

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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 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

SENATE VERSION

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

CONFERENCE

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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.

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

No equivalent provision.

SENATE VERSION

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.

(c) 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.

No equivalent provision.

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

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

CONFERENCE

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

Government Code.

No equivalent provision.

SECTION __. Section 133.003, Local Government Code, is amended to read as follows:

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

- (1) the consolidated fee imposed under Section 133.102;
- (2) the time payment fee imposed under Section 133.103;
- (3) fees for services of peace officers employed by the state imposed under Article 102.011, Code of Criminal 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

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

133.107.

No equivalent provision.

SECTION __. 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.

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

No equivalent provision.

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

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

offense was committed before that date.

No equivalent provision.

SECTION __. 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.

No equivalent provision.

SECTION __. 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

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

~~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 the court].~~

(i) The state shall reimburse a county for attorney compensation and expenses awarded under Subsection (h). 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.

No equivalent provision.

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

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

SENATE VERSION

SECTION __. The change in law made by this Act to Article 26.051, Code of Criminal Procedure, 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.

CONFERENCE

No equivalent provision.

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

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

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

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

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

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

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

representation;

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

(E) have tried to a verdict as lead defense counsel a significant number of felony cases, including homicide trials and other trials for offenses punishable as second or first degree felonies or capital felonies;

(F) have trial experience in:

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

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

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

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

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

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

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

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

(E) have authored a significant number of appellate

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

briefs, including appellate briefs for homicide cases and other cases involving an offense punishable as a capital felony or a felony of the first degree or an offense described by Section 3g(a)(1), Article 42.12;
(F) have trial or appellate experience in:
(i) the use of and challenges to mental health or forensic expert witnesses; and
(ii) the use of mitigating evidence at the penalty phase of a death penalty trial; and
(G) have participated in continuing legal education courses or other training relating to criminal defense in appealing death penalty cases.
(4) The committee shall prominently post the standards in each district clerk's office in the region with a list of attorneys qualified for appointment.
(5) ~~[(4)]~~ Not later than the second anniversary of the date an attorney is placed on the list of attorneys qualified for appointment in death penalty cases and each year following the second anniversary, the attorney must present proof to the committee that the attorney has successfully completed the minimum continuing legal education requirements of the State Bar of Texas, including a course or other form of training relating to criminal ~~the~~ defense in ~~or~~ death penalty cases or in appealing death penalty cases, as applicable. The committee shall remove the attorney's name from the list of qualified attorneys if the attorney fails to provide the committee with proof of completion of the continuing legal education requirements.

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

SENATE VERSION

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

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

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

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

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

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

CONFERENCE

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

payment for services rendered before removal in accordance with the local guidelines for payment of an attorney appointed to represent a defendant in a capital case.

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

- (1)the type of investigation to be conducted;
- (2)specific facts that suggest the investigation will result in admissible evidence; and
- (3)an itemized list of anticipated expenses for each investigation.

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

- (1)state the reasons for the denial in writing;
- (2)attach the denial to the confidential request; and
- (3)submit the request and denial as a sealed exhibit to the record.

No equivalent provision.

SECTION __. The change in law made by this Act applies only to a capital felony case that is filed on or after the effective date of this Act. A capital felony case that is filed before the effective date of this Act is governed by the law in effect on the date the case was filed, and the former law is continued in effect for that

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION	CONFERENCE
---------------	----------------	------------

purpose.

SECTION __. A local selection committee shall amend standards previously adopted by the committee to conform with the requirements of Subsection (d), Article 26.052, Code of Criminal Procedure, as amended by the Act, not later than the 75th day after the effective date of this Act. An attorney appointed to a death penalty case on or after the 75th day after the effective date of the Act must meet the standards adopted in conformity with amended Subsection (d), Article 26.052, Code of Criminal Procedure. An attorney appointed to a death penalty case before the 75th day after the effective date of this Act is covered by the law in effect when the attorney was appointed, and the former law is continued in effect for the purpose.

SECTION __. Subtitle F, Title 2, Government Code, is amended by adding Chapter 78 to read as follows:
CHAPTER 78. CAPITAL WRITS COMMITTEE AND OFFICE OF CAPITAL WRITS
SUBCHAPTER A. CAPITAL WRITS COMMITTEE
Sec. 78.001. DEFINITIONS. In this subchapter:
(1)"Committee" means the capital writs committee established under this subchapter.
(2)"Office of capital writs" means the office of capital writs established under Subchapter B.
Sec. 78.002. ESTABLISHMENT OF COMMITTEE;

No equivalent provision.

