

- SUBJECT:** Allowing defendants to appear by counsel in class C misdemeanor cases
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 9 ayes — Keel, Riddle, Ellis, Denny, Dunnam, Hodge, P. Moreno, Pena, Talton
0 nays
- WITNESSES:** For — Fernando Trevino
Against — Barry Macha; Bennett Sandlin, Texas Municipal League
On — W. Clay Abbott; Shannon Edmonds, Texas District and County Attorneys Association
- BACKGROUND:** Code of Criminal Procedure, sec. 33.04, states that in class C misdemeanor cases, the defendant may appear by counsel and the trial may proceed without the defendant's presence, if the prosecutor agrees.

A class C misdemeanor carries a maximum fine of \$500. Included in this category are most traffic offenses, assault by contact, possession of tobacco products by a minor, driving under the influence of alcohol by a minor, and theft of less than \$50, among others.

Code of Criminal Procedure, sec. 45.020, which applies to justice and municipal courts, states that the defendant has a right to appear by counsel as in all other cases and does not specify that the prosecutor must agree to the defendant's absence.
- DIGEST:** CSHB 207 would amend Code of Criminal Procedure, sec. 33.04, to allow a defendant in a class C misdemeanor case to appear by counsel and for the trial to proceed without the defendant's presence, if the defendant's counsel stipulated to the identity of the defendant. It would eliminate the requirement of consent by the state's attorney.

The bill would take effect on September 1, 2003, and would apply only to proceedings that commenced on or after the effective date.

**SUPPORTERS
SAY:**

CSHB 207 would allow a defendant to appear by counsel in a class C misdemeanor case without the state's consent. Defendants should be entitled to waive their right to be present at trial. They are the ones giving up the right to confront and cross-examine witnesses and they, not prosecutors, should make the choice about whether to appear. Because class C misdemeanors are not punishable by jail, choosing not to appear in person would not infringe on the constitutional rights of defendants.

The bill would ensure that defendants could exercise their right to a jury trial within the constraints of their busy lives. It is burdensome for defendants to miss work to spend the day at municipal or justice court for multiple court settings, and many defendants pay tickets to avoid the inconvenience even if they feel that they are innocent.

CSHB 207 would help municipal and justice courts dispose of cases. Under current law, when defendants do not appear for trial, their cases continue to clog the court's docket. The number of actual trials probably would not increase because most cases settle on the day of trial. Even if the number of trials did increase under CSHB 207, the cases could be tried quickly, in part because there would be one less person present in the courtroom to bog down the proceedings.

CSHB 207 would not harm the state. Requiring the defense attorney to stipulate to the identity of the defendant would ensure that prosecutors could prove the case without the defendant being present. Furthermore, prosecutors would benefit because juries likely would hold the absence of defendants against them and could assess the maximum fine against them in the event of a guilty verdict.

Many defendants, not just wealthy ones, would benefit from this bill because everyone has the right to an attorney and it is not prohibitively expensive to hire a lawyer for a class C misdemeanor case. For most, missing a day of work to appear in court would be more costly than paying a defense lawyer to appear on their behalf.

HB 207 would clarify the discrepancy under current law between Code of Criminal Procedure, sec. 45, which governs justice and municipal courts, and sec. 33, which establishes trial procedures for all criminal cases. There would

be no doubt that the defendant did not have to appear in a class C misdemeanor case regardless of whether the prosecutor agreed. Some justices of the peace and magistrates have used sec. 33 to require the defendant's presence for pre-trial motions, and HB 207 also would prevent that practice from occurring.

Defense attorneys, like prosecutors and judges, do not want to waste time. In the unlikely event that a defendant passed away prior to trial, the defense attorney would have no reason to proceed. Finally, CSHB 207 would encourage prosecutors to dismiss frivolous cases because they would have to prove the case rather than banking on the defendant failing to appear.

OPPONENTS
SAY:

It would be unfair to allow a defendant to contest a class C misdemeanor without being present for a trial, especially when jurors, the judge, and the prosecutor all have to be there. Jurors should not have to take time out of their busy schedules to hear a traffic case when the defendant does not care enough about it even to show up, nor should taxpayers have to pay for the jury trial. This problem would be compounded because a defendant who was found guilty in justice or municipal court could appeal to county court and have a new trial, which would inconvenience a second jury. The defendant, however, would not have to appear for either trial. The prosecutor at least should continue to have a say in determining whether a defendant has a legitimate reason for not appearing.

CSHB 207 unfairly would benefit wealthy defendants, who could hire a lawyer and wash their hands of the case, while poor defendants still would have to miss work and other functions to appear in court for their trial. Defense attorneys who handle a high volume of traffic cases would be the ones to benefit under this bill, not defendants, most of whom cannot afford an attorney.

A defense attorney who had lost all contact with the defendant still could insist on a jury trial, which could lead to some absurd results. For example, a defendant might be dead but the defense attorney still could proceed without the defendant's presence.

The practical effect of CSHB 207 would be to overwhelm justice and municipal dockets. Requiring the defendant to appear helps limit requests for

trial, a trend that this bill would reverse. Defense attorneys would set cases for trial hoping that the prosecution witnesses would not appear, forcing the state to dismiss the case.

NOTES: HB 207 as introduced would not have required defense attorneys to stipulate to the identity of the defendant.

SB 867 by Wentworth, the companion bill, is scheduled to be heard in the Senate Criminal Justice Committee on April 8.