

1 STATE OF OKLAHOMA

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

3 SENATE BILL 624

By: Treat

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5
6 AS INTRODUCED

7 An Act relating to continuing legal education;
8 amending 19 O.S. 2011, Sections 138.1a and 138.5,
9 which relate to public defenders; requiring entities
10 to provide training for certain attorneys; directing
11 inclusion of certain topics in required curriculum;
12 amending 19 O.S. 2011, Section 215.28, as amended by
13 Section 67, Chapter 304, O.S.L. 2012 (19 O.S. Supp.
14 2016, Section 215.28), which relates to the District
15 Attorneys Council; specifying required contents in
16 certain training curriculum; amending Section 4,
17 Chapter 198, O.S.L. 2013 (22 O.S. Supp. 2016, Section
18 60.20), which relates to domestic violence
19 educational training; specifying required contents in
20 certain training curriculum for judiciary; amending
21 22 O.S. 2011, Section 1355.4, which relates to the
22 Oklahoma Indigent Defense System; modifying certain
23 duty of Executive Director; updating language; and
24 providing an effective date.

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

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

21 Section 138.1a. A. In each county of this state possessing a
22 population of over three hundred thousand (300,000) according to the
23 Federal Decennial Census of 1990, or any succeeding Federal
24 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 public defender shall provide and coordinate training and continuing
11 legal education for attorneys employed by the office of public
12 defender. Curriculum for the training required by this section
13 shall include, but not be limited to:

14 1. Nationally-recognized defense seminars based on guidance
15 from the National Association of Criminal Defense Lawyers; and

16 2. Evidence-based practices regarding behavioral health and
17 treatment of defendants with substance abuse or mental health needs.

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

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

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1 Section 138.5. A. It shall be the duty of the office of the
2 county indigent defender to represent as counsel anyone who appears
3 for arraignment without aid of counsel, and who has been informed by
4 the judge that it is his right to have counsel, and who desires
5 counsel, but is unable to employ such aid; and upon order of a
6 district judge of such county he shall investigate any matter
7 pending before ~~said~~ the judge and report to him in the manner
8 prescribed by ~~said~~ the judge.

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

1 determines that the person does not have the financial resources to
2 pay the fee. Any fee collected pursuant to this subsection shall be
3 retained by the court clerk as an administrative fee and deposited
4 in the court fund. Before the court appoints the county indigent
5 defender based on ~~said~~ the application, the court shall advise the
6 defendant or, if applicable, his or her parent or legal guardian
7 that the application is signed under oath and under the penalty of
8 perjury. A copy of the application shall be sent to the prosecuting
9 attorney or the Office of the Attorney General, whichever is
10 appropriate, for review, and, upon request, the court shall hold a
11 hearing on the issue of the eligibility for appointment of the
12 county indigent defender.

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

17 D. It shall be the duty of the office of the county indigent
18 defender to provide and coordinate training and continuing legal
19 education for attorneys within the office. Training shall include,
20 but not be limited to, nationally-recognized defense seminars based
21 on guidance from the National Association of Criminal Defense
22 Lawyers and evidence-based practices regarding behavioral health and
23 treatment of defendants with substance abuse or mental health needs.

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

4 Section 215.28. A. There is hereby created the District
5 Attorneys Council which shall be organized and administered as
6 herein provided. Any reference in the Oklahoma Statutes to the
7 District Attorneys Training Coordination Council shall mean the
8 District Attorneys Council.

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

1 Coordinator and the Assistant Coordinator shall receive compensation
2 for their services within the pay scale limits for district
3 attorneys.

4 C. 1. The Council shall be composed of the following members:

5 a. the Attorney General, or a designated representative
6 of the Attorney General,

7 b. the President of the Oklahoma District Attorneys
8 Association,

9 c. the President-elect of the Oklahoma District Attorneys
10 Association,

11 d. one district attorney selected by the Court of
12 Criminal Appeals for a three-year term, and

13 e. one district attorney selected by the Board of
14 Governors of the Oklahoma Bar Association for a three-
15 year term.

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

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1 D. The Council shall designate from among its members a
2 Chairman and Vice Chairman who shall serve for one-year terms and
3 who may be reelected. Membership on the Council shall not
4 constitute holding a public office. The Council shall not have the
5 right to exercise any portion of the sovereign power of the state.
6 A member of the Council shall not be disqualified from holding any
7 public office or employment by reason of appointment or membership
8 on the Council, nor shall the member forfeit the office or
9 employment, by reason of appointment to the Council.

10 E. The Council shall meet at least four times in each year and
11 shall hold special meetings when called by the Chairman, or, in the
12 absence of the Chairman, by the Vice Chairman or when called by the
13 Chairman upon the written request of two members of the Council.
14 The Council shall establish its own procedures and requirements with
15 respect to quorum, place and conduct of its meetings and other
16 matters.

