

By: Phillips, Moody, Herrero

H.B. No. 107

Substitute the following for H.B. No. 107:

By: Moody

C.S.H.B. No. 107

A BILL TO BE ENTITLED

AN ACT

relating to the rendering of a judgment and sentence in the absence of certain defendants charged with felonies.

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

SECTION 1. Article 42.14, Code of Criminal Procedure, is amended to read as follows:

Art. 42.14. IN ABSENCE OF DEFENDANT. (a) In a misdemeanor case, the [The] judgment and sentence [in a misdemeanor case] may be rendered in the absence of the defendant.

(b) In a felony case, the judgment and sentence may be rendered in the absence of the defendant only if:

(1) the defendant is imprisoned in a penal institution;

(2) the defendant is not charged with a felony offense:

(A) that is listed in Section 3g(a)(1), Article 42.12; or

(B) for which it is alleged that:

(i) a deadly weapon, as defined by Section 1.07, Penal Code, was used or exhibited during the commission of the offense or during immediate flight from the commission of the offense; and

(ii) the defendant used or exhibited the deadly weapon or was a party to the offense and knew that a deadly

1 weapon would be used or exhibited;

2 (3) the defendant in writing before a district court  
3 having jurisdiction in the county where the defendant is  
4 imprisoned:

5 (A) waives the right to be present at the  
6 rendering of the judgment and sentence or to have counsel present;

7 (B) affirms that the defendant does not have  
8 anything to say as to why the sentence should not be pronounced and  
9 that there is no reason to prevent the sentence under Article 42.07;

10 (C) states that the defendant has entered into a  
11 written plea agreement with the attorney representing the state in  
12 the prosecution of the case; and

13 (D) requests the judge to pronounce sentence in  
14 the case in accordance with the plea agreement;

15 (4) the defendant and the attorney representing the  
16 state in the prosecution of the case have entered into a written  
17 plea agreement that is made a part of the record in the case; and

18 (5) sentence is pronounced in accordance with the plea  
19 agreement.

20 (c) In this article, "penal institution" has the meaning  
21 assigned by Section 1.07, Penal Code.

22 SECTION 2. The change in law made by this Act applies only  
23 to an offense committed on or after the effective date of this Act.  
24 An offense committed before the effective date of this Act is  
25 governed by the law in effect at the time the offense was committed,  
26 and the former law is continued in effect for that purpose. For  
27 purposes of this section, an offense was committed before the

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1 effective date of this Act if any element of the offense was  
2 committed before that date.

3       SECTION 3. This Act takes effect September 1, 2009.