

- SUBJECT:** Restricting prosecutors from encouraging waiver of right to counsel
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 7 ayes — Keel, Riddle, Denny, Escobar, Pena, Raymond, Reyna
0 nays
2 absent — Hodge, P. Moreno
- WITNESSES:** For — Raman Gill, Texas Appleseed; Dominic Gonzales, Texas Criminal Justice Coalition/Equal Justice Center; Ana Yanez- Correa, National LULAC; David Gonzalez
Against — None
- BACKGROUND:** Individuals have a constitutional right to counsel in all adversarial judicial proceedings. At trial and appellate stages, and in habeas corpus proceedings, indigent defendants have the right to have counsel appointed in any adversarial judicial proceeding that may result in confinement.
- DIGEST:** HB 3152 would amend Code of Criminal Procedure, art. 1.051, to prohibit prosecutors from encouraging or initiating a defendant's waiver of the right to counsel. In addition, state attorneys could not communicate with an indigent defendant who had requested the appointment of counsel unless the court had denied the request.
- A court could not ask a defendant to communicate with the state's attorney until the court advised the defendant of the right to counsel and how to obtain counsel and the defendant had been given a reasonable opportunity to do so. If an indigent defendant had requested counsel, a court could not encourage the defendant to speak with the state's attorney unless the defendant's request for appointed counsel had been denied.
- A defendant's waiver obtained in violation of these rules would be presumed invalid.
- The bill would take effect on September 1, 2005.

**SUPPORTERS
SAY:**

In many counties, a defendant charged with a misdemeanor is instructed to meet with the prosecutor before retaining or having counsel appointed. Prosecutors and courts frequently will discourage a defendant from seeking counsel in order to expedite their docket. For example, defendants are told that they can resolve their case more quickly if they do not speak with an attorney, or a prosecutor will threaten to increase a defendant's punishment if the defendant chooses to get an attorney. Not realizing that the prosecutor represents the state, the defendant will rely on the prosecutor for legal advice or reveal information that may later be used against the defendant.

HB 3152 would eliminate this practice by requiring an unrepresented defendant to knowingly and voluntarily waive the right to counsel before speaking with a prosecutor, unless the judge denied this request. When law enforcement can coerce a defendant to give up the right to counsel based on false information, this renders the constitutional right meaningless. It can result in unnecessarily harsh sentencing and guilty pleas from those who are innocent. This is unfair to defendants and lowers the public confidence in the administration of justice.

HB 3152 would set out a process that would be achievable, enabling courts to run efficiently while ensuring the defendants their constitutional rights. The bill would ensure that a defendant was granted basic protections required by the U.S. and Texas Constitutions.

While the bill might decrease somewhat the efficiency of the current system, the need to protect basic constitutional rights should trump efficiency. Moreover, according to the Legislative Budget Board, this bill would not increase costs to the state. HB 3152 might save money in the long run because individuals would be less likely to serve unnecessarily long jail sentences due to uncounseled guilty pleas.

**OPPONENTS
SAY:**

The bill unnecessarily would clog courts and increase costs to counties by delaying pleas and requiring more court-appointed lawyers.

HB 3152 would eliminate many efficient and effective pre-trial diversion programs. For instance, in Harris County, a defendant charged with writing a hot check can simply go to the district attorney's office, sign up for deferred adjudication, and pay off fines through a clerk. The procedure is convenient for the defendant and speeds up the administration of justice.

To participate in this program a defendant must first waive the right to counsel. This bill would eliminate the efficiency of this program by requiring the defendant to see a judge before participating or by appointing an attorney to each defendant.

NOTES:

The companion bill, SB 1083 by Ellis, has been referred to the Criminal Justice Committee.