

BILL ANALYSIS

C.S.H.B. 1178
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law provides that a person accused of a crime is entitled to be represented by an attorney. Current law also provides that a defendant may waive the right to counsel if the waiver is intelligent and voluntary. Current law provides limited guidance on procedures under which waivers of the right to counsel may be legitimately obtained. The provisions in current statute do not adequately ensure that valid counsel waivers are obtained when indigent defendants fail to retain private counsel after attempting to do so. Current law also fails to adequately prohibit specific communications by prosecutors and judges that tend to undermine the validity of waivers of the right to counsel, including communications with defendants for whom a request for counsel is pending or has recently been denied. In order to provide additional meaningful protections for the right to counsel in criminal proceedings and to ensure the validity of convictions obtained subject to waivers of the right to counsel, this bill seeks to clarify the circumstances under which a court may or may not obtain from a defendant a waiver of the right to counsel and under which an attorney representing the state may or may not communicate with a defendant who is not represented by counsel.

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

C.S.H.B. 1178 amends the Code of Criminal Procedure to provide that when an indigent defendant who has refused appointed counsel in order to retain private counsel appears without counsel after having been given the opportunity to retain counsel, the court is authorized to proceed with the matter on ten days' notice to the defendant of a dispositive setting after the court gives the defendant a reasonable opportunity to request appointment of counsel. Or, if the defendant chooses not to request appointment of counsel, the court may proceed with the matter on ten days' notice to the defendant of a dispositive setting after obtaining a waiver of the right to counsel pursuant to Article 1.051(f) and (g), Code of Criminal Procedure.

The bill also provides that a waiver of the right to counsel is presumed to be invalid if it is obtained in violation of the following in any adversary judicial proceeding that may result in punishment by confinement:

- The state's attorney is not authorized to initiate or encourage an attempt to obtain from a defendant who lacks counsel a waiver of the right to counsel;
- The state's attorney is not authorized to communicate with a defendant who has requested the appointment of counsel, unless the court or the authorized court's designee has denied the request and, subsequent to the denial, the defendant has been given a reasonable opportunity to retain and has failed to retain private counsel or the defendant waives or has waived the opportunity to retain private counsel;
- The court is not authorized to direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request counsel. If the defendant has requested appointed counsel, the court is not authorized to direct or encourage the defendant to communicate with the attorney representing the state unless the court or the authorized court's designee has denied the request and, subsequent to the denial, the defendant has been given a

reasonable opportunity to retain and has failed to retain counsel or the defendant waives or has waived the opportunity to retain private counsel.

C.S.H.B. 1178 also provides that for purposes of entering a guilty plea or proceeding to trial for a defendant who wishes to waive the right to counsel, the court is required to advise the defendant of the nature of the charges against the defendant. The court also is required to advise the defendant of the dangers and disadvantages of self-representation if the defendant is proceeding to trial. The bill also changes the content of the court's form which is required to be provided to a defendant who voluntarily and intelligently waives a right to counsel, by deleting the words, "trial of the charge," and replacing them with "case."

The bill also states that the presiding judge or magistrate may not order the accused to be rearrested or require the accused to give another bond in a higher amount because the accused withdraws a waiver of the right to counsel or requests the assistance of appointed or retained counsel. Finally, the bill replaces gender-specific language with gender-neutral language.

Makes application of this Act prospective.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 1178 amends the caption to clarify that the bill relates to procedures applicable to waivers of the right to counsel in certain adversary judicial proceedings that may result in punishment by confinement. The original caption did not state that the bill pertains to proceedings that may result in punishment by confinement.

The substitute clarifies that a waiver of the right to counsel is invalid if it is obtained in violation of certain provisions, rather than if it is obtained following a violation of certain provisions, as stated in the original. The substitute further clarifies that in an adversary judicial proceeding that may result in punishment by confinement, the state's attorney is not authorized to communicate with a defendant who has requested the appointment of counsel nor is the court authorized to direct or encourage the defendant to communicate with the state's attorney, unless the court or the court's authorized designee has denied the request and, subsequent to the denial, the defendant has been given a reasonable opportunity to retain and has failed to retain private counsel or waives or has waived the opportunity to retain private counsel. The original did not explicitly provide that the state's attorney can communicate with a defendant whose request for appointed counsel has been denied if the defendant has failed to retain private counsel after being given a reasonable opportunity to do so or if the defendant waives or has waived the opportunity to retain counsel.

The substitute further clarifies that the court's warning on the dangers and disadvantages of self-representation is required to be given only to defendants who will be proceeding to trial. The substitute removes the change in the original bill that stated that a defendant may withdraw a waiver of the right to counsel at any time without penalty.

The substitute adds another section and states that the presiding judge or magistrate is not authorized to order the accused to be rearrested or require the accused to give another bond in a higher amount because the accused withdraws a waiver of the right to counsel or requests the assistance of appointed or retained counsel.