

## **BILL ANALYSIS**

C.S.S.B. 1557  
By: Hinojosa  
Corrections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Under current law and agency interpretation, attorneys appointed to represent indigent inmates under Article 26.051(h), Code of Criminal Procedure, are not compensated with the same safeguards as attorneys appointed to represent other indigent defendants. Currently, indigent inmate defense claims go through a multi-layered approval process that often takes several months, in part because claims are treated as Miscellaneous Claims on the state. Because payment is so difficult and commonly known as “slow pay or no pay,” judges have extreme trouble in locating qualified counsel to serve in these cases.

This bill makes clear that indigent inmate defense claims will be treated the same as claims for representing other indigent defendants and will be subject to the same safeguards enacted in the Fair Defense Act. The bill will also streamline the payment process so that attorneys are timely paid for their time and expenses incurred in representing inmates charged with crimes.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1. Article 26.051(a) (2), Code of Criminal Procedure, is amended by defining "correctional institutions division" to mean the correctional institutions division of the Texas Department of Criminal Justice (TDCJ).

SECTION 2. Article 26.051, Code of Criminal Procedure, Subsection (d) is amended to require, rather than authorize, that a court shall (1) notify the Texas Board of Criminal Justice if it determines that a defendant is indigent and is an inmate charged with an offense committed while in the custody of the correctional institutions division or a correctional facility authorized by Section 495.001, Government Code and (2) request that the board provide legal representation for the inmate.

SECTION 2. Article 26.051, Code of Criminal Procedure, Subsection (h) is amended to say that when the court appoints an attorney other than an attorney provided by the board: (1) except as otherwise provided by this article, the inmate's legal defense is subject to Articles 1.051, 26.04, 26.05, and 26.052, as applicable and (2) the county in which a facility of the correctional institutions division or a correctional facility authorized by Section 495.001, Government Code, is located shall pay from its general fund the total costs of the aggregate amount allowed and awarded by the court for attorney compensation and expenses under Article 26.05 or 26.052, as applicable.

SECTION 2. Article 26.051, Code of Criminal Procedure, Subsection (i) is added to provide that the state shall reimburse a county for attorney compensation and expenses awarded under Subsection (h). Provides that a court seeking reimbursement for a county shall certify to the comptroller of public accounts the amount of compensation and expenses for which the county is entitled to be reimbursed under this article. Not later than the 60th day after the date the comptroller receives from the court the request for reimbursement, the comptroller shall issue a warrant to the county in the amount certified by the court.

SECTION 3. Articles 26.051(b) and (c), Code of Criminal Procedure, and Article 26.055, Code of Criminal Procedure, are repealed.

SECTION 4. The change in law made by this Act applies to compensation and expenses owed on or after the effective date of this Act to an attorney appointed under Article 26.051, Code of Criminal Procedure, regardless of whether the attorney was appointed before, on, or after the effective date of this Act.

SECTION 5. Effective Date: Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

#### **EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute contains language not in the original bill defining "correctional institutions division" to mean the correctional institutions division of the Texas Department of Criminal Justice (TDCJ).

SB 1557 provides that when the court appoints an attorney other than an attorney provided by the board, except as otherwise provided by Article 26.051, Code of Criminal Procedure, the inmate's legal defense is subject to Articles 1.051, 15.17, 26.04, 26.05, and 26.052, as applicable. The substitute contains the same language, but does not include Article 15.17 in the list of articles that the inmate's legal defense is subject to.

Both the original and the substitute provide that the county shall pay from its general fund the total costs of the aggregate amount allowed and awarded by the court for attorney compensation and expenses under Article 26.05 or 26.052, as applicable. However, the substitute specifies that this provision applies to the county in which a facility of the correctional institutions division or a correctional facility authorized by Section 495.001, Government Code, is located.

CSSB 1557 includes language not in the original bill which requires, rather than authorizes, that a court notify the board if it determines that a defendant is indigent and is an inmate charged with an offense committed while in the custody of the correctional institutions division or a correctional facility authorized by Section 495.001, Government Code and request that the board provide legal representation for the inmate.

The original bill applies to an appointment of an attorney under Article 26.051, Code of Criminal Procedure, made on or after the effective date, and provides that an appointment of an attorney made before the effective date is to be governed by the law in effect when the appointment was made. The substitute applies to compensation and expenses owed on or after the effective date to an attorney appointed under Article 26.051, Code of Criminal Procedure, regardless of whether the attorney was appointed before, on, or after the effective date.

SB 1557 takes effect September 1, 2007. CSSB 1557 takes effect upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.