

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 107
By: Phillips et al. (Seliger)
Criminal Justice
5/15/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Section 42.14 (In Absence of Defendant), Code of Criminal Procedure, currently allows for the sentencing in absentia of defendants in certain misdemeanor cases. There is currently no provision to allow felony cases to be processed in absentia when the defendant is incarcerated. If a defendant is already incarcerated, the plea, judgment, and sentence for a felony case should be allowed to be rendered without the presence of the incarcerated defendant, if that defendant so agrees. This bill would amend the Code of Criminal Procedure relating to the rendering of a judgment and sentence in the absence of certain defendants charged with certain felonies. This bill would also allow a sentence to be rendered in the absence of a defendant imprisoned in a penal institution under certain conditions. Such a process would save the state time and money while also allowing inmates to start serving simultaneous sentences earlier.

C.S.H.B. 107 relates to allowing certain criminal proceedings in the absence of certain defendants.

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 Chapter 27, Code of Criminal Procedure, by adding Article 27.19, as follows:

Art. 27.19. PLEA BY CERTAIN DEFENDANTS. (a) Requires a court, notwithstanding any other provision of this code, to accept a plea of guilty or nolo contendere from a defendant who is confined in a penal institution if the plea is made:

(1) in accordance with the procedure established by Article 27.18 (Plea or Waiver of Rights by Closed Circuit Video Teleconferencing); or

(2) in writing before the appropriate court having jurisdiction in the county in which the penal institution is located, provided that the defendant is notified by the court of original jurisdiction of the right to counsel and to procedures for requesting appointment of counsel, and is provided a reasonable opportunity to request a court-appointed lawyer; if the defendant elects to proceed without counsel, the defendant is required to waive the right to counsel in accordance with Article 1.051 (Right to Representation by Counsel); if the defendant has counsel, the defendant is required to waive the right to be present at the taking of the plea or to have counsel present; and, if the defendant is charged with a felony, judgment and sentence are rendered in accordance with the conditions and the procedure established by Article 42.14(b).

(b) Defines "penal institution."

SECTION 2. Amends Article 42.14, Code of Criminal Procedure, as follows:

Art. 42.14. IN ABSENCE OF DEFENDANT. (a) Authorizes the judgment and sentence, in a misdemeanor case, to be rendered in the absence of the defendant. Makes a nonsubstantive change.

(b) Authorizes the judgment and sentence, in a felony case, to be rendered in the absence of the defendant only if:

(1) the defendant is confined in a penal institution;

(2) the defendant is not charged with a felony offense that is listed in Section 3g(a)(1) (relating to the provisions of Section 3 not applying to certain individuals), Article 42.12 (Community Supervision), or for which it is alleged that a deadly weapon was used or exhibited during the commission of the offense or during immediate flight from the commission of the offense and the defendant used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited;

(3) the defendant in writing before the appropriate court having jurisdiction in the county in which the penal institution is located waives the right to be present at the rendering of the judgment and sentence or to have counsel present; affirms that the defendant does not have anything to say as to why the sentence should not be pronounced and that there is no reason to prevent the sentence under Article 42.07 (Reasons to Prevent Sentence); states that the defendant has entered into a written plea agreement with the attorney representing the state in the prosecution of the case; and requests the court to pronounce sentence in the case in accordance with the plea agreement;

(4) the defendant and the attorney representing the state in the prosecution of the case have entered into a written plea agreement that is made a part of the record in the case; and

(5) sentence is pronounced in accordance with the plea agreement.

(c) Authorizes a judgment and sentence to be rendered under this article in the absence of the defendant only after the defendant is notified by the court of original jurisdiction of the right to counsel and the defendant requests counsel or waives the right to counsel in accordance with Article 1.051.

(d) Defines "deadly weapon" and "penal institution."

(e) Authorizes the attorney representing the state, if a defendant enters a plea of guilty or nolo contendere under Article 27.19, to request at the time the plea is entered that the defendant submit a fingerprint of the defendant suitable for attachment to the judgment. Requires the county in which the defendant is confined, on request for a fingerprint under this subsection, to obtain a fingerprint of the defendant and use first-class mail or other means acceptable to the attorney representing the state and the county to forward the fingerprint to the court accepting the plea.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2009.