

TO AMEND THE CHOCTAW NATION OF OKLAHOMA CODE OF CRIMINAL PROCEDURE BY AMENDING  
THE PUBLIC DEFENDER ACT

IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION  
RONALD PERRY INTRODUCED THE FOLLOWING COUNCIL BILL

A COUNCIL BILL

**TO AMEND** the Choctaw Nation of Oklahoma Code of Criminal Procedure by striking the entire text of the existing Public Defender Act, found in sections 1355 through 1366, and adopting the Public Defender Act as amended and hereby creating the Choctaw Nation of Oklahoma Office of Public Defender.

**WHEREAS**, Article IX, Section 4 of the Constitution of the Choctaw Nation of Oklahoma (the "Nation") provides that the Tribal Council (the "Council") shall enact legislation, rules and regulations not inconsistent with the Constitution for the general good of the Choctaw Nation and for the administration and regulation of the affairs of the Choctaw Nation;

**WHEREAS**, the Choctaw Nation of Oklahoma (the "Nation") seeks to provide the best possible representation for those accused of crimes in the Choctaw Nation of Oklahoma District Courts (the "District Courts");

**WHEREAS**, the Nation seeks to provide equal and fair representation for indigent persons accused of crimes and to protect the constitutional and statutory rights of indigent persons accused of crimes;

**WHEREAS**, the Nation anticipates an increase in criminal cases filed in the District Courts;

**WHEREAS**, to provide the best representation for indigent persons accused of crimes in the District Court, the Council finds it is in the best interest of the Nation to amend the Choctaw Nation of Oklahoma Criminal Procedure Code by striking language in sections 1355 through 1366 (See Exhibit A) and adopting and incorporating the Public Defender Act, as amended pursuant to Exhibit B. See Exhibit B; and

**WHEREAS**, the Council finds it is in the best interest of the Nation to create the Choctaw Nation of Oklahoma Office of Public Defender, a department under the Executive Branch, to handle increasing criminal cases in District Court and to ensure effective and efficient representation to indigent clients.

**THEREFORE BE IT ENACTED**, by the Council that this Bill be cited as approval to amend the Choctaw Nation of Oklahoma Criminal Procedure Code by striking language pursuant to Exhibit A, and incorporating and adopting all changes pursuant to Exhibit B.

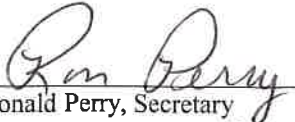
**BE IT FURTHER ENACTED**, by the Tribal Council of the Choctaw Nation of Oklahoma that this bill be cited as approval to create the Choctaw Nation of Oklahoma Office of Public Defender, a department under the Executive Branch, pursuant to Exhibit B.


**BE IT FURTHER ENACTED**, by the Tribal Council of the Choctaw Nation of Oklahoma that the amendments to Choctaw Nation of Oklahoma Criminal Procedure Code shall be effective December 1, 2020.

**CERTIFICATION**

*I, the undersigned, as speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that eleven (11) members answered roll call and that a quorum was present at the Regular Session of the Tribal Council at Tuskahoma, Oklahoma on October 10, 2020. I further certify that the foregoing Council Bill CB- 13 -21 was adopted at such meeting by the affirmative vote of eleven (11 ) members, zero ( 0 ) negative votes, and zero (0 ) abstaining.*

TO AMEND THE CHOCTAW NATION OF OKLAHOMA CODE OF CRIMINAL PROCEDURE BY AMENDING  
THE PUBLIC DEFENDER ACT

  
\_\_\_\_\_  
Ronald Perry, Secretary  
Choctaw Nation Tribal Council

  
\_\_\_\_\_  
Thomas Williston, Speaker  
Choctaw Nation Tribal Council

  
\_\_\_\_\_  
Gary Batton, Chief  
Choctaw Nation of Oklahoma

Date 10-14-20

**TO AMEND THE CHOCTAW NATION OF OKLAHOMA CODE OF CRIMINAL PROCEDURE BY AMENDING  
THE PUBLIC DEFENDER ACT**

**Purpose/Need of Council Bill:** To amend the Choctaw Nation of Oklahoma Criminal Procedure Code by striking the entire text of the Public Defender Act, sections 1355 through 1366 (See Exhibit A) and incorporating and adopting language in Exhibit B. This bill creates the Choctaw Nation of Oklahoma Office of Public Defender, an office to provide representation to indigent clients accused of crimes in Choctaw Nation tribal courts. The Office will be created under the Executive Branch and will be governed by the Ethics Commission to ensure proper separation of powers between the judicial and executive branch departments.

**Title of Council Bill:** TO AMEND THE CHOCTAW NATION OF OKLAHOMA CODE OF CRIMINAL  
PROCEDURE BY AMENDING THE PUBLIC DEFENDER ACT

**Agency:** Legal & Compliance

**Budget:** NA

**Match Required:** NA.

**Request by Project Director:** Brian Danker, Executive Director, Legal Department, Brad Mallett, SEO, Legal and Compliance

## EXHIBIT A

### **Public Defender**

#### **Section 1355. Short Title**

~~This act, Section 1355 through Section 1366 of this title, shall be known and may be cited as the "Public Defender Act".~~

#### **Section 1356. Creation of the Office of the Public Defender**

~~The office of public defender is hereby created, and such office shall be charged upon the order of any judge of a court of the Choctaw Nation, with the protection of the rights of any defendant to a criminal action including misdemeanor cases, felony cases, traffic tickets punishable by incarceration and other cases pursuant to the Choctaw Nation Juvenile Code. Public defenders may also be appointed in civil child custody cases to represent parents, guardians or children who are determined by the court to be indigent.~~

#### **Section 1357. Appointment of Public Defender**

~~The office of public defender shall be assumed by such attorneys, authorized to practice law in the Choctaw Nation of Oklahoma, as shall be appointed or contracted either on a full-time or part-time basis by the Court of Appeals and shall continue to serve at the pleasure of said judges. In the event that an attorney is designated by said judges as the person in charge of such office, he or she shall be the chief public defender, and all other attorneys who may be appointed to assist such chief public defender shall be designated as assistant public defenders.~~

#### **Section 1358. Determination of need for Public Defender**

~~The Court of Appeals shall determine, at the time the court budget is submitted, the necessity of retaining a public defender or assistants thereto on a full-time or part-time basis for representation of unfortunate and poverty stricken persons charged with the commission of a crime, which determination shall be made after inquiry into the number impoverished or destitute defendants which have been brought before such courts during the past term and an estimate of the number that may be charged during the next fiscal year. The Court of Appeals may consult with the District Judge and the court clerk in arriving at their decision.~~

#### **Section 1359. Compensation—Private Practice**

~~When the judges have determined, in accordance with Section 1357 of this title that the protection of the unfortunate and poverty stricken defendants subject to criminal action in the Choctaw Nation of Oklahoma require the employment of a public defender on a full-time basis, such person so appointed shall not engage in any practice of law except in the performance of the duties as public defender, and shall receive a salary commensurate with his or her experience as determined by the judges; provided that if additional assistance is required by the public defender to properly fulfill the duties of the office, the public defender may authorize the employment of and appoint assistant public defenders on a full-time or part-time basis, which assistants shall be under the same restrictions as to the practice of law as the public defender, and each shall receive~~

## EXHIBIT A

a salary commensurate with his or her experience as determined by the chief public defender, so long as the salary is within the budget guidelines for the office.

### **Section 1360. Duties of Public Defender**

A. It shall be the duty of the office of the public 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 or her right to have counsel, and who desires counsel, but is unable to employ such aid.

B. When a defendant or, if applicable, his parent or legal guardian requests representation by the public defender, such person shall submit an appropriate application, the form of which shall state that such application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such. The application shall state whether or not the defendant has been released on bond. In addition, if the defendant has been released on bond, the application shall include a written statement from the applicant that he or she has contacted three (3) attorneys, licensed to practice law in the Choctaw Nation of Oklahoma, and the applicant has been unable to obtain legal counsel. A nonrefundable application fee of Fifteen Dollars (\$15.00) shall be paid to the court clerk at the time the application is submitted or the fee may be taxed as costs in the case. The court may, based upon the financial information submitted, waive the fee, if the person is in custody or if the court determines that the person does not have the financial resources to pay the fee. Any fee collected pursuant to this subsection shall be retained by the court clerk as an administrative fee and deposited in the court fund. Before the court appoints the public defender based on said application, the court shall advise the defendant or, if applicable, his or her parent or legal guardian that the application is signed under oath and under the penalty of perjury. A copy of the application shall be sent to the prosecuting attorney for review upon request of the prosecuting attorney, and, upon request, the court shall hold a hearing on the issue of the eligibility for appointment of the public defender.