No equivalent provision.

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

DUTIES.(a) The capital writs committee is established.
(b) The committee shall recommend to the Court of Criminal Appeals a director for the office of capital writs when a vacancy exists for the position of director.
Sec. 78.003. APPOINTMENT AND COMPOSITION OF COMMITTEE. (a) The committee is composed of the following five members who are appointed by the president of the State Bar of Texas, with ratification by the executive committee of the State Bar of Texas:
(1)three attorneys who are members of the State Bar of Texas and who are not employed as prosecutors or law enforcement officials, all of whom must have criminal defense experience with death penalty proceedings in this state; and
(2)two state district judges, one of whom serves as presiding judge of an administrative judicial region.
(b) The committee shall elect one member of the committee to serve as the presiding officer of the committee.
(c) The committee members serve at the pleasure of the president of the State Bar of Texas, and the committee meets at the call of the presiding officer of the committee.
Sec. 78.004. RECOMMENDATION AND APPOINTMENT OF DIRECTOR OF OFFICE OF CAPITAL WRITS. (a) The committee shall submit to the Court of Criminal Appeals, in order of the committee's preference, a list of the names of not more than five persons the committee recommends that the court consider in appointing the director of the office of

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

capital writs when a vacancy exists for the position of director. If the committee finds that three or more persons under the committee's consideration are qualified to serve as the director of the office or capital writs, the committee must include at least three names in the list submitted under this subsection.

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

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

[Sections 78.005-78.050 reserved for expansion]

SUBCHAPTER B. OFFICE OF CAPITAL WRITS

Sec. 78.051. DEFINITIONS. In this subchapter:

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

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

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

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

Sec. 78.053. DIRECTOR; STAFF. (a) The Court of

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

Criminal Appeals shall appoint a director to direct and supervise the operation of the office. The director serves a four-year term and continues to serve until a successor has been appointed and qualified. The Court of Criminal Appeals may remove the director only for good cause. The director may be reappointed for a second or subsequent term.

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

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

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

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

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

(1)a conflict of interest exists;

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

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

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

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

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

(1)is conducted under Article 11.071, Code of Criminal Procedure;
(2)is collateral to the preparation of an application under Article 11.071 Code of Criminal Procedure; or
(3)concerns any other post-conviction matter other than a direct appeal, including an action or proceeding under Article 46.05 or Chapter 64, Code of Criminal Procedure.
(c) Notwithstanding Article 26.04(p)Code of Criminal Procedure, the office may independently investigate the financial condition of any person the office is appointed to represent. The office shall report the results of the investigation to the appointing judge. The judge may hold a hearing to determine if the person is indigent and entitled to representation under this section.
Sec. 78.055. COMPENSATION OF OTHER APPOINTED ATTORNEYS. If it is necessary that an attorney other than an attorney employed by the office be appointed, that attorney shall be compensated as provided by Articles 11.071 and 26.05, Code of Criminal Procedure.
Sec. 78.056. APPOINTMENT LIST. (a) The presiding judges of the administrative judicial regions shall maintain a statewide list of competent counsel available for appointment under Section 2(f), Article 11.071, Code of Criminal Procedure, if the office does not accept or is prohibited from accepting an appointment under Section 78.054.Each attorney on the list must possess the qualifications described by Section 78.004(b).

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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

No equivalent provision.

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

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

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

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

of the appointed counsel.

(e) If the court of criminal appeals denies an applicant relief under this article, an attorney appointed under this section to represent the applicant shall, not later than the 15th day after the date the court of criminal appeals denies relief or, if the case is filed and set for submission, the 15th day after the date the court of criminal appeals issues a mandate on the initial application for a writ of habeas corpus under this article, move for the appointment of [to be appointed as] counsel in federal habeas review under 21 U.S.C. Section 848(q) or equivalent provision ~~for, if necessary, move for the appointment of other counsel under 21 U.S.C. Section 848(q) or equivalent provision~~. The attorney shall immediately file a copy of the motion with the court of criminal appeals, and if the attorney fails to do so, the court may take any action to ensure that the applicant's right to federal habeas review is protected, including initiating contempt proceedings against the attorney.

