

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Pena

H.B. No. 1267

A BILL TO BE ENTITLED

AN ACT

relating to the compensation of counsel appointed to defend an indigent defendant in a criminal proceeding.

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

SECTION 1. Article 26.05(c), Code of Criminal Procedure, is amended 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

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

10 SECTION 2. The change in law made by this Act applies only  
11 to a request for payment submitted under Article 26.05(c), Code of  
12 Criminal Procedure, as amended by this Act, on or after the  
13 effective date of this Act.

14 SECTION 3. This Act takes effect September 1, 2007.

FLOOR AMENDMENT NO. 1

ADOPTED

MAY 23 2007

BY:



*Deputy Law*  
Secretary of the Senate

1 Amend H.B. No. 1267 (senate ~~committee~~ printing) by striking  
2 SECTIONS 1 and 2 and adding the following appropriately numbered  
3 SECTIONS:

4 SECTION \_\_\_\_ . Subsection (d), Article 26.052, Code of  
5 Criminal Procedure, as amended by Chapters 787 and 965, Acts of  
6 the 79th Legislature, Regular Session, 2005, is reenacted and  
7 amended to read as follows:

8 (d)(1) The committee shall adopt standards for the  
9 qualification of attorneys to be appointed to represent indigent  
10 defendants in capital cases in which the death penalty is  
11 sought.

12 (2) The standards must require that a trial attorney  
13 appointed as lead counsel to a capital case [~~or an attorney~~  
14 ~~appointed as lead appellate counsel in the direct appeal of a~~  
15 ~~capital case~~]:

16 (A) be a member of the State Bar of Texas;

17 (B) exhibit proficiency and commitment to  
18 providing quality representation to defendants in death penalty  
19 cases;

20 (C) have not been found by a federal or state  
21 court to have rendered ineffective assistance of counsel during  
22 the trial or appeal of any capital case, unless the conduct  
23 underlying the finding fails to accurately reflect the  
24 attorney's current ability to provide effective representation;

25 (D) have at least five years of criminal law  
26 experience [~~in criminal litigation~~];

27 (E) have tried to a verdict as lead defense  
28 counsel a significant number of felony cases, including homicide  
29 trials and other trials for offenses punishable as second or

1 first degree felonies or capital felonies;

2 (F) have trial experience in:

3 (i) the use of and challenges to mental  
4 health or forensic expert witnesses; and

5 (ii) investigating and presenting  
6 mitigating evidence at the penalty phase of a death penalty  
7 trial; and

8 (G) have participated in continuing legal  
9 education courses or other training relating to criminal defense  
10 in death penalty cases.

11 (3) The standards must require that an attorney  
12 appointed as lead appellate counsel in the direct appeal of a  
13 capital case:

14 (A) be a member of the State Bar of Texas;

15 (B) exhibit proficiency and commitment to  
16 providing quality representation to defendants in death penalty  
17 cases;

18 (C) have not been found by a federal or state  
19 court to have rendered ineffective assistance of counsel during  
20 the trial or appeal of any capital case, unless the conduct  
21 underlying the finding fails to accurately reflect the  
22 attorney's current ability to provide effective representation;

23 (D) have at least five years of criminal law  
24 experience;

25 (E) have authored a significant number of  
26 appellate briefs, including appellate briefs for homicide cases  
27 and other cases involving an offense punishable as a capital  
28 felony or a felony of the first degree or an offense described  
29 by Section 3g(a)(1), Article 42.12;

30 (F) have trial or appellate experience in:

31 (i) the use of and challenges to mental

1 health or forensic expert witnesses; and

2 (ii) the use of mitigating evidence at the  
3 penalty phase of a death penalty trial; and

4 (G) have participated in continuing legal  
5 education courses or other training relating to criminal defense  
6 in appealing death penalty cases.

7 (4) The committee shall prominently post the  
8 standards in each district clerk's office in the region with a  
9 list of attorneys qualified for appointment.

10 (5) [~~4~~] Not later than the second anniversary of  
11 the date an attorney is placed on the list of attorneys  
12 qualified for appointment in death penalty cases and each year  
13 following the second anniversary, the attorney must present  
14 proof to the committee that the attorney has successfully  
15 completed the minimum continuing legal education requirements of  
16 the State Bar of Texas, including a course or other form of  
17 training relating to criminal [~~the~~] defense in [~~of~~] death  
18 penalty cases or in appealing death penalty cases, as  
19 applicable. The committee shall remove the attorney's name from  
20 the list of qualified attorneys if the attorney fails to provide  
21 the committee with proof of completion of the continuing legal  
22 education requirements.

23 SECTION \_\_\_\_\_. A local selection committee shall amend  
24 standards previously adopted by the committee to conform with  
25 the requirements of Subsection (d), Article 26.052, Code of  
26 Criminal Procedure, as amended by this Act, not later than the  
27 75th day after the effective date of this Act. An attorney  
28 appointed to a death penalty case on or after the 75th day after  
29 the effective date of this Act must meet the standards adopted  
30 in conformity with amended Subsection (d), Article 26.052, Code  
31 of Criminal Procedure. An attorney appointed to a death penalty

1 case before the 75th day after the effective date of this Act is  
2 covered by the law in effect when the attorney was appointed,  
3 and the former law is continued in effect for that purpose.

# ADOPTED

FLOOR AMENDMENT NO. 2

MAY 23 2007 BY: Ellis

*Atty Gen*  
Secretary of the Senate

1 Amend H.B. No. 1267 (Senate Committee Printing) as follows:

2 (1) Strike the recital to SECTION 1 of the bill (page 1,  
3 lines 11-12) and substitute the following:

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

7 (2) Immediately following the text of amended Subsection  
8 (c), Article 26.05, Code of Criminal Procedure (page 1, between  
9 lines 39 and 40), insert the following:

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

12 (1) consists of criminal fees collected under Section  
13 133.107, Local Government Code; and

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

18 SECTION 2. Subchapter B, Chapter 102, Government Code, is  
19 amended by adding Section 102.023 to read as follows:

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

25 SECTION 3. Section 133.003, Local Government Code, is  
26 amended to read as follows:

27 Sec. 133.003. CRIMINAL FEES. This chapter applies to the  
28 following criminal fees:

- 1 (1) the consolidated fee imposed under Section  
2 133.102;
- 3 (2) the time payment fee imposed under Section  
4 133.103;
- 5 (3) fees for services of peace officers employed by  
6 the state imposed under Article 102.011, Code of Criminal  
7 Procedure, and forwarded to the comptroller as provided by  
8 Section 133.104;
- 9 (4) costs on conviction imposed in certain statutory  
10 county courts under Section 51.702, Government Code, and  
11 deposited in the judicial fund;
- 12 (5) costs on conviction imposed in certain county  
13 courts under Section 51.703, Government Code, and deposited in  
14 the judicial fund;
- 15 (6) the administrative fee for failure to appear or  
16 failure to pay or satisfy a judgment imposed under Section  
17 706.006, Transportation Code;
- 18 (7) fines on conviction imposed under Section  
19 621.506(g), Transportation Code;
- 20 (8) the fee imposed under Article 102.0045, Code of  
21 Criminal Procedure; ~~and~~
- 22 (9) the cost on conviction imposed under Section  
23 133.105 and deposited in the judicial fund; and
- 24 (10) the cost on conviction imposed under Section  
25 133.107.

26 SECTION 4. Subchapter C, Chapter 133, Local Government  
27 Code, is amended by adding Section 133.107 to read as follows:

28 Sec. 133.107. FEE FOR SUPPORT OF INDIGENT DEFENSE  
29 REPRESENTATION. (a) A person convicted of any offense, other  
30 than an offense relating to a pedestrian or the parking of a  
31 motor vehicle, shall pay as a court cost, in addition to other



1 costs, a fee of \$2 to be used to fund indigent defense  
2 representation through the fair defense account established  
3 under Section 71.058, Government Code.

4 (b) The treasurer shall remit a fee collected under  
5 this section to the comptroller in the manner provided by  
6 Subchapter B. The comptroller shall credit the remitted fees to  
7 the credit of the fair defense account established under Section  
8 71.058, Government Code.

9 SECTION 5. The imposition of a cost of court under Section  
10 133.107, Local Government Code, as added by this Act, applies  
11 only to an offense committed on or after the effective date of  
12 this Act. An offense committed before the effective date of  
13 this Act is covered by the law in effect when the offense was  
14 committed, and the former law is continued in effect for that  
15 purpose. For purposes of this section, an offense was committed  
16 before the effective date of this Act if any element of the  
17 offense was committed before that date.

18 (3) Renumber existing SECTIONS of the bill accordingly.

# ADOPTED

FLOOR AMENDMENT NO. 3

MAY 23 2007

*Leta Spaw*  
Secretary of the Senate

BY: *Chris Harris*

1 Amend H.B. 1267 by Inserting the following on page 2,  
2 between lines 9 and 10 (House Enrolled Version):

3 SECTION \_\_\_\_. Article 26.052, Code of Criminal Procedure,  
4 is amended by amending Subsections (e), (f), and (g) and adding  
5 Subsections (e-1) and (e-2) to read as follows:

6 (e) The presiding judge of the district court in which a  
7 capital felony case is filed shall appoint an attorney, who [~~two~~  
8 ~~attorneys, at least one of whom~~] must be qualified under this  
9 chapter, to represent an indigent defendant as soon as  
10 practicable after charges are filed[, ~~unless the state gives~~  
11 ~~notice in writing that the state will not seek the death~~  
12 ~~penalty~~]. Unless the state files written notice in the case  
13 that the state will not seek the death penalty, the judge shall  
14 appoint a second attorney to the case on the earlier of:

15 (1) the date the state files written notice in the  
16 case that the state will seek the death penalty; or

17 (2) the 90th day after the date on which the  
18 defendant is charged with a capital offense by indictment or by  
19 complaint, whichever occurs first.

20 (e-1) An attorney is not required to meet the standards  
21 described by Subsection (d)(2) to be eligible for appointment as  
22 a second attorney under Subsection (e).

23 (e-2) A case in which the state seeks the death penalty  
24 may not proceed to trial on the merits before the 180th day  
25 after the date on which a second attorney is appointed to the  
26 case under Subsection (e). If, after the second attorney is  
27 appointed, the state files written notice in the case that the  
28 state will not seek the death penalty, the judge may remove the  
29 second attorney from the case. The second attorney remains

1 entitled to reasonable payment for services rendered before  
2 removal in accordance with the local guidelines for payment of  
3 an attorney appointed to represent a defendant in a capital  
4 case.

5 (f) Appointed counsel may file with the trial court a  
6 pretrial ex parte confidential request for advance payment of  
7 expenses to investigate potential defenses and mitigation  
8 evidence. The request for expenses must state:

9 (1) the type of investigation to be conducted;

10 (2) specific facts that suggest the investigation  
11 will result in admissible evidence; and

12 (3) an itemized list of anticipated expenses for each  
13 investigation.

14 (g) The court shall timely grant the request for advance  
15 payment of expenses in whole or in part if the request is  
16 reasonable. If the court denies in whole or in part the request  
17 for expenses, the court shall:

18 (1) state the reasons for the denial in writing;

19 (2) attach the denial to the confidential request;

20 and

21 (3) submit the request and denial as a sealed exhibit  
22 to the record.

23 SECTION \_\_\_\_\_. The change in law made by this Act applies  
24 only to a capital felony case that is filed on or after the  
25 effective date of this Act. A capital felony case that is filed  
26 before the effective date of this Act is governed by the law in  
27 effect on the date the case was filed, and the former law is  
28 continued in effect for that purpose.

# ADOPTED

Floor Amendment No. 4

MAY 23 2007

By [Signature]  
Secretary of the Senate (Duncan)

Amend H.B. 1267 by adding the following SECTIONS and renumber accordingly:

1 SECTION \_\_\_\_ Subtitle F, Title 2, Government Code, is  
2 amended by adding Chapter 78 to read as follows:

3 CHAPTER 78. CAPITAL WRITS COMMITTEE AND OFFICE OF CAPITAL WRITS

4 SUBCHAPTER A. CAPITAL WRITS COMMITTEE

5 Sec. 78.001. DEFINITIONS. In this subchapter:

6 (1) "Committee" means the capital writs committee  
7 established under this subchapter.

8 (2) "Office of capital writs" means the office of  
9 capital writs established under Subchapter B.

10 Sec. 78.002. ESTABLISHMENT OF COMMITTEE; DUTIES. (a) The  
11 capital writs committee is established.

12 (b) The committee shall recommend to the Court of Criminal  
13 Appeals a director for the office of capital writs when a  
14 vacancy exists for the position of director.

15 Sec. 78.003. APPOINTMENT AND COMPOSITION OF COMMITTEE.

16 (a) The committee is composed of the following five members who  
17 are appointed by the president of the State Bar of Texas, with  
18 ratification by the executive committee of the State Bar of  
19 Texas:

20 (1) three attorneys who are members of the State Bar  
21 of Texas and who are not employed as prosecutors or law  
22 enforcement officials, all of whom must have criminal defense  
23 experience with death penalty proceedings in this state; and

24 (2) two state district judges, one of whom serves as  
25 presiding judge of an administrative judicial region.

26 (b) The committee shall elect one member of the committee  
27 to serve as the presiding officer of the committee.

1        (c) The committee members serve at the pleasure of the  
2 president of the State Bar of Texas, and the committee meets at  
3 the call of the presiding officer of the committee.

4        Sec. 78.004. RECOMMENDATION AND APPOINTMENT OF DIRECTOR OF  
5 OFFICE OF CAPITAL WRITS. (a) The committee shall submit to the  
6 Court of Criminal Appeals, in order of the committee's  
7 preference, a list of the names of not more than five persons  
8 the committee recommends that the court consider in appointing  
9 the director of the office of capital writs when a vacancy  
10 exists for the position of director. If the committee finds  
11 that three or more persons under the committee's consideration  
12 are qualified to serve as the director of the office of capital  
13 writs, the committee must include at least three names in the  
14 list submitted under this subsection.

15        (b) Each person recommended to the Court of Criminal  
16 Appeals by the committee under Subsection (a) must exhibit  
17 proficiency and commitment to providing quality representation  
18 to defendants in death penalty state habeas cases, as described  
19 by the Guidelines and Standards for Texas Capital Counsel, as  
20 published by the State Bar of Texas.

21        (c) When a vacancy for the position exists, the Court of  
22 Criminal Appeals shall appoint from the list of persons  
23 submitted to the court under Subsection (a) the director of the  
24 office of capital writs.

25        [Sections 78.005-78.050 reserved for expansion]

26        SUBCHAPTER B. OFFICE OF CAPITAL WRITS

27        Sec. 78.051. DEFINITIONS. In this subchapter:

28        (1) "Committee" means the capital writs committee  
29 established under Subchapter A.

30        (2) "Office" means the office of capital writs  
31 established and operated under this subchapter.

1       Sec. 78.052. ESTABLISHMENT; FUNDING. (a) The office of  
2 capital writs is established and operates under the direction  
3 and supervision of the director of the office.

4       (b) The office shall receive funds for personnel costs and  
5 expenses as specified in the General Appropriations Act.

6       Sec. 78.053. DIRECTOR; STAFF. (a) The Court of Criminal  
7 Appeals shall appoint a director to direct and supervise the  
8 operation of the office. The director serves a four-year term  
9 and continues to serve until a successor has been appointed and  
10 qualified. The Court of Criminal Appeals may remove the  
11 director only for good cause. The director may be reappointed  
12 for a second or subsequent term.

13       (b) The director shall employ attorneys and employ or  
14 retain licensed investigators and other personnel necessary to  
15 perform the duties of the office.

16       (c) The director and any attorney employed by the office  
17 may not:

18               (1) engage in the private practice of criminal law;

19 or

20               (2) accept anything of value not authorized by law  
21 for services rendered under this subchapter.

22       Sec. 78.054. POWERS AND DUTIES. (a) The office may not  
23 accept an appointment under Article 11.071, Code of Criminal  
24 Procedure, if:

25               (1) a conflict of interest exists;

26               (2) the office has insufficient resources to provide  
27 adequate representation for the defendant;

28               (3) the office is incapable of providing  
29 representation for the defendant in accordance with the rules of  
30 professional conduct; or

31               (4) other good cause is shown for not accepting the  
32 appointment.

1        (b) The office may not represent a defendant in a federal  
2 habeas review. The office may not represent a defendant in an  
3 action or proceeding in state court other than an action or  
4 proceeding that:

5            (1) is conducted under Article 11.071, Code of  
6 Criminal Procedure;

7            (2) is collateral to the preparation of an  
8 application under Article 11.071, Code of Criminal Procedure; or

9            (3) concerns any other post-conviction matter other  
10 than a direct appeal, including an action or proceeding under  
11 Article 46.05 or Chapter 64, Code of Criminal Procedure.

12        (c) Notwithstanding Article 26.04(p), Code of Criminal  
13 Procedure, the office may independently investigate the  
14 financial condition of any person the office is appointed to  
15 represent. The office shall report the results of the  
16 investigation to the appointing judge. The judge may hold a  
17 hearing to determine if the person is indigent and entitled to  
18 representation under this section.

19        Sec. 78.055. COMPENSATION OF OTHER APPOINTED  
20 ATTORNEYS. If it is necessary that an attorney other than an  
21 attorney employed by the office be appointed, that attorney  
22 shall be compensated as provided by Articles 11.071 and 26.05,  
23 Code of Criminal Procedure.

24        Sec. 78.056. APPOINTMENT LIST. (a) The presiding judges  
25 of the administrative judicial regions shall maintain a  
26 statewide list of competent counsel available for appointment  
27 under Section 2(f), Article 11.071, Code of Criminal Procedure,  
28 if the office does not accept or is prohibited from accepting an  
29 appointment under Section 78.054. Each attorney on the list  
30 must possess the qualifications described by Section 78.004(b).

1        (b) The Office of Court Administration and the Task Force  
2 on Indigent Defense shall provide administrative support  
3 necessary under this section.

4        SECTION \_\_. Sections 2(b), (c), (e), and (f), Article  
5 11.071, Code of Criminal Procedure, are amended to read as  
6 follows:

7        (b) If a defendant is sentenced to death the convicting  
8 court, immediately after judgment is entered under Article  
9 42.01, shall determine if the defendant is indigent and, if so,  
10 whether the defendant desires appointment of counsel for the  
11 purpose of a writ of habeas corpus. If the defendant desires  
12 appointment of counsel for the purpose of a writ of habeas  
13 corpus, the court shall appoint the office of capital writs to  
14 represent the defendant as provided by Subsection (c).

15        (c) At the earliest practical time, but in no event later  
16 than 30 days, after the convicting court makes the findings  
17 required under Subsections (a) and (b), the convicting court  
18 shall appoint the office of capital writs or, if the office of  
19 capital writs does not accept or is prohibited from accepting an  
20 appointment under Section 78.054, Government Code, other  
21 competent counsel under Subsection (f), unless the applicant  
22 elects to proceed pro se or is represented by retained counsel.  
23 On appointing counsel under this section, the convicting court  
24 shall immediately notify the court of criminal appeals of the  
25 appointment, including in the notice a copy of the judgment and  
26 the name, address, and telephone number of the appointed  
27 counsel.

28        (e) If the court of criminal appeals denies an applicant  
29 relief under this article, an attorney appointed under this  
30 section to represent the applicant shall, not later than the  
31 15th day after the date the court of criminal appeals denies  
32 relief or, if the case is filed and set for submission, the 15th



1 day after the date the court of criminal appeals issues a  
2 mandate on the initial application for a writ of habeas corpus  
3 under this article, move for the appointment of [~~to be appointed~~  
4 ~~as~~] counsel in federal habeas review under 21 U.S.C. Section  
5 848(q) or equivalent provision [~~or, if necessary, move for the~~  
6 ~~appointment of other counsel under 21 U.S.C. Section 848(q) or~~  
7 ~~equivalent provision~~]. The attorney shall immediately file a  
8 copy of the motion with the court of criminal appeals, and if  
9 the attorney fails to do so, the court may take any action to  
10 ensure that the applicant's right to federal habeas review is  
11 protected, including initiating contempt proceedings against the  
12 attorney.

13 (f) If the office of capital writs does not accept or is  
14 prohibited from accepting an appointment under Section 78.054,  
15 Government Code, the [~~The~~] convicting court shall appoint  
16 counsel from a list of competent counsel maintained by the  
17 presiding judges of the administrative judicial regions under  
18 Section 78.056, Government Code. The convicting court shall  
19 reasonably compensate as provided by Section 2A an attorney  
20 appointed under this section, other than an attorney employed by  
21 the office of capital writs, regardless of whether the attorney  
22 is appointed by the convicting court or was appointed by the  
23 court of criminal appeals under prior law. An attorney  
24 appointed under this section who is employed by the office of  
25 capital writs shall be compensated in accordance with Subchapter  
26 B, Chapter 78, Government Code.

