

1-1 By: Phillips, Moody, Herrero H.B. No. 107  
1-2 (Senate Sponsor - Seliger)  
1-3 (In the Senate - Received from the House April 23, 2009;  
1-4 May 1, 2009, read first time and referred to Committee on Criminal  
1-5 Justice; May 18, 2009, reported adversely, with favorable  
1-6 Committee Substitute by the following vote: Yeas 7, Nays 0;  
1-7 May 18, 2009, sent to printer.)

1-8 COMMITTEE SUBSTITUTE FOR H.B. No. 107 By: Seliger

1-9 A BILL TO BE ENTITLED  
1-10 AN ACT

1-11 relating to allowing for certain criminal proceedings in the  
1-12 absence of certain defendants.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Chapter 27, Code of Criminal Procedure, is  
1-15 amended by adding Article 27.19 to read as follows:

1-16 Art. 27.19. PLEA BY CERTAIN DEFENDANTS.

1-17 (a) Notwithstanding any other provision of this code, a court  
1-18 shall accept a plea of guilty or nolo contendere from a defendant  
1-19 who is confined in a penal institution if the plea is made:

1-20 (1) in accordance with the procedure established by  
1-21 Article 27.18; or

1-22 (2) in writing before the appropriate court having  
1-23 jurisdiction in the county in which the penal institution is  
1-24 located, provided that:

1-25 (A) the defendant is notified by the court