

1-1 By: Escobar, McClendon (Senate Sponsor - Ellis) H.B. No. 1178
1-2 (In the Senate - Received from the House April 18, 2007;
1-3 April 19, 2007, read first time and referred to Committee on
1-4 Criminal Justice; May 10, 2007, reported favorably by the
1-5 following vote: Yeas 7, Nays 0; May 10, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to procedures applicable to waivers of the right to
1-9 counsel in certain adversary judicial proceedings that may result
1-10 in punishment by confinement.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Article 1.051, Code of Criminal Procedure, is
1-13 amended by amending Subsections (e), (f), and (g) and adding
1-14 Subsections (f-1) and (f-2) to read as follows:

1-15 (e) An appointed counsel is entitled to 10 days to prepare
1-16 for a proceeding but may waive the preparation time with the consent
1-17 of the defendant in writing or on the record in open court. If a
1-18 nonindigent defendant [~~or an indigent defendant who has refused~~
1-19 ~~appointed counsel in order to retain private counsel~~] appears
1-20 without counsel at a proceeding after having been given a
1-21 reasonable opportunity to retain counsel, the court, on 10 days'
1-22 notice to the defendant of a dispositive setting, may proceed with
1-23 the matter without securing a written waiver or appointing counsel.
1-24 If an indigent defendant who has refused appointed counsel in order
1-25 to retain private counsel appears without counsel after having been
1-26 given an opportunity to retain counsel, the court, after giving the
1-27 defendant a reasonable opportunity to request appointment of
1-28 counsel or, if the defendant elects not to request appointment of
1-29 counsel, after obtaining a waiver of the right to counsel pursuant
1-30 to Subsections (f) and (g), may proceed with the matter on 10 days'
1-31 notice to the defendant of a dispositive setting.

1-32 (f) A defendant may voluntarily and intelligently waive in
1-33 writing the right to counsel. A waiver obtained in violation of
1-34 Subsection (f-1) or (f-2) is presumed invalid.

1-35 (f-1) In any adversary judicial proceeding that may result
1-36 in punishment by confinement, the attorney representing the state
1-37 may not:

1-38 (1) initiate or encourage an attempt to obtain from a
1-39 defendant who is not represented by counsel a waiver of the right to
1-40 counsel; or

1-41 (2) communicate with a defendant who has requested the
1-42 appointment of counsel, unless the court or the court's designee
1-43 authorized under Article 26.04 to appoint counsel for indigent
1-44 defendants in the county has denied the request and, subsequent to
1-45 the denial, the defendant:

1-46 (A) has been given a reasonable opportunity to
1-47 retain and has failed to retain private counsel; or

1-48 (B) waives or has waived the opportunity to
1-49 retain private counsel.

1-50 (f-2) In any adversary judicial proceeding that may result
1-51 in punishment by confinement, the court may not direct or encourage
1-52 the defendant to communicate with the attorney representing the
1-53 state until the court advises the defendant of the right to counsel
1-54 and the procedure for requesting appointed counsel and the
1-55 defendant has been given a reasonable opportunity to request
1-56 appointed counsel. If the defendant has requested appointed
1-57 counsel, the court may not direct or encourage the defendant to
1-58 communicate with the attorney representing the state unless the
1-59 court or the court's designee authorized under Article 26.04 to
1-60 appoint counsel for indigent defendants in the county has denied
1-61 the request and, subsequent to the denial, the defendant:

1-62 (1) has been given a reasonable opportunity to retain
1-63 and has failed to retain private counsel; or

1-64 (2) waives or has waived the opportunity to retain

2-1 private counsel.

2-2 (g) If a defendant wishes to waive the [his] right to
 2-3 counsel for purposes of entering a guilty plea or proceeding to
 2-4 trial, the court shall advise the defendant [him] of the nature of
 2-5 the charges against the defendant and, if the defendant is
 2-6 proceeding to trial, the dangers and disadvantages of
 2-7 self-representation. If the court determines that the waiver is
 2-8 voluntarily and intelligently made, the court shall provide the
 2-9 defendant with a statement substantially in the following form,
 2-10 which, if signed by the defendant, shall be filed with and become
 2-11 part of the record of the proceedings:

2-12 "I have been advised this _____ day of
 2-13 _____, 2 [19] _____, by the (name of court) Court
 2-14 of my right to representation by counsel in the case
 2-15 [~~trial of the charge~~] pending against me. I have been
 2-16 further advised that if I am unable to afford counsel,
 2-17 one will be appointed for me free of charge.
 2-18 Understanding my right to have counsel appointed for
 2-19 me free of charge if I am not financially able to
 2-20 employ counsel, I wish to waive that right and request
 2-21 the court to proceed with my case without an attorney
 2-22 being appointed for me. I hereby waive my right to
 2-23 counsel. (signature of [~~the~~] defendant)"

2-24 SECTION 2. Article 17.09, Code of Criminal Procedure, is
 2-25 amended by adding Section 4 to read as follows:

2-26 Sec. 4. Notwithstanding any other provision of this
 2-27 article, the judge or magistrate in whose court a criminal action is
 2-28 pending may not order the accused to be rearrested or require the
 2-29 accused to give another bond in a higher amount because the accused:

2-30 (1) withdraws a waiver of the right to counsel; or
 2-31 (2) requests the assistance of counsel, appointed or
 2-32 retained.

2-33 SECTION 3. (a) The change in law made by this Act to Article
 2-34 1.051(e), Code of Criminal Procedure, applies only to a proceeding
 2-35 at which an indigent defendant appears without counsel after having
 2-36 refused appointed counsel if the proceeding occurs on or after the
 2-37 effective date of this Act. A proceeding at which an indigent
 2-38 defendant appears without counsel after having refused appointed
 2-39 counsel that occurs before the effective date of this Act is covered
 2-40 by the law in effect at the time of the proceeding, and the former
 2-41 law is continued in effect for that purpose.

2-42 (b) The change in law made by this Act to Article 1.051(f),
 2-43 Code of Criminal Procedure, applies only to a waiver of counsel or a
 2-44 communication with a defendant that occurs on or after the
 2-45 effective date of this Act. A waiver of counsel or a communication
 2-46 with a defendant that occurred before the effective date of this Act
 2-47 is covered by the law in effect at the time the waiver or
 2-48 communication occurred, and the former law is continued in effect
 2-49 for that purpose.

2-50 SECTION 4. This Act takes effect September 1, 2007.

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