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

### **Section 1361. Duties of the Chief Public Defender**

A. The chief public defender shall be an attorney who has practiced law for at least four (4) years preceding the appointment and who is licensed to practice law in the Choctaw Nation of Oklahoma. The chief public defender shall have experience in the representation of persons accused or convicted of crimes.

B. The chief public defender shall perform administrative functions as directed by the Court of Appeals.

C. The Chief public defender shall have the following powers and duties:

1. To prepare and administer an annual budget approved by the Court of Appeals;

## EXHIBIT A

- ~~2. To employ personnel as necessary to carry out the duties imposed upon the public defender by law and to set the salaries of such personnel, subject to the budgetary guidelines established by the Court of Appeals;~~
- ~~3. To solicit and maintain a current list of attorneys licensed to practice law in the Choctaw Nation of Oklahoma who are willing to accept case assignments;~~
- ~~4. To establish reasonable hourly rates of compensation for attorneys appointed in accordance with this act, subject to approval by the Court of Appeals; and~~
- ~~5. Other duties as assigned by the Court of Appeals which relate to indigent defense.~~

### ~~Section 1362. Secretaries, Investigators and Other Staff—Salaries~~

~~Pursuant to the provisions of this act, the public defender may authorize the employment of one or more secretaries and one or more investigators and shall determine and fix the salary to be paid; provided, that such salaries are provided for in the budget of the office of the public defender.~~

### ~~Section 1363. Reassignment of Case upon Conflict of Interest~~

~~If the court determines that a conflict of interest exists between a defendant and the public defender, the case may be reassigned by the court to another public defender, an attorney who represents indigents pursuant to contract, or a private attorney who has agreed to accept such appointments.~~

### ~~Section 1364. Compensation of Expert Witnesses~~

~~Expert witness compensation for indigent defense shall be paid by the court fund pursuant to procedures established by the Court of Appeals.~~

### ~~Section 1365. Appeals by Public Defender~~

~~The public defender, shall perfect appeals for those defendants which they represented in the trial court unless an appellate conflict exists between two or more such defendants, in which case the public defender shall represent one defendant and the court may assign the appeal of the case for any other defendants in the same manner as provided for conflict at the trial level in Section 1361 of this title. If an appellate conflict of interest exists between the defendant and the public defender in a case, the district court may assign the appeal of the case in the same manner as provided for conflict at the trial level in Section 1361 of this title.~~

### ~~Section 1366. Costs of Representation of Public Defender~~

~~A. The court shall order any person represented by a public defender to pay the costs of representation. In assessing these costs, the court shall take into consideration the ability of the defendant to pay and any likely hardship which would result. The court may then order payment~~

## EXHIBIT A

~~to be made in total or in installments and, in the case of installment payments, set the amount and due date of each installment.~~

~~B. Costs assessed pursuant to this section shall be collected by the court clerk and deposited in the court fund.~~

~~C. Costs of representation shall be a debt against the person represented until paid and shall be subject to any method provided by law for the collection of debts.~~

~~D. Any order directing the defendant to pay costs of representation shall be a lien against all real and personal property of the defendant and may be filed against such property and foreclosed as provided by law for such liens.~~

## **EXHIBIT B**

### **OFFICE OF THE CHOCTAW NATION OF OKLAHOMA PUBLIC DEFENDER**

#### **Section 1355. Short Title**

A. Sections 1355 through 1381 of this title shall be known and may be cited as the “Public Defender Act”.

#### **Section 1356. Purpose of Act**

A. The purpose of this Act is to establish the Office of the Choctaw Nation of Oklahoma Public Defender.

B. Nothing in this Act effects, abrogates, or waives the Nation’s sovereign immunity.

#### **Section 1357. Establishment of the Office of the Choctaw Nation of Oklahoma Public Defender.**

A. There is established the Office of the Choctaw Nation of Oklahoma Public Defender within the Executive Branch of the Choctaw Nation of Oklahoma government and under the oversight of the Ethics Commission of the Choctaw Nation of Oklahoma.

B. If any section or part of this Chapter is later determined to be void or unenforceable, the remainder of this Chapter shall nevertheless remain in full force and effect, unless this Chapter, without said void or unenforceable section or part, fails in its purpose.