27 SECTION \_\_\_\_ . Section 2A(a), Article 11.071, Code of  
28 Criminal Procedure, is amended to read as follows:

29 (a) The state shall reimburse a county for compensation of  
30 counsel under Section 2, other than for compensation of counsel  
31 employed by the office of capital writs, and for payment of  
32 expenses under Section 3, regardless of whether counsel is

1 employed by the office of capital writs. The total amount of  
2 reimbursement to which a county is entitled under this section  
3 for an application under this article may not exceed \$25,000.  
4 Compensation and expenses in excess of the \$25,000 reimbursement  
5 provided by the state are the obligation of the county.

6 SECTION \_\_\_\_ . Section 3, Article 11.071, Code of Criminal  
7 Procedure, is amended by adding Subsection (f) to read as  
8 follows:

9 (f) This section applies to counsel's investigation of the  
10 factual and legal grounds for the filing of an application for a  
11 writ of habeas corpus, regardless of whether counsel is employed  
12 by the office of capital writs.

13 SECTION \_\_\_\_ . Sections 4A(e) and (f), Article 11.071, Code  
14 of Criminal Procedure, are amended to read as follows:

15 (e) Sections 2A and 3 apply to compensation and  
16 reimbursement of counsel appointed under Subsection (b)(3) in  
17 the same manner as if counsel had been appointed by the  
18 convicting court, unless the attorney is employed by the office  
19 of capital writs, in which case the compensation of that  
20 attorney is governed by Subchapter B, Chapter 78, Government  
21 Code.

22 (f) Notwithstanding any other provision of this article,  
23 the court of criminal appeals shall appoint counsel and  
24 establish a new filing date for application, which may be no  
25 later than the 270th day after the date on which counsel is  
26 appointed, for each applicant who before September 1, 1999,  
27 filed an untimely application or failed to file an application  
28 before the date required by Section 4(a) or (b). Section 2A  
29 applies to the compensation and payment of expenses of counsel  
30 appointed by the court of criminal appeals under this  
31 subsection, unless the attorney is employed by the office of

1 capital writs, in which case the compensation of that attorney  
2 is governed by Subchapter B, Chapter 78, Government Code.

3 SECTION \_\_\_\_ . Article 26.04(b), Code of Criminal Procedure,  
4 is amended to read as follows:

5 (b) Procedures adopted under Subsection (a) shall:

6 (1) authorize only the judges of the county courts,  
7 statutory county courts, and district courts trying criminal  
8 cases in the county, or the judges' designee, to appoint counsel  
9 for indigent defendants in the county;

10 (2) apply to each appointment of counsel made by a  
11 judge or the judges' designee in the county;

12 (3) ensure that each indigent defendant in the county  
13 who is charged with a misdemeanor punishable by confinement or  
14 with a felony and who appears in court without counsel has an  
15 opportunity to confer with appointed counsel before the  
16 commencement of judicial proceedings;

17 (4) require appointments for defendants in capital  
18 cases in which the death penalty is sought to comply with any  
19 applicable [~~the~~] requirements under Articles 11.071 and  
20 [Article] 26.052;

21 (5) ensure that each attorney appointed from a public  
22 appointment list to represent an indigent defendant perform the  
23 attorney's duty owed to the defendant in accordance with the  
24 adopted procedures, the requirements of this code, and  
25 applicable rules of ethics; and

26 (6) ensure that appointments are allocated among  
27 qualified attorneys in a manner that is fair, neutral, and  
28 nondiscriminatory.

29 SECTION \_\_\_\_ . Article 26.044(a), Code of Criminal  
30 Procedure, is amended by adding Subdivision (3) to read as  
31 follows:

1           (3) "Office of capital writs" means the office of  
2 capital writs established under Subchapter B, Chapter 78,  
3 Government Code.

