

By: Escobar

H.B. No. 3152

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

(a-2) The court may not direct or encourage the defendant to communicate with the attorney for the state until the court advises the defendant of the right to counsel and the procedure for obtaining counsel and the defendant has been given a reasonable opportunity to obtain counsel. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney for the state unless the court or the court's designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county has denied 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 the 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 appointed for me free of charge
19 if I am not financially able to employ counsel, I wish
20 to waive that right and request the court to proceed
21 with my case without an attorney being appointed for
22 me. I hereby waive my right to counsel. (signature of
23 defendant)"

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