#### **Section 1358. Purpose of the Office of the Choctaw Nation of Oklahoma Public Defender**

A. The purpose of the Office of the Choctaw Nation of Oklahoma Public Defender is to provide legal defense services to individual indigent persons charged with criminal offenses.

B. The public defender shall at all times serve his or her clients independent of any political considerations or private interests and provide legal services to indigent persons accused of crimes which are commensurate with those available to nonindigent persons.

C. By providing these services through the expenditure of public funds, attorneys and advocates employed by the Choctaw Nation of Oklahoma government should not hereafter be appointed to pro bono representation in the courts of the Choctaw Nation of Oklahoma, except for those employed by the Office of the Choctaw Nation of Oklahoma Public Defender pursuant to this Act.

#### **Section 1359. Definitions**

A. As used in the Public Defender Act:

1. “Commission” means the Ethics Commission of the Choctaw Nation of Oklahoma.
2. “Director” means the Director of the Choctaw Nation of Oklahoma Office of Public Defender.

## **EXHIBIT B**

B. As used in the Choctaw Nation of Oklahoma codes, references to “public defender” shall mean an attorney who represents indigents pursuant to a contract with the Office of the Public Defender, an attorney who accepts assignments of cases from the Office of Public Defender to represent indigents, or an attorney employed by the Office of the Public Defender.

### **Section 1360. Personnel**

The following positions are hereby established:

A. Director

B. Staff Attorneys

C. Appropriate clerical personnel

D. Investigators

E. Such other positions that may be added pursuant to approval of the budget by the Chief of the Choctaw Nation of Oklahoma, the Tribal Council of the Choctaw Nation of Oklahoma, and pursuant to the policies and procedures of the Choctaw Nation of Oklahoma.

F. All positions established pursuant to this section are subject to Choctaw Nation of Oklahoma policies and procedures.

### **Section 1361. Power and Duties of the Office of Public Defender**

A. The Office of Public Defender shall have the responsibility of defending all indigents, as determined in accordance with the provisions of the Public Defender Act in all felony cases and in all misdemeanor and traffic cases punishable by incarceration. In addition, the Office of Public Defender shall have the responsibility of defending all indigent juveniles, as determined in accordance with the provisions of this Act, in juvenile delinquency proceedings, adult certification proceedings, reverse certification proceedings, youthful offender proceedings, and any other cases pursuant to the Choctaw Nation of Oklahoma Juvenile Code, other than mental health cases, in-need-of-supervision proceedings, and any other juvenile proceedings that are civil in nature.

B. The Director may select attorneys to handle indigent criminal cases from a list of attorneys who have agreed to accept assignments of such cases, who provide proof of professional liability insurance coverage, and who meet the qualifications established by the Office of Public Defender for such assignments. Payment to such attorneys shall be made from the budget of the Office of the Public Defender.

C. The Commission shall have the authority to provide for representation for indigent criminal defendants whom representation is required by either the Constitution or laws of the Choctaw Nation of Oklahoma by attorneys employed by the Office of the Public Defender.

### **Section 1362. Ethics Commission as Governing Body of the Office of Public Defender**

## **EXHIBIT B**

A. The Ethics Commission of the Choctaw Nation of Oklahoma shall govern the Office of the Choctaw Nation of Oklahoma Public Defender. The composition of the Ethics Commission, appointment of Ethics Commission members, terms of Ethics Commission members, and vacancies within the Ethics Commission shall be in accordance with the Choctaw Nation of Oklahoma Code of Ethics. Choctaw Nation of Oklahoma Code of Ethics (2020).

B. Members of the Commission shall receive no salary, but shall be reimbursed for their ordinary travel expenses. Mileage shall be paid according to the then-prevailing United States Internal Revenue Service standard mileage rate.

C. Regular meetings of the Commission shall be held no less than quarterly and called upon by the chair.

### **Section 1363. Commission Powers and Duties**

A. The Commission shall have the following powers and duties:

1. To appoint and discharge, for good cause only, the Director;
2. To set the salary of the Director with consideration given to experience as well as other factors;
3. To require reports from the Director as deemed necessary;
4. To approve the annual budget for the Office of Public Defender prepared by the Director; and
5. To consult with public defenders and defense lawyers who represent indigents pursuant to a contract or who agree to accept indigent defense cases assigned by the Director to discuss problems and hear recommendations concerning necessary research, minimum standards, educational needs, and other matters imperative to conducting criminal defense in the Choctaw Nation of Oklahoma in a professional manner.

B. The Commission shall make an annual report to the Chief of the Choctaw Nation of Oklahoma, the Tribal Council of the Choctaw Nation of Oklahoma, the Chief Justice of the Constitutional Court of the Choctaw Nation of Oklahoma, and the Chief Judge of the Choctaw Nation Court of Appeals regarding the efforts of the Commission to implement the purpose of the Choctaw Nation of Oklahoma Office of the Public Defender.

C. The Commission shall establish one main office and as many satellite offices as necessary for the proper representation the Office of Public Defender clients.

### **Section 1364. Director of the Office of the Public Defender**

A. The Director shall manage the Office of Public Defender. The Director shall be appointed by the Commission and serve at the pleasure of the Commission, except as provided in section 1382 of this Act. The Director shall be an attorney who has practiced law for at least four (4) years

## **EXHIBIT B**

preceding the appointment and who is licensed to practice law in the courts of the Choctaw Nation of Oklahoma or eligible to become licensed within one (1) year of the appointment.

### **Section 1365. Power, Duties, and Responsibilities of the Director**

A. The Director shall perform administrative functions which serves the Commission.

B. The Director shall have the following power and duties:

1. To prepare and administer an annual budget approved by the Commission and to process claims for the Office of the Public Defender;
2. To adopt salary schedules for the Office of the Public Defender;
3. To establish policies and procedures for the Office of the Public Defender, pursuant to the policies, procedures, and laws of the Choctaw Nation of Oklahoma.
4. To enter into contracts to provide counsel in cases in which the defendant is indigent and unable to employ counsel, to enter into contracts with individuals, educational institutions, or tribal, state, or federal agencies for other purposes, and to approve or disapprove the provisions of any such contract;
5. To authorize the acceptance of funds and/or services from any public or private source;
6. To authorize contracts with individuals, educational institutions, or other governmental agencies;
7. To review and approve or disapprove claims for expenditures of monies;
8. To take such actions to strengthen the criminal justice system in the Choctaw Nation of Oklahoma;
9. To promote the education and training of all attorneys representing indigent criminal defendants;
10. To maintain and improve effective representation for the indigent criminal defendant;
11. To employ personnel as necessary to carry out the duties imposed upon the Office of the Public Defender by law and to set the salaries of such personnel;
12. To solicit and maintain a current list of attorneys licensed to practice law in the Choctaw Nation of Oklahoma and who are willing to accept case assignments from the Office of Public Defender;
13. To establish reasonable hourly rates of compensation for attorneys appointed in accordance with the Public Defender Act;
14. To establish maximum caseloads for attorneys employed by the Office of the Public Defender;

## EXHIBIT B

15. To reduce caseloads through reassignment of cases to private attorneys, as necessary;
  16. To approve the sharing of office space, equipment, or personnel among the separate indigent defense programs within the Office of the Public Defender;
  17. To prepare and submit to the Commission an annual report for the preceding fiscal year regarding the efforts of the Office of the Public Defender to implement the purposes of the Public Defender Act, and to file that report with the Chief of the Choctaw Nation of Oklahoma, the Tribal Council of the Choctaw Nation of Oklahoma, the Chief Justice of the Constitutional Court of the Choctaw Nation of Oklahoma, and the Chief Appellate Judge of the Choctaw Nation of Oklahoma Court of Appeals;
  18. To provide the Office of Public Defender personnel who serve in an advisory capacity to the public defenders and defense attorneys who represent indigents pursuant to contract or who agree to accept cases assigned by the Office of Public Defender to represent indigents;
  19. To gather and disseminate information to public defenders, including, but not limited to, changes in the law;
  20. To recommend additional legislation necessary to upgrade the Office of Public Defender or to improve the Choctaw Nation of Oklahoma justice system;
  21. To operate a cost-effective system by:
    - a. implementing procedures to track Office of Public Defender expenditures to show costs by case and client and to track time and expenses by attorney if the attorney is employed by the Office of the Public Defender; and
    - b. reviewing assignment of indigency status to identify clients who have available resources, and collecting costs of representation when feasible.
- C. 1. The Director is hereby authorized to develop, establish, and maintain lists of approved contractors who have agreed to provide expert services to the Office of Public Defender. The lists shall include any expert who desires to furnish services to the Office of Public Defender and who has filed a schedule of fees for services with, and on a form approved by the Director. Any deviation in excess of the published schedule of fees shall require the prior written approval of the Director. Any attorney appointed or assigned cases in accordance with the Public Defender Act may request expert services from the list of experts maintained by the Director. The Director or designee may, in said person's sole discretion, approve requests for expert services;
2. Attorneys appointed or assigned cases in accordance with the Public Defender Act may request investigative or other nonexpert witness services from the Director on a form provided by the Director. The Director or designee may, in said person's sole discretion, approve requests for such services at a reasonable hourly rate of compensation;