17 F. The members of the Council shall not receive a salary for
18 duties performed as members of the Council but shall be entitled to
19 be reimbursed for their travel expenses in accordance with the State
20 Travel Reimbursement Act.

21 G. The Council shall make an annual report to the Governor, the
22 President Pro Tempore of the Senate, the Speaker of the House of
23 Representatives, and the President of the Oklahoma District
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1 Attorneys Association regarding its efforts to implement the
2 purposes of this section.

3 H. The Council shall have the power to perform such functions
4 as in its opinion shall strengthen the criminal justice system in
5 Oklahoma, to provide a professional organization for the education,
6 training and coordination of technical efforts of all state
7 prosecutors and to maintain and improve prosecutor efficiency and
8 effectiveness in enforcing the laws of this state including, but not
9 limited to, the following:

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

12 2. Convene regional or statewide conferences and training
13 seminars for the purpose of implementing the provisions of this ~~act~~
14 section;

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

21 4. Serve in an advisory capacity to the district attorneys of
22 the state;

23 5. Provide and coordinate training and continuing legal
24 education for district attorneys and their assistants, including

1 participation in nationally recognized prosecutorial seminars
2 conducted in other states. Curriculum for training required by this
3 paragraph shall include, but not be limited to:

- 4 a. dynamics of domestic violence,
- 5 b. the impact of domestic violence on victims and their
6 children, including victim trauma and the neurobiology
7 of trauma,
- 8 c. identification of dominant aggressor,
- 9 d. batterer's tactics and behavior,
- 10 e. Victim Protection Orders, full faith and credit under
11 the Violence Against Women Act, and
- 12 f. victim's rights;

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

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

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

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

23 10. Establish an equitable distribution plan for allocation of
24 any funds or gifts received from public or private sources for state

1 prosecution and distribute such funds in accordance with such plan;
2 and

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

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

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

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1 SECTION 4. AMENDATORY Section 4, Chapter 198, O.S.L.
2 2013 (22 O.S. Supp. 2016, Section 60.20), is amended to read as
3 follows:

4 Section 60.20. The Administrative Office of the Courts shall
5 provide annual domestic violence educational training for members of
6 the judiciary. Curriculum for training required by this section
7 shall include, but not be limited to:

- 8 a. dynamics of domestic violence,
- 9 b. the impact of domestic violence on victims and their
10 children, including victim trauma and the neurobiology
11 of trauma,
- 12 c. identification of dominant aggressor,
- 13 d. batterer's tactics and behavior,
- 14 e. Victim Protection Orders, full faith and credit under
15 the Violence Against Women Act, and
- 16 f. victim's rights.

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

19 Section 1355.4. A. The chief executive officer of the Oklahoma
20 Indigent Defense System shall be the Executive Director, who shall
21 be appointed by the Board and serve at the pleasure of the Board.
22 The Executive Director shall be an attorney who has practiced law
23 for at least four (4) years preceding the appointment and who is
24 licensed to practice law in this state or is eligible to become so

1 licensed within one (1) year of the appointment. The Executive
2 Director shall have experience in the representation of persons
3 accused or convicted of crimes.

4 B. The Executive Director shall perform administrative
5 functions which serve the Board.

6 C. The Executive Director shall have the following powers and
7 duties:

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

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

15 3. To review and approve or disapprove claims for expenditures
16 of monies;

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

19 5. To promote the education and training of all attorneys
20 representing indigent criminal defendants including, but not limited
21 to, nationally-recognized defense seminars based on guidance from
22 the National Association of Criminal Defense Lawyers and evidence-
23 based practices regarding behavioral health and treatment of
24 defendants with substance abuse or mental health needs;

1 6. To maintain and improve effective representation for the
2 indigent criminal defendant;

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

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

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

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

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

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

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

23 14. To prepare and submit to the Board an annual report for the
24 preceding fiscal year regarding the efforts of the System to

1 implement the purposes of the Indigent Defense Act, and to file that
2 report with the Governor, the President Pro Tempore of the Senate,
3 the Speaker of the House of Representatives, the Chief Justice of
4 the Oklahoma Supreme Court, and the Presiding Judge of the Oklahoma
5 Court of Criminal Appeals;

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

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

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

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

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

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

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1 b. adopting written policies regarding when employees are
2 to be in travel status and making efforts to reduce
3 travel costs, and

4 c. reviewing assignment of indigency status to identify
5 clients who have available resources, and collecting
6 costs of representation when feasible.

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

22 2. Attorneys appointed or assigned cases in accordance with the
23 Indigent Defense Act may request investigative or other nonexpert
24 witness services from the Executive Director on a form provided by

1 the Executive Director. The Executive Director or designee may, in
2 ~~said~~ the person's sole discretion, approve requests for such
3 services at a reasonable hourly rate of compensation; provided,
4 however, that nothing contained in the Indigent Defense Act shall be
5 construed to render the Executive Director a member of the defense
6 team in any System client's case for strategic purposes.

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

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

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

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

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