

By: Ellis

S.B. No. 1083

A BILL TO BE ENTITLED

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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 proceedings:

12 "I have been advised this \_\_\_\_\_ day of \_\_\_\_\_, [~~19~~] 20,  
13 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.