## **EXHIBIT B**

3. Services obtained under this section may be obtained as sole source contracts and are specifically exempt from the requirements of soliciting no less than three quotations found in Choctaw Nation of Oklahoma policies and procedures.

D. Each individual performing the services provided for in subsection C of this section may, with the approval of the Director, be reimbursed for necessary travel expenses up to the amount permitted by the Choctaw Nation of Oklahoma travel policies.

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

### **Section 1366. Application for Representation by the Office of Public Defender**

A. When an indigent requests representation by the Office of Public Defender, such person shall submit an appropriate application to the court clerk, which shall state that the application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such. The application shall state whether or not the indigent has been released on bond. In addition, if the indigent has been released on bond, the application shall include a written statement from the applicant that the applicant has contacted three named attorneys, licensed to practice law in the courts of the Choctaw Nation of Oklahoma, and the applicant has been unable to obtain legal counsel. A nonrefundable application fee of Forty Dollars (\$40.00) shall be paid to the court clerk at the time the application is submitted, and no application shall be accepted without payment of the fee; except that the court may, based upon the financial information submitted, defer all or part of the fee if the court determines that the person does not have the financial resources to pay the fee at time of application, to attach as a court fee upon conviction. Any fees collected pursuant to this subsection shall be retained by the court clerk, deposited in the Court Fund, and reported quarterly to the Chief Justice of the Constitutional Court.

B. 1. The Choctaw Nation Court of Appeals shall promulgate rules governing the determination of indigency. The initial determination of indigency shall be made by the Chief Judge of the Choctaw Nation of Oklahoma Judicial District or a designee thereof, based on the defendant's application and the rules provided herein.

2. Upon promulgation of the rules required by law, the determination of indigency shall be subject to review by the Presiding Judge of the Choctaw Nation of Oklahoma District Court. Until such rules become effective, the determination of indigency shall be subject to review by the Choctaw Nation of Oklahoma Court of Appeals.

C. Before the court appoints the Office of Public Defender based on the application, the court shall advise the indigent or, if applicable, a parent or legal guardian, that the application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such. A copy of the application shall be sent to the prosecuting attorney for review. Upon request by any party including, but not limited to, the attorney appointed to represent the indigent, the court shall hold a hearing on the issue of eligibility for appointment of the Office of the Public Defender.

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

E. The Office of the Public Defender shall be prohibited from accepting an appointment unless a completed application for court-appointed counsel form has been filed and is part of the record in the case.

### **Section 1367. Conflicts of Interest**

A. If the Director determines that a conflict of interest exists at the trial level between a defendant and an attorney employed by the Office of the Public Defender, the case may be reassigned by the Director to another attorney employed by the Office of the Public Defender, or to a private attorney with whom the Office of the Public Defender has a contract for indigent defense or who is included on a list of attorneys as provided in subsection C of this section.

B. If the Director determines that a conflict of interest exists at the trial level between a defendant and an attorney who represents indigents either pursuant to a contract with the Office of the Public Defender or as assigned by the Office of the Public Defender, the case may be reassigned by the Director to an attorney employed by the Office of Public Defender, another attorney who represents indigents pursuant to a contract with the Office of the Public Defender, or another private attorney who has agreed to accept such assignments pursuant to subsection C of this section.

C. Assignment of a case by the Office of Public Defender to a private attorney shall be from a list of attorneys willing to accept such assignments and who meet the qualifications established by the Director for such assignments.

D. Payment to such private attorneys shall be made by the Office of the Public Defender and shall be at rates approved by the Director.

### **Section 1368. Costs and Fees**

A. At the time of pronouncing the judgment and sentence or other final order, the court shall order any person represented by an attorney employed by the Office of Public Defender or a defense attorney who contracts or volunteers to represent indigents pursuant to the provisions of the Public Defender Act to pay the costs for representation in total or in installments and, in the case of installment payments, set the amount and due date of each installment.

