

SUBJECT: Use of notary to waive right to certain probation revocation hearings

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Herrero, Moody, Canales, Hunter, Shaheen, Simpson

0 nays

1 absent — Leach

WITNESSES: For: — (*Registered, but did not testify*: Seth Mitchell, Bexar County Commissioners Court; Mark Mendez, Tarrant County Commissioners Court; John Dahill, Texas Conference of Urban Counties)

BACKGROUND: Code of Criminal Procedure, Art. 42.12, sec. 21 establishes the procedures for hearings for individuals accused of violating a condition of community supervision (probation). A judge may revoke the community supervision of a defendant who is incarcerated in a penal institution without holding a hearing if certain conditions are met. Defendants must, in writing and before a court where they are imprisoned, waive their right to a hearing and to counsel, affirm that they have nothing to say as to why their probation should not be revoked, and request the judge to revoke their probation.

DIGEST: HB 518 would allow offenders incarcerated in a penal institution to use a notary public to waive their right to a probation revocation hearing and to counsel.

The bill would take effect September 1, 2015.

SUPPORTERS SAY: HB 518 is needed to provide another way for those in correctional facilities to waive their right to a hearing and to counsel when accused of violating their probation.

When a defendant on probation is incarcerated, the hearing to revoke probation is often a formality. Still, to waive this hearing, the defendant

must be transported to a court to sign a waiver, which is unnecessary and puts a burden on the correctional facility and the county where the court is located. It also can be against the wishes of defendants who may not want to disrupt their routine or rehabilitation programs to be transported to a court.

HB 518 would provide a more efficient alternative by allowing defendants to waive the hearing in front of a notary public. Many correctional facilities have a notary on staff so offenders could waive their hearing without leaving the facility. Offenders' rights would be protected by standard remedies available for such proceedings, and the choice of using a notary or a court appearance to waive a probation hearing would remain entirely with the offender.

**OPPONENTS
SAY:**

HB 518 could put some defendants at risk of waiving their rights without proper information, and court appearances could help preserve that protection.