4           SECTION \_\_\_\_ . Article 26.044, Code of Criminal Procedure,  
5 is amended by adding Subsection (n) to read as follows:

6           (n) An attorney employed by a public defender's office may  
7 be appointed with respect to an application for a writ of habeas  
8 corpus only if:

9           (1) an attorney employed by the office of capital  
10 writs is not appointed in the case; and

11           (2) the attorney employed by the public defender's  
12 office is on the list of competent counsel maintained under  
13 Section 78.056, Government Code.

14           SECTION \_\_\_\_ . Article 26.05(a), Code of Criminal Procedure,  
15 is amended to read as follows:

16           (a) A counsel, other than an attorney with a public  
17 defender or an attorney employed by the office of capital writs,  
18 appointed to represent a defendant in a criminal proceeding,  
19 including a habeas corpus hearing, shall be paid a reasonable  
20 attorney's fee for performing the following services, based on  
21 the time and labor required, the complexity of the case, and the  
22 experience and ability of the appointed counsel:

23           (1) time spent in court making an appearance on  
24 behalf of the defendant as evidenced by a docket entry, time  
25 spent in trial, and time spent in a proceeding in which sworn  
26 oral testimony is elicited;

27           (2) reasonable and necessary time spent out of court  
28 on the case, supported by any documentation that the court  
29 requires;

30           (3) preparation of an appellate brief and preparation  
31 and presentation of oral argument to a court of appeals or the  
32 Court of Criminal Appeals; and

1 (4) preparation of a motion for rehearing.

2 SECTION \_\_\_\_ . Section 2(d), Article 11.071, Code of  
3 Criminal Procedure, is repealed, effective January 1, 2008.

4 SECTION 11. (a) Not later than January 1, 2008, in  
5 accordance with Section 78.056, Government Code, as added by  
6 this Act, the presiding judges of the administrative judicial  
7 regions shall complete the statewide list of competent counsel  
8 available for appointment to represent defendants in  
9 applications for writs of habeas corpus.

10 (b) Not later than January 15, 2008, the president of the  
11 State Bar of Texas shall appoint the members of the capital  
12 writs committee.

13 (c) Not later than May 15, 2008, the capital writs  
14 committee shall submit to the Court of Criminal Appeals the list  
15 of candidates for the position of the director of the office of  
16 capital writs.

17 (d) Not later than September 1, 2008, the Court of  
18 Criminal Appeals shall appoint the director of the office of  
19 capital writs under Chapter 78, Government Code, as added by  
20 this Act.

21 SECTION \_\_\_\_ . Section 6, Article 11.071, Code of Criminal  
22 Procedure, is amended by adding Subsection (b-1) to read as  
23 follows:

24 (b-1) If the convicting court receives notice that the  
25 requirements of Section 5(a) for consideration of a subsequent  
26 application have been met, the convicting court shall appoint  
27 counsel and provide for the compensation and reimbursement of  
28 expenses of the counsel as is provided by Sections 2A and 3,  
29 including compensation for time previously spent and  
30 reimbursement of expenses previously incurred and regardless of  
31 whether the subsequent application is ultimately dismissed.

1           SECTION \_\_\_\_\_. (a) The change in law made by this Act to  
2 Section 2A, Article 11.071, Code of Criminal Procedure, applies  
3 only to an initial or subsequent application for a writ of  
4 habeas corpus filed on or after January 1, 2008. An application  
5 filed before January 1, 2008, is covered by the law in effect  
6 when the application was filed, and the former law is continued  
7 in effect for that purpose.

8           (b) The change in law made by this Act in adding Section  
9 6(b-1), Article 11.071, Code of Criminal Procedure, applies only  
10 to a subsequent application for a writ of habeas corpus filed on  
11 or after January 1, 2008. A subsequent application filed before  
12 January 1, 2008, is covered by the law in effect when the  
13 application was filed, and the former law is continued in effect  
14 for that purpose.