B. Costs assessed pursuant to this section shall be collected by the court clerk and when collected paid monthly to the Office of Public Defender for deposit to the Office of Public Defender Revolving Fund.

C. Costs of representation shall be a debt against the person represented until paid and shall be subject to any method provided by law for the collection of debts.

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D. Any order directing the defendant to pay costs of representation shall be a lien against all real and personal property of the defendant and may be filed against such property and foreclosed as provided by law for civil liens.

E. The court shall assess the following fees as the cost of representation:

1. For any misdemeanor case in which a plea of guilty or stipulation to revocation or imposition of sentence has been entered . . . \$150.00

2. For any felony case in which a plea of guilty or stipulation to revocation or imposition of sentence has been entered . . . \$250.00

3. For any misdemeanor case tried to a jury . . . \$500.00

4. For any felony case tried to a jury . . . \$1,000.00

5. For any merit hearing on an application to revoke a suspended sentence or accelerate a deferred sentence in a misdemeanor case . . . \$200.00

6. For any merit hearing on an application to revoke a suspended sentence or accelerate a deferred sentence in a felony case . . . \$300.00

The fees shall be assessed unless ordered waived upon good cause shown by the indigent person, or unless another amount is specifically requested by counsel for the indigent person and is approved by the court. In cases or proceedings other than those set forth in paragraphs 1 through 6 of this subsection, the court shall assess the cost of representation not to exceed Two Hundred Fifty Dollars (\$250.00), except upon a showing by counsel of the actual costs or representation in excess of said amount.

### **Section 1369. Payments For Costs and Fines Resulting From Contempt Citations**

The Office of Public Defender shall not approve payment of any claims for fines resulting from contempt citations issued to attorneys defending indigent clients. The Director may approve payment of reasonable court costs resulting from contempt citations issued to attorneys appointed in accordance with the Public Defender Act.

### **Section 1370. Appeals**

A. The Office of Public Defender shall perfect all direct appeals for all cases to which the Office of Public Defender is appointed by district courts at the time the appeal is initiated, except as otherwise provided in this section and Section 1371 of this title.

B. Judges of the district courts shall appoint the Office of Public Defender, at the time the appeal is initiated, in cases in which the defendant is subject to incarceration and to perfect all indigent criminal appeals which are felony or misdemeanor appeals, appeals by petition for writ of certiorari, juvenile criminal appeals and youthful offender appeals pursuant to the Choctaw Nation

## **EXHIBIT B**

of Oklahoma Children's Code, appeals from revocation of a suspended sentence and appeals from acceleration of deferred judgments.

### **Section 1371. Appellate Conflicts of Interest**

If the Director determines that a conflict exists after evaluating a case, the Director shall reassign the case in the same manner as provided for conflicts at the trial level in Section 1367 of this Act.

If the district court, at the time the appeal is initiated, or the Choctaw Nation of Oklahoma Court of Appeals, after the appeal has been initiated, determines that the Office of Public Defender has a conflict of interest in the case, the district court, initially or on remand from the Choctaw Nation Court of Appeals, shall appoint counsel by reassigning the case to another public defender, an attorney who represents indigents pursuant to contract, or a private attorney who has agreed to accept such appointments.

### **Section 1372. Postconviction Proceedings**

A. The Office of Public Defender shall not be appointed to represent indigents in proceedings for postconviction relief; provided, however, the Office of Public Defender may represent indigents in postconviction proceedings if the representation is related to another pending case in which the Office of Public Defender has been appointed, or the proceeding is necessary to obtain an appeal out of time on behalf of an Office of Public Defender client in a case to which the Office of Public Defender has been properly appointed.

B. No attorney employed by the Office of Public Defender or providing legal services for the Office of Public Defender pursuant to contract shall be required to appear in the district courts of the Choctaw Nation of Oklahoma on issues of appellate counsel appointment and requests for exhibits, records and transcripts.

C. After a mandate has been issued by the Choctaw Nation of Oklahoma Court of Appeals or the Choctaw Nation of Oklahoma Constitutional Court, in any case on direct appeal, the Office of Public Defender is prohibited from appealing that case in any further proceedings.

