

BILL ANALYSIS

Senate Research Center
80R9909 JPL-F

H.B. 1178
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Criminal Justice
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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. Current law also provides that a defendant may waive the right to counsel if the waiver is voluntarily and intelligently made, but provides limited guidance on the procedures by which a waiver is made. In addition, current statutes fail to adequately prohibit specific communications by prosecutors and judges that undermine the validity of a waiver of the right to counsel, including communications with defendants for whom a request for counsel is pending or has recently been denied.

H.B. 1178 clarifies the circumstances under which a court is authorized to obtain from a defendant a waiver of the right counsel and under which an attorney representing the state is authorized to communicate with a defendant who is not represented by counsel.

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 (e), (f), and (g) and adding Subsections (f-1) and (f-2), as follows:

(e) Authorizes the court, on 10 days' notice to a defendant of a dispositive setting, to proceed with a matter without securing a written waiver or appointing counsel if a nonindigent defendant appears without counsel at a proceeding after having been given a reasonable opportunity to retain counsel. Authorizes the court, after giving the defendant a reasonable opportunity to request appointment of counsel or, if the defendant elects not to request appointment of counsel, after obtaining a waiver of the right to counsel pursuant to Subsections (f) and (g), to proceed with the matter on 10 days' notice to the defendant of a dispositive setting, if an indigent defendant who has refused appointed counsel in order to retain private counsel appears without counsel after having been given an opportunity to retain counsel.

(f) Provides that a waiver of the right to counsel obtained in violation of Subsection (f-1) or (f-2) is presumed invalid.

(f-1) Prohibits the attorney representing the state, in any adversary judicial proceeding that may result in punishment by confinement, from initiating or encouraging an attempt to obtain from a defendant who is not represented by counsel a waiver of the right to counsel, or communicating with a defendant who has requested the appointment of counsel 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 and, subsequent to the denial, the defendant has been given a reasonable opportunity to retain, and failed to retain, private counsel or waives or has waived the opportunity to retain private counsel.

(f-2) Prohibits the court, in any adversary judicial proceeding that may result in punishment by confinement, from directing or encouraging 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 appointed counsel. Prohibits the court from directing or encouraging the defendant, if the defendant has requested appointed counsel, from communicating with the attorney representing 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, 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.

(g) Requires the court to advise a defendant, if the defendant wishes to waive the right to counsel, whether for purposes of entering a guilty plea or proceeding to trial, of the nature of the charges against the defendant and the dangers and disadvantages of self-representation if the defendant is proceeding to trial. Sets forth the form of the statement to be filed with and become part of the record of the proceedings if the court determines that the waiver is voluntarily and intelligently made. Makes nonsubstantive changes.

SECTION 2. Amends Article 17.09, Code of Criminal Procedure, by adding Section 4, as follows:

Sec. 4. Prohibits a judge or magistrate in whose court a criminal action is pending, notwithstanding any other provision of this article, from ordering 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 counsel, appointed or retained.

SECTION 3. (a) and (b) Makes application of Articles 1.051(e) and (f), Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 4. Effective date: September 1, 2007.