

By: Escobar, McClendon

H.B. No. 1178

A BILL TO BE ENTITLED

1 AN ACT

2 relating to procedures applicable to waivers of the right to  
3 counsel in certain adversary judicial proceedings that may result  
4 in punishment by confinement.

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

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

9 (e) An appointed counsel is entitled to 10 days to prepare  
10 for a proceeding but may waive the preparation time with the consent  
11 of the defendant in writing or on the record in open court. If a  
12 nonindigent defendant [~~or an indigent defendant who has refused~~  
13 ~~appointed counsel in order to retain private counsel~~] appears  
14 without counsel at a proceeding after having been given a  
15 reasonable opportunity to retain counsel, the court, on 10 days'  
16 notice to the defendant of a dispositive setting, may proceed with  
17 the matter without securing a written waiver or appointing counsel.  
18 If an indigent defendant who has refused appointed counsel in order  
19 to retain private counsel appears without counsel after having been  
20 given an opportunity to retain counsel, the court, after giving the  
21 defendant a reasonable opportunity to request appointment of  
22 counsel or, if the defendant elects not to request appointment of  
23 counsel, after obtaining a waiver of the right to counsel pursuant  
24 to Subsections (f) and (g), may proceed with the matter on 10 days'

1 notice to the defendant of a dispositive setting.

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

5 (f-1) In any adversary judicial proceeding that may result  
6 in punishment by confinement, the attorney representing the state  
7 may not:

8 (1) initiate or encourage an attempt to obtain from a  
9 defendant who is not represented by counsel a waiver of the right to  
10 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 and, subsequent to  
15 the denial, the defendant:

16 (A) has been given a reasonable opportunity to  
17 retain and has failed to retain private counsel; or

18 (B) waives or has waived the opportunity to  
19 retain private counsel.

20 (f-2) In any adversary judicial proceeding that may result  
21 in punishment by confinement, the court may not direct or encourage  
22 the defendant to communicate with the attorney representing the  
23 state until the court advises the defendant of the right to counsel  
24 and the procedure for requesting appointed counsel and the  
25 defendant has been given a reasonable opportunity to request  
26 appointed counsel. If the defendant has requested appointed  
27 counsel, the court may not direct or encourage the defendant to

1 communicate with the attorney representing the state unless the  
2 court or the court's designee authorized under Article 26.04 to  
3 appoint counsel for indigent defendants in the county has denied  
4 the request and, subsequent to the denial, the defendant:

5 (1) has been given a reasonable opportunity to retain  
6 and has failed to retain private counsel; or

7 (2) waives or has waived the opportunity to retain  
8 private counsel.

9 (g) If a defendant wishes to waive the [~~his~~] right to  
10 counsel for purposes of entering a guilty plea or proceeding to  
11 trial, the court shall advise the defendant [~~him~~] of the nature of  
12 the charges against the defendant and, if the defendant is  
13 proceeding to trial, the dangers and disadvantages of  
14 self-representation. If the court determines that the waiver is  
15 voluntarily and intelligently made, the court shall provide the  
16 defendant with a statement substantially in the following form,  
17 which, if signed by the defendant, shall be filed with and become  
18 part of the record of the proceedings:

19 "I have been advised this \_\_\_\_\_ day of  
20 \_\_\_\_\_, 2 ~~[19]~~ \_\_\_\_\_, by the (name of court) Court  
21 of my right to representation by counsel in the case  
22 [~~trial of the charge~~] pending against me. I have been  
23 further advised that if I am unable to afford counsel,  
24 one will be appointed for me free of charge.  
25 Understanding my right to have counsel appointed for  
26 me free of charge if I am not financially able to  
27 employ counsel, I wish to waive that right and request

1 the court to proceed with my case without an attorney  
2 being appointed for me. I hereby waive my right to  
3 counsel. (signature of [~~the~~] defendant)"

4 SECTION 2. Article 17.09, Code of Criminal Procedure, is  
5 amended by adding Section 4 to read as follows:

6 Sec. 4. Notwithstanding any other provision of this  
7 article, the judge or magistrate in whose court a criminal action is  
8 pending may not order the accused to be rearrested or require the  
9 accused to give another bond in a higher amount because the accused:

10 (1) withdraws a waiver of the right to counsel; or

11 (2) requests the assistance of counsel, appointed or  
12 retained.

13 SECTION 3. (a) The change in law made by this Act to Article  
14 1.051(e), Code of Criminal Procedure, applies only to a proceeding  
15 at which an indigent defendant appears without counsel after having  
16 refused appointed counsel if the proceeding occurs on or after the  
17 effective date of this Act. A proceeding at which an indigent  
18 defendant appears without counsel after having refused appointed  
19 counsel that occurs before the effective date of this Act is covered  
20 by the law in effect at the time of the proceeding, and the former  
21 law is continued in effect for that purpose.

22 (b) The change in law made by this Act to Article 1.051(f),  
23 Code of Criminal Procedure, applies only to a waiver of counsel or a  
24 communication with a defendant that occurs on or after the  
25 effective date of this Act. A waiver of counsel or a communication  
26 with a defendant that occurred before the effective date of this Act  
27 is covered by the law in effect at the time the waiver or

1 communication occurred, and the former law is continued in effect  
2 for that purpose.

3 SECTION 4. This Act takes effect September 1, 2007.