

SUBJECT: Waiving jury trial without attorney's advice in misdemeanor cases

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Place, Talton, Dunnam, Galloway, Hinojosa, Keel,
0 nays
3 absent— Farrar, Nixon, A. Reyna

WITNESSES: For — Judge David Hodges; Sherri Wallace, Dallas County Criminal District Attorney's office
Against — None
On — W.C. Kirkendall, Texas District & County Attorneys Association

BACKGROUND : Article 1.13(c) of the Code of Criminal Procedure requires that a defendant be represented by an attorney before a court can grant a request to waive a trial by jury.

DIGEST: HB 515 would allow defendants in misdemeanor cases to waive a jury trial without being represented by an attorney.
The bill would take effect September 1, 1997, and apply only to trials for offenses committed on or after the effective date.

SUPPORTERS SAY: HB 515 would clarify some confusion about current law. The requirement that a defendant be represented by an attorney before waiving a jury trial was intended to apply only to felony cases, but has been interpreted to apply to misdemeanor cases as well. This interpretation clearly conflicts with another provision in the Code of Criminal Procedure that specifically allows *either* defendants in misdemeanor case *or* their attorneys to waive a jury trial. Under this provision, many courts have not appointed attorneys before allowing defendants in misdemeanor cases to waive their right to a jury trial. These conflicting interpretations pose a real danger that thousands of convictions could be rendered void because defendants in misdemeanor cases waived jury trials without representation.

This bill does not raise constitutional issues; the law has never required that each and every defendant accused of a misdemeanor be represented by an attorney before waiving a jury trial. HB 515 would save taxpayers the considerable expense of paying for court-appointed attorneys in every misdemeanor case.

OPPONENTS
SAY:

Our judicial system guarantees a right to due process. Regardless of whether a charge involves a misdemeanor or felony, defendants may be confused by the legal process and jeopardize their rights by agreeing to something they do not understand. Waiving a jury trial without adequate counsel can have serious consequences — conviction of a class A misdemeanor can mean as much as a year in jail and a \$4,000 fine. The courts should at least be allowed some discretion in deciding whether defendants in misdemeanor cases are competent to waive a trial by jury without legal advice.

NOTES:

The companion bill, SB 261 by Sibley, was reported favorably without amendment from the Senate Jurisprudence Committee on February 18.