

AN ACT

relating to appointment procedures concerning and compensation and reimbursement for counsel appointed to represent indigent defendants in certain criminal and post-conviction proceedings and to the creation of an indigent defense representation fund.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 26.05, Code of Criminal Procedure, is amended by amending Subsection (c) and adding Subsection (i) to read as follows:

(c) Each fee schedule adopted shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings and the judge approves the payment. If the judge disapproves the requested amount of payment, the judge shall make written findings stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by

filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment or failure to act and determine the appropriate amount of payment. In reviewing the disapproval or failure to act, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county.

(i) The indigent defense representation fund is a separate account in the general revenue fund. The fund:

(1) consists of criminal fees collected under Section 133.107, Local Government Code; and

(2) may be used only for the purposes for which the fair defense account established under Section 71.058, Government Code, may be used, including compensating appointed counsel in accordance with this code.

SECTION 2. Article 26.051(a)(2), Code of Criminal Procedure, is amended to read as follows:

(2) "Correctional institutions [~~Institutional~~ division" means the correctional institutions [~~institutional~~ division of the Texas Department of Criminal Justice.

SECTION 3. Article 26.051, Code of Criminal Procedure, is amended by amending Subsections (d) and (h) and adding Subsection

(i) to read as follows:

(d) A court shall:

(1) [may] notify the board if it determines that a defendant before the court is indigent and is an inmate charged with an offense committed while in the custody of the correctional institutions [institutional] division or a correctional facility authorized by Section 495.001, Government Code; and

(2) request that the board provide legal representation for the inmate.

(h) 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 ~~[, the county shall pay from its general fund the first \$250.00 of the aggregate sum allowed and awarded by the court for the attorney fees under Article 26.05 of this code. If the fees awarded for a court-appointed attorney in a case described by this subsection exceed \$250.00, the court shall certify the amount in excess of \$250.00 to the board. On request of the board, the comptroller shall issue a warrant to the court-appointed attorney in the amount certified to the board by~~

1 ~~the court]~~.

2 (i) The state shall reimburse a county for attorney
3 compensation and expenses awarded under Subsection (h). A court
4 seeking reimbursement for a county shall certify to the comptroller
5 of public accounts the amount of compensation and expenses for
6 which the county is entitled to be reimbursed under this article.
7 Not later than the 60th day after the date the comptroller receives
8 from the court the request for reimbursement, the comptroller shall
9 issue a warrant to the county in the amount certified by the court.

10 SECTION 4. Subchapter B, Chapter 102, Government Code, is
11 amended by adding Section 102.023 to read as follows:

12 Sec. 102.023. COURT COST ON CONVICTION: SUPPORT OF
13 INDIGENT DEFENSE REPRESENTATION. A person convicted of any
14 offense, other than an offense relating to a pedestrian or the
15 parking of a motor vehicle, shall pay a cost on conviction of \$2
16 under Section 133.107, Local Government Code.

17 SECTION 5. Section 133.003, Local Government Code, is
18 amended to read as follows:

19 Sec. 133.003. CRIMINAL FEES. This chapter applies to the
20 following criminal fees:

21 (1) the consolidated fee imposed under Section
22 133.102;

23 (2) the time payment fee imposed under Section
24 133.103;

25 (3) fees for services of peace officers employed by
26 the state imposed under Article 102.011, Code of Criminal
27 Procedure, and forwarded to the comptroller as provided by Section

133.104;

(4) costs on conviction imposed in certain statutory county courts under Section 51.702, Government Code, and deposited in the judicial fund;

(5) costs on conviction imposed in certain county courts under Section 51.703, Government Code, and deposited in the judicial fund;

(6) the administrative fee for failure to appear or failure to pay or satisfy a judgment imposed under Section 706.006, Transportation Code;

(7) fines on conviction imposed under Section 621.506(g), Transportation Code;

(8) the fee imposed under Article 102.0045, Code of Criminal Procedure; ~~and~~

(9) the cost on conviction imposed under Section 133.105 and deposited in the judicial fund; and

(10) the cost on conviction imposed under Section 133.107.

SECTION 6. Subchapter C, Chapter 133, Local Government Code, is amended by adding Section 133.107 to read as follows:

Sec. 133.107. FEE FOR SUPPORT OF INDIGENT DEFENSE REPRESENTATION. (a) A person convicted of any offense, other than an offense relating to a pedestrian or the parking of a motor vehicle, shall pay as a court cost, in addition to other costs, a fee of \$2 to be used to fund indigent defense representation through the fair defense account established under Section 71.058, Government Code.

1 (b) The treasurer shall remit a fee collected under this
2 section to the comptroller in the manner provided by Subchapter B.
3 The comptroller shall credit the remitted fees to the credit of the
4 fair defense account established under Section 71.058, Government
5 Code.

6 SECTION 7. Articles 26.051(b) and (c), Code of Criminal
7 Procedure, and Article 26.055, Code of Criminal Procedure, are
8 repealed.

9 SECTION 8. The change in law made by this Act to Article
10 26.05(c), Code of Criminal Procedure, applies only to a request for
11 payment submitted under Article 26.05(c) on or after the effective
12 date of this Act.

13 SECTION 9. The change in law made by this Act to Article
14 26.051, Code of Criminal Procedure, applies to compensation and
15 expenses owed on or after the effective date of this Act to an
16 attorney appointed under Article 26.051, Code of Criminal
17 Procedure, regardless of whether the attorney was appointed before,
18 on, or after the effective date of this Act.

19 SECTION 10. The imposition of a cost of court under Section
20 133.107, Local Government Code, as added by this Act, applies only
21 to an offense committed on or after the effective date of this Act.
22 An offense committed before the effective date of this Act is
23 covered by the law in effect when the offense was committed, and the
24 former law is continued in effect for that purpose. For purposes of
25 this section, an offense was committed before the effective date of
26 this Act if any element of the offense was committed before that
27 date.

1 SECTION 11. This Act takes effect September 1, 2007.

H.B. No. 1267

President of the Senate

Speaker of the House

I certify that H.B. No. 1267 was passed by the House on May 11, 2007, by the following vote: Yeas 128, Nays 5, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 1267 on May 25, 2007, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1267 on May 27, 2007, by the following vote: Yeas 139, Nays 8, 2 present, not voting.

Chief Clerk of the House

H.B. No. 1267

I certify that H.B. No. 1267 was passed by the Senate, with amendments, on May 23, 2007, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1267 on May 27, 2007, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor