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FACT SHEET

Support H.B. 1178 (Escobar)

ENSURE DEFENDANTS ARE INFORMED ABOUT THEIR RIGHT TO A LAWYER IN CRIMINAL CASES

Texas has made significant improvements to its statewide indigent defense practices since the Fair Defense Act (SB 7) was passed in 2001. However, in many courts the following practices prevent defendants from making informed decisions about whether to seek the assistance of a lawyer:

- Defendants in some counties are required to talk to prosecutors before they are told about the right to counsel or before they have an opportunity to request counsel.
- Defendants in some counties are told that they have a right to a lawyer in a jury trial, but they are not informed that they have a right to counsel during plea negotiations, during arraignment, or at sentencing.
- In some counties, jail and court officials refuse to answer questions about how to apply for a court appointed lawyer, or they refuse to give defendants applications for appointed counsel when defendants specifically request them.
- In some counties, courts delay rulings on requests for appointed lawyers. Even after a defendant has tried to assert the right to a lawyer, these counties direct or encourage defendants to enter into plea negotiations with prosecutors.

The public perception of fairness in the criminal justice system was one of the key reasons the U.S. Supreme Court required states to appoint lawyers to defend indigent people accused of crime in the landmark case of *Gideon v. Wainwright*. The perception of fairness in Texas courts is severely compromised by practices that prevent people from accessing the right to counsel.

Defendants who are subjected to these practices may be convinced to plead guilty to offenses they did not commit because they do not understand how to challenge the charges against them without the assistance of counsel. These practices also create the risk that cases where the defendant was factually guilty could be overturned because the conviction was illegally obtained, jeopardizing public safety.

The purpose of HB 1178 is to ensure that defendants facing jail time understand that they have a right to a lawyer and have a reasonable opportunity to request the assistance of a defense lawyer before they talk to a prosecutor about the facts of their case and/or agree to a plea bargain. The bill also changes current law to ensure that defendants can try to hire a lawyer on their own without losing the opportunity to request appointed counsel if it turns out that they cannot afford to hire a lawyer.

The implementation of HB 1178 will not force, or even encourage, any defendant to get a lawyer. Defendants still have the right to proceed in their cases without counsel. The bill simply ensures that defendants receive the information they need to make intelligent decisions about whether to request or waive counsel.

The Legislature unanimously passed similar legislation in 2005, but HB 3152 was vetoed due to concerns that it would impact traffic court proceedings. HB 1178 resolves those concerns, by applying *only* to cases before county and district courts in which defendants are facing confinement in jail.