

SUBJECT: Waiver of jury trial without an attorney for fine-only offenses

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Place, Talton, Farrar, Greenberg, Nixon, Pickett, Pitts, Solis
0 nays
1 absent — Hudson

WITNESSES: For — None
Against — None
On — Robert Kepple, Texas District and County Attorneys Association

BACKGROUND: Code of Criminal Procedure art. 1.13(c) requires that a criminal defendant have an attorney before agreeing to waive a jury trial.

DIGEST: HB 308 would amend Code of Criminal Procedure art. 1.1.3(c) to allow defendants accused of an offense punishable by fine only to waive the right to trial by jury without being represented by an attorney. HB 308 would apply to any trial that occurred on or after the bill's effective date, September 1, 1995.

SUPPORTERS SAY: Defendants charged with an offense subject to punishment by fine only — a traffic offense or Class C misdemeanor, for instance — are not entitled under current law to have a court-appointed attorney to represent them. However, several recent court decisions have created some uncertainty as to whether counsel must be provided to a defendant before that defendant may waive the right to a jury. HB 308 would alleviate confusion and reasonably specify that a defendant need not have a lawyer when waiving the right to a jury for very minor offenses.

The 14th Court of Appeals already has ruled in *Huynh v. City of Houston*, 874 S.W.2d 184 (Tex. App. — Houston [14th. Dist.] 1994) that counsel is not required before a defendant can waive a right to trial for offenses punishable by fine only. The ruling followed two other court rulings —

State v. Carr, 847 S.W.2d 561 (Tex. Crim. App. 1992) and *Townsend v. State*, 865 S.W.2d 469 (Tex. Crim. App. 1993) — holding that a defendant must be advised by counsel before waiving a right to a jury trial in misdemeanor cases. Both of these cases, however, involved offenses punishable by fine *and* imprisonment. HB 308 would clear up any doubts concerning the applicability of art. 1.13 to offenses punishable by fine only.

The bill would not undermine the basic right to a trial by jury, and would pertain only to the procedure of agreeing to the waiver. At least one court of appeals has already found that representation by counsel is not necessary when waiving the right to trial by jury. HB 308 would merely codify that ruling.

OPPONENTS
SAY:

While this bill would not limit the defendant's right to a trial by jury, a defendant who does not have an attorney might not realize precisely what they are doing when waiving that right. Requiring an attorney to inform them that they could have a jury and how that might be important is an essential part to the right to trial by jury, even for fine-only offenses.