15

22

# ADOPTED

FLOOR AMENDMENT NO. 5

MAY 23 2007

BY:

*Atty. Gen. Law*  
Secretary of the Senate

*J. J. Arny*

1 Amend H.B. No. 1267 (senate committee printing) as follows:

2 (1) Add the following appropriately numbered SECTIONS to  
3 the bill and renumber the subsequent SECTIONS of the bill  
4 accordingly:

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

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

10 SECTION \_\_. Article 26.051, Code of Criminal Procedure, is  
11 amended by amending Subsections (d) and (h) and adding  
12 Subsection (i) to read as follows:

13 (d) A court shall:

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

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

22 (h) When the court appoints an attorney other than an  
23 attorney provided by the board:

24 (1) except as otherwise provided by this article, the  
25 inmate's legal defense is subject to Articles 1.051, 26.04,  
26 26.05, and 26.052, as applicable; and

27 (2) the county in which a facility of the  
28 correctional institutions division or a correctional facility

1 authorized by Section 495.001, Government Code, is located shall  
2 pay from its general fund the total costs of the aggregate  
3 amount allowed and awarded by the court for attorney  
4 compensation and expenses under Article 26.05 or 26.052, as  
5 applicable [~~the county shall pay from its general fund the~~  
6 ~~first \$250.00 of the aggregate sum allowed and awarded by the~~  
7 ~~court for the attorney fees under Article 26.05 of this code.~~  
8 ~~If the fees awarded for a court appointed attorney in a case~~  
9 ~~described by this subsection exceed \$250.00, the court shall~~  
10 ~~certify the amount in excess of \$250.00 to the board. On~~  
11 ~~request of the board, the comptroller shall issue a warrant to~~  
12 ~~the court appointed attorney in the amount certified to the~~  
13 ~~board by the court].~~

14 (i) The state shall reimburse a county for attorney  
15 compensation and expenses awarded under Subsection (h). A court  
16 seeking reimbursement for a county shall certify to the  
17 comptroller of public accounts the amount of compensation and  
18 expenses for which the county is entitled to be reimbursed under  
19 this article. Not later than the 60th day after the date the  
20 comptroller receives from the court the request for  
21 reimbursement, the comptroller shall issue a warrant to the  
22 county in the amount certified by the court.

23 SECTION \_\_. Articles 26.051(b) and (c), Code of Criminal  
24 Procedure, and Article 26.055, Code of Criminal Procedure, are  
25 repealed.

26 SECTION \_\_. The change in law made by this Act to Article  
27 26.051, Code of Criminal Procedure, applies to compensation and  
28 expenses owed on or after the effective date of this Act to an  
29 attorney appointed under Article 26.051, Code of Criminal  
30 Procedure, regardless of whether the attorney was appointed



1 before, on, or after the effective date of this Act.

2 (2) In SECTION 2 of the bill (page 1, line 40), between  
3 "Act" and "applies", insert "to Article 26.05, Code of Criminal  
4 Procedure,".

5 (3) In SECTION 2 of the bill (page 1, line 42), strike "as  
6 amended by this Act,".

25



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 16, 2007**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE:** **HB1267** by Pena (Relating to the compensation of counsel appointed to defend an indigent defendant in a criminal proceeding.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Code of Criminal Procedure relating to the compensation of counsel appointed to defend an indigent defendant in a criminal proceeding. The bill would allow an attorney to appeal a failure to act on the attorney's request for payment 60 days after the request for payment has been submitted. To the extent the bill would amend procedures for compensation of indigent defense counsel, the fiscal implication to the State is not anticipated to be significant. The bill would take effect September 1, 2007.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated. To the extent the bill would amend procedures for compensation of indigent defense counsel, the fiscal implication to units of local government is expected to be minimal.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** JOB, ES, ZS, TB, KJG



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**February 26, 2007**

**TO:** Honorable Aaron Pena, Chair, House Committee on Criminal Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB1267** by Pena (Relating to the compensation of counsel appointed to defend an indigent defendant in a criminal proceeding.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

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**Local Government Impact**

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**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** JOB, ES, ZS, TB, KJG



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**80TH LEGISLATIVE REGULAR SESSION**

**May 16, 2007**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB1267** by Pena (Relating to the compensation of counsel appointed to defend an indigent defendant in a criminal proceeding.), **As Engrossed**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, GG, LM





**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**80TH LEGISLATIVE REGULAR SESSION**

**February 23, 2007**

**TO:** Honorable Aaron Pena, Chair, House Committee on Criminal Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB1267** by Pena (Relating to the compensation of counsel appointed to defend an indigent defendant in a criminal proceeding.), **As Introduced**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, GG

