

- SUBJECT:** Compensation of appointed counsel in a criminal proceeding
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Peña, Vaught, Riddle, Escobar, Hodge, Talton
0 nays
3 absent — Mallory Caraway, Moreno, Pierson
- WITNESSES:** For — David Gonzalez, Texas Criminal Defense Lawyers Association;
(*Registered, but did not testify:* Dominic Gonzales, Texas Criminal Justice Coalition; Andrea Marsh, Texas Fair Defense Project)

Against — None

On — Olen Underwood, 2nd Judicial Administrative Region of Texas;
(*Registered, but did not testify:* Wesley Shackelford, Task Force on Indigent Defense)
- BACKGROUND:** Under Code of Criminal Procedure, art. 26.05(b), reimbursement for attorneys who are appointed to defend indigent defendants must be paid in accordance with a schedule of fees adopted by formal action of the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county. Under art. 26.05(c), each fee schedule adopted must 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. Before receiving payment, the appointed counsel must itemize the types of services performed on a form submitted to the presiding judge. If the judge disapproves the requested amount of payment, the judge must state in writing the amount of payment approved by the judge and each reason for approving an amount different from that requested.

An attorney whose request for payment is disapproved may appeal the disapproval by filing a motion with the presiding judge of the administrative judicial region, at which point the presiding judge must review the disapproval of payment and determine the appropriate amount of payment. In reviewing the disapproval, the presiding judge of the administrative judicial region may conduct a hearing.

Not later than 45 days after the date an application for payment of a fee is submitted, 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.

Code of Criminal Procedure, art. 26.05 does not address situations where the judge has failed to act on a request by an indigent defense attorney for payment of services rendered.

DIGEST:

HB 1267 would amend Code of Criminal Procedure, art. 26.05(c) to grant indigent defense attorneys whose request for payment had not been answered by the courts after 60 days a right of appeal to the presiding judge of the administrative judicial region, who would follow existing processes to approve an amount of payment.

The bill would take effect September 1, 2007, and apply to a request for payment made on or after that date.