

By: Escobar, Hodge

H.B. No. 3152

A BILL TO BE ENTITLED

1 AN ACT

2 relating to procedures applicable to waivers of the right to
3 counsel.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Article 1.051, Code of Criminal Procedure, is
6 amended by amending Subsections (f) and (g) and adding Subsections
7 (a-1) and (a-2) to read as follows:

8 (a-1) The attorney for the state in a criminal case may not:

9 (1) initiate or encourage an attempt to obtain from an
10 unrepresented defendant a waiver of the right to counsel; or

11 (2) communicate with a defendant who has requested the
12 appointment of counsel unless the court or the court's designee
13 authorized under Article 26.04 to appoint counsel for indigent
14 defendants in the county has denied the request.

15 (a-2) The court may not direct or encourage the defendant to
16 communicate with the attorney for the state until the court advises
17 the defendant of the right to counsel and the procedure for
18 obtaining counsel and the defendant has been given a reasonable
19 opportunity to obtain counsel. If the defendant has requested
20 appointed counsel, the court may not direct or encourage the
21 defendant to communicate with the attorney for the state unless the
22 court or the court's designee authorized under Article 26.04 to
23 appoint counsel for indigent defendants in the county has denied
24 the request.

1 (f) A defendant may voluntarily and intelligently waive in
2 writing the right to counsel. A waiver obtained in violation of
3 Subsection (a-1) or (a-2) is presumed invalid.

4 (g) If a defendant wishes to waive his right to counsel,
5 whether for purposes of entering a guilty plea or proceeding to
6 trial, the court shall advise him of the dangers and disadvantages
7 of self-representation. If the court determines that the waiver is
8 voluntarily and intelligently made, the court shall provide the
9 defendant with a statement substantially in the following form,
10 which, if signed by the defendant, shall be filed with and become
11 part of the record of proceedings:

12 "I have been advised this _____ day of _____,
13 [~~19~~] 20, by the (name of court) Court of my right to
14 representation by counsel in the case [~~trial of the~~
15 ~~charge~~] pending against me. I have been further
16 advised that if I am unable to afford counsel, one will
17 be appointed for me free of charge. Understanding my
18 right to have counsel if I am not financially able to
19 employ counsel, I wish to waive that right and request
20 the court to proceed with my case without an attorney
21 being appointed for me. I hereby waive my right to
22 counsel. (signature of defendant)"

23 SECTION 2. This Act takes effect September 1, 2005.