

BILL ANALYSIS

H.B. 3152
By: Escobar
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Current law provides that a person accused of a crime is entitled to be represented by an attorney. The right to counsel also is protected by the Texas and United States Constitutions, and the scope of the right is informed by those constitutional guarantees. A defendant may waive the right to counsel, but that waiver is valid only if it is knowingly and voluntarily made.

Although current law recognizes the right to counsel, it does not adequately or expressly prohibit some long-standing practices utilized in Texas that produce invalid waivers of counsel. It does not proscribe prosecutorial and judicial practices that tend to produce invalid waivers and that jeopardize the finality of criminal convictions obtained subject to such waivers. H.B. 3152 codifies practices necessary to ensure that waivers of the right to counsel are effective and validly obtained.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 3152 amends the Criminal Procedure Code relating to the right to counsel and waivers of counsel. In order to ensure that waivers of the right to counsel are knowingly and voluntarily made, the proposed bill requires judges to inform defendants of the right to counsel and to provide a reasonable opportunity to obtain counsel before they may direct or encourage a defendant to communicate directly with an attorney for the state. The bill also prohibits judges from attempting to elicit a waiver of a defendant's right to counsel after the defendant has requested appointment of counsel, unless the request for counsel has been denied. H.B. 3152 bars prosecutors from communicating with a defendant who has asserted the right to counsel and from attempting to obtain a waiver of a defendant's right to counsel, in a manner consistent with Texas Disciplinary Rule of Professional Conduct 3.09.

EFFECTIVE DATE

September 1, 2005.