(f) If the office of capital writs does not accept or is prohibited from accepting an appointment under Section 78.054, Government Code, the [The] convicting court shall appoint counsel from a list of competent counsel maintained by the presiding judges of the administrative judicial regions under Section 78.056, Government Code. The convicting court shall reasonably compensate as provided by Section 2A an attorney appointed under this section, other than an attorney employed by the office of capital writs, regardless of whether the attorney is appointed by the convicting court or was appointed by

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

the court of criminal appeals under prior law. An attorney appointed under this section who is employed by the office of capital writs shall be compensated in accordance with Subchapter B, Chapter 78, Government Code.

No equivalent provision.

SECTION __. Section 2A(a), Article 11.071, Code of Criminal Procedure, is amended to read as follows:
(a) The state shall reimburse a county for compensation of counsel under Section 2, other than for compensation of counsel employed by the office of capital writs, and for payment of expenses under Section 3, regardless of whether counsel is employed by the office of capital writs. The total amount of reimbursement to which a county is entitled under this section for an application under this article may not exceed \$25,000. Compensation and expenses in excess of the \$25,000 reimbursement provided by the state are the obligation of the county.

No equivalent provision.

SECTION __. Section 3, Article 11.071, Code of Criminal Procedure, is amended by adding Subsection (f) to read as follows:
(f) This section applies to counsel's investigation of the factual and legal grounds for the filing of an application for a writ of habeas corpus, regardless of whether counsel is employed by the office of capital writs.

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

SENATE VERSION

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

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

(f)Notwithstanding any other provision of this article, the court of criminal appeals shall appoint counsel and establish a new filing date for application, which may be no later than the 270th day after the date on which counsel is appointed, for each applicant who before September 1, 1999, filed an untimely application or failed to file an application before the date required by Section 4(a) or (b). Section 2A applies to the compensation and payment of expenses of counsel appointed by the court of criminal appeals under this subsection, unless the attorney is employed by the office of capital writs, in which case the compensation of that attorney is governed by Subchapter B, Chapter 78, Government Code.

No equivalent provision.

SECTION __. Article 26.04(b), Code of Criminal Procedure, is amended to read as follows:

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

(1)authorize only the judges of the county courts,

CONFERENCE

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

statutory county courts, and district courts trying criminal cases in the county, or the judges' designee, to appoint counsel for indigent defendants in the county;

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

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

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

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

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

No equivalent provision.

SECTION __. Article 26.044(a), Code of Criminal Procedure, is amended by adding Subdivision (3) to read as follows:

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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

No equivalent provision.

SECTION __. Article 26.044, Code of Criminal Procedure, is amended by adding Subsection (n) to read as follows:
(n) An attorney employed by a public defender's office may be appointed with respect to an application for a writ of habeas corpus only if:
(1) an attorney employed by the office of capital writs is not appointed in the case; and
(2) the attorney employed by the public defender's office is on the list of competent counsel maintained under Section 78.056, Government Code.

No equivalent provision.

SECTION __. Article 26.05(a), Code of Criminal Procedure, is amended to read as follows:
(a) A counsel, other than an attorney with a public defender or an attorney employed by the office of capital writs, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:
(1)time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

in trial, and time spent in a proceeding in which sworn oral testimony is elicited;
(2)reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires;
(3)preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and
(4) preparation of a motion for rehearing.

No equivalent provision.

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

No equivalent provision.

SECTION 11. (a) Not later than January 1, 2008, in accordance with Section 78.056, Government Code, as added by this Act, the presiding judges of the administrative judicial regions shall complete the statewide list of competent counsel available for appointment to represent defendants in applications for writs of habeas corpus.
(b)Not later than January 15, 2008, the president of the State Bar of Texas shall appoint the members of the capital writs committee.
(c)Not later than May 15, 2008, the capital writs committee shall submit to the Court of Criminal Appeals the list of candidates for the position of the director of the office of capital writs.

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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

No equivalent provision.

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

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

No equivalent provision.

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

House Bill 1267
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

Section 6(b-1), Article 11.071, Code of Criminal Procedure, applies only to a subsequent application for a writ of habeas corpus filed on or after January 1, 2008. A subsequent application filed before January 1, 2008, is covered by the law in effect when the application was filed, and the former law is continued in effect for that purpose.

No equivalent provision.

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

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

Same as House version.