### **Section 1373. District Court Clerk Responsibilities For Authorized Appeals**

The district court clerks shall transmit one certified copy of the original record for each appeal authorized by the Public Defender Act directly to the Office of Public Defender as soon as possible after the filing of the notice of intent to appeal and the order appointing the Office of Public Defender, unless additional copies are requested, not to exceed three copies. One certified copy of all transcripts, records and exhibits designated shall be transmitted for each authorized appeal by the district court clerk to the Office of Public Defender within the time limits as established by the Rules of the Choctaw Nation Court of Appeals and applicable statutes, unless additional copies are requested, not to exceed three copies. The Office of Public Defender attorney is hereby authorized to supplement the designation of record as filed by the trial counsel by filing a written supplemental designation of record. When a written supplemental designation of record is filed by

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the Office of Public Defender attorney, it shall be the duty of the court clerk or the court reporter, as appropriate, to include the supplementary materials as part of the record on appeal.

### **Section 1374. Trial Counsel Responsibilities When Initiating an Appeal**

It shall be the responsibility of the trial counsel to file all jurisdictional documents required to be filed in the district court and the Choctaw Nation Court of Appeals to initiate the appeal. The Office of Public Defender shall be prohibited from accepting any appeal, unless trial counsel has timely filed all necessary documents or has pursued and been granted the authority for an appeal out of time on the defendant's behalf.

### **Section 1375. Notification by Judges of Appointment to Perfect Appeals**

It shall be the responsibility of the appropriate judge of the district court to notify the Office of Public Defender of any appointment of the Office of Public Defender to perfect an appeal pursuant to the Public Defender Act within three (3) days after such appointment. The appointment order shall state the nature of the appeal. The appropriate judge of the district court shall send all necessary documents to insure perfection of the appeal to the Office of Public Defender within the time prescribed in the Rules of the Choctaw Nation Court of Appeals or under applicable statutes.

### **Section 1376. Costs and Court Fees For Perfecting Appeals**

All necessary transcript costs and court fees required for perfecting appeals for indigents pursuant to the Public Defender Act shall be paid by the defendant if the defendant is financially able to do so. Otherwise, the costs shall be paid from the Court Fund.

### **Section 1377. Effective Date**

The appointment of counsel pursuant to the provisions of the Public Defender Act shall commence for indigent criminal defendants on or subsequent to December 1, 2020.

### **Section 1378. No Liability for Volunteered Professional Legal Services for Indigent Defense**

Any member of the Choctaw Nation of Oklahoma Bar Association who volunteers professional legal services without compensation for purposes of providing trial or appellate legal defense services to an indigent defendant shall not be subject to any liability for volunteered professional services that are performed in conjunction with the representation of said indigent defendant.

### **Section 1379. Creation of the Revolving Fund for the Choctaw Nation of Oklahoma Office of Public Defender**

There is hereby created the Revolving Fund for the Office of Public Defender to be designated the "Office of Public Defender Revolving Fund." The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of federal funds, grants, gifts and such other funds as are provided by law. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Office of Public Defender to defray expenses relating to the

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performance of duties imposed upon the Office of Public Defender by law. Expenditures from said fund shall be made pursuant to the policies and procedures of the Choctaw Nation of Oklahoma Finance Department and/or applicable laws of the Choctaw Nation of Oklahoma.

### **Section 1380. Creation of the Forensic Testing Revolving Fund**

There is hereby created in a revolving fund for the Office of Public Defender, to be designated the "Forensic Testing Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations and shall consist of all funds appropriated by the Tribal Council to the fund or monies received from any political subdivision of the Choctaw Nation of Oklahoma as reimbursements or recovery for forensic testing. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Office of Public Defender for the purpose of providing forensic testing. Expenditures shall be made pursuant to the policies and procedures of the Choctaw Nation of Oklahoma Finance Department and/or applicable laws of the Choctaw Nation of Oklahoma.

### **§ 1381. Amendments**

A. These provisions may be amended by the Tribal Council of the Choctaw Nation of Oklahoma.

### **§ 1382. Initial Appointment of Director of Office of Public Defender**

A. The initial appointment of the Director shall be made by the Senior Executive Officer of the Legal and Compliance Division of the Choctaw Nation of Oklahoma with the approval of the Chief of the Choctaw Nation of Oklahoma, pursuant to the policies and procedures of the Choctaw Nation of Oklahoma. Once the first Director is appointed, the Commission shall govern the Office of Public Defender pursuant to this Act.