

SUBJECT: Reimbursement for attorneys appointed for indigent inmate defendants

COMMITTEE: Corrections — committee substitute recommended

VOTE: 5 ayes — Madden, Hochberg, McReynolds, Dunnam, Haggerty

0 nays

2 absent — Jones, Oliveira

SENATE VOTE: On final passage, April 26 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 3636 by Turner:*)

For — Susan Hays; (*Registered, but did not testify:* Delia Cabello, Concerned Christians for Inmates; Andrea Marsh, Texas Fair Defense Project; Nicole Porter, ACLU of Texas; Ana Yanez-Correa, Texas Criminal Justice Coalition)

Against — None

On — Wesley Shackelford, Task Force on Indigent Defense

BACKGROUND: Under Code of Criminal Procedure, art. 26.051, a county pays the first \$250 of the fee owed to an attorney who represents an indigent inmate who is charged with an offense while confined in a Texas Department of Criminal Justice (TDCJ) facility in that county. The court that heard the case reports the remaining portion of the fee to the State Counsel for Offenders for review, which reviews the fee order and forwards it to the TDCJ board. If the board approves the fee, it forwards the fee order to the comptroller, which forwards the fee order to the Attorney General's Finance Division to see if the order is legally enforceable. If the fee order is enforceable, the comptroller pays the claim. If not, the attorney general returns the request to the comptroller, which sends a denial letter.

DIGEST: CSSB 1557 would change the funding mechanism for defense of indigent offenders who commit crimes while confined in TDCJ facilities. The bill would amend art. 26.051 to direct a county to pay from its general fund the total costs of the aggregate amount allowed and awarded by the court for attorney compensation and expenses. The state then would reimburse

the county for attorney compensation and expenses for indigent defense of offenders in TDCJ within 60 days after the comptroller received the request for reimbursement.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007. CSSB 1557 would only apply to compensation and expenses owed on or after that date.

**SUPPORTERS
SAY:**

CSSB 1557 would create an efficient process to assure that attorneys appointed to represent indigent inmates in TDCJ facilities were compensated in a timely manner. Currently, indigent inmate defense claims must go through a multi-layered and lengthy approval process that involves 11 steps and four state agencies. This process can take up to a year, and this delay in payment means many attorneys cannot afford to take indigent inmate defense cases.

CSSB 1557 would create a streamlined, four-step process. First, the appointed attorney would submit a fee and expense request to the trial judge. Second, the trial judge would review the request and, if it was proper, approve the request, issue an order for payment, and direct it the county. Third, the county would pay the attorney's fees and expenses. Fourth, the comptroller would reimburse the county within 60 days.

Local judges, who are experts in the law and accountable to the people through the electoral process, would ensure that fee orders were proper. In addition, the number of man hours spent under the current system results in costs that far outweigh any benefit, especially because the payment order made by the judge under the current system almost always is enforced. By improving efficiency, the bill in turn would promote better indigent inmate defense and a better justice system for Texas.

Under CSSB 1557, counties would be fully reimbursed for indigent inmate defense. Although the counties would face additional layouts of attorney's fees and expenses up front, the new system would work to their financial benefit because they no longer would be responsible for the first \$250 of the fees and expenses. It is only fair for the state to pay the entire cost for indigent inmate defense because these offenses are committed inside state facilities by offenders under state control. These state issues should not create a burden for counties.

CSSB 1557 would not result in a significant fiscal impact to the state because funds already exist to pay indigent inmate defense. Additionally, these expenses would be offset by the reduction in state agency man hours needed to review the fee and expense order.

**OPPONENTS
SAY:**

The current system ensures that indigent inmate defenders do not overcharge their fees or pad their expenses. CSSB 1557 would remove the multiple levels of review necessary to ensure that the state pays only what is truly owed.

NOTES:

The House committee substitute differs from the Senate-passed version in that it no longer includes a reference to Code of Criminal Procedure, art. 15.17, in the list of statutes to which an inmate's legal defense would be subject. Art. 15.17 regulates the duties of arresting officers and magistrates in the processing of a criminal defendant. It also determines how arresting officers and magistrates inform defendants of their constitutional rights.

CSSB 1557 also would change the term "institutional division" to "correctional institutions division," and would amend art. 26.051 so that it would regulate the defense of indigent defendants who were accused of committing crimes while in the custody of the correctional institutions division or a correctional facility under contract with TDCJ.

The similar companion bill, HB 3636 by Turner, was reported favorably, as substituted, by the House Corrections Committee on April 16.