardian requests representation by the county indigent  
7 defender, such person shall submit an appropriate application, the  
8 form of which shall state that such application is signed under oath  
9 and 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. 2020,  
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.

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, 2021.

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