

SUBJECT: Requiring reimbursement of certain expenses to appointed counsel

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Collier, K. Bell, Cason, Cook, Crockett, Murr, Vasut

0 nays

2 absent — Hinojosa, A. Johnson

WITNESSES: For — Emily Gerrick, Texas Fair Defense Project; (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; Angelica Cogliano, Austin Lawyers Guild; M. Paige Williams, Dallas County Criminal District Attorney John Creuzot; Shea Place, Texas Criminal Defense Lawyers Association; Maggie Luna, Texas Criminal Justice Coalition; Cynthia Simons, Texas Women's Justice Coalition; Rebecca Bernhardt, The Innocence Project of Texas)

Against — (*Registered, but did not testify*: Melissa Shannon, Bexar County Commissioners Court)

On — Geoff Burkhart, Texas Indigent Defense Commission

BACKGROUND: Code of Criminal Procedure art. 26.05(d) requires reimbursement for reasonable and necessary expenses to counsel in a noncapital case, other than an attorney with a public defender's office, appointed to represent an indigent defendant. This includes expenses for investigation and for mental health and other experts.

Under arts. 26.052(f) and (g), appointed counsel may file with the trial court a pretrial ex parte confidential request for advance payment of expenses expected to be incurred, which the court must grant if the request is reasonable. Under art. 26.052(h), appointed counsel may present a claim for reimbursement for expenses incurred without prior approval of the court, and the court must order reimbursement for the expenses if they are reasonably necessary and reasonably incurred.

DIGEST: HB 2446 would include certain travel expenses or costs associated with remotely conducting a confidential interview in the reasonable and necessary expenses required to be reimbursed to an attorney appointed to represent an indigent defendant. If a defendant were imprisoned in a correctional facility located more than 50 miles from the court in which the defendant's proceeding was pending, travel to the defendant's location for a confidential interview or any costs associated with remotely conducting an interview with the defendant would be reimbursed.

Expenses incurred with or without prior court approval under the bill would be reimbursed in the manners provided for under Code of Criminal Procedure arts. 26.052(f), (g), and (h).

The bill would take effect September 1, 2021, and would apply only to expenses incurred on or after that date.

SUPPORTERS SAY: HB 2446 would help to ensure that individuals incarcerated in jails outside of the trial court county still received adequate representation by reimbursing appointed counsel for expenses incurred in communications with clients held more than 50 miles from the trial court.

As of March 1, 2021, there were nearly 2,000 individuals in Texas detained in jails outside the county where their case would be tried, which has resulted in substantial out-of-pocket costs for appointed attorneys who either must drive long distances to out-of-county jails or pay substantial fees to talk on the phone to communicate with clients. Currently, there are differences across the state in how and whether counties reimburse appointed attorneys for these communications expenses. The bill's requirements for reimbursement would incentivize appointed attorneys to communicate with and visit clients placed in out-of-county jails.

The bill would impose no costs to the state and would ensure that an individual's right to counsel was not negatively impacted by distance and a lack of funding.

**CRITICS
SAY:**

HB 2446 could lead to an increase in court-appointed attorney expenses, costing counties more money for what is already a significant cost.