

BILL ANALYSIS

Senate Research Center

H.B. 3152
By: Escobar (Ellis)
Criminal Justice
5/18/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

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

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 1.051, Code of Criminal Procedure, by amending Subsections (f) and (g) and adding Subsections (a-1) and (a-2), as follows:

(a-1) Prohibits the attorney for the state in a criminal case from initiating or encouraging an attempt to obtain from an unrepresented defendant a waiver of the right to counsel or from communicating with a defendant who has requested the appointment of counsel unless the court or the court's designee authorized under Article 26.04 (Procedures for Appointing Counsel) to appoint counsel for indigent defendants in the county has denied the request.

(a-2) Prohibits the court from directing or encouraging the defendant to communicate with the attorney for the state until the court advises the defendant of the right to counsel and the procedure for obtaining counsel and the defendant has been given a reasonable opportunity to obtain counsel. Prohibits the court, if the defendant has requested appointed counsel, from directing or encouraging the defendant to communicate with the attorney for the state unless the court or the court's designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county has denied the request.

(f) Makes a conforming change.

(g) Requires the court, if a defendant wishes to waive his right to counsel, whether for purposes of entering a guilty plea or proceeding to trial, to advise him of the dangers and disadvantages of self-representation. Makes conforming changes.

SECTION 2. Effective date: September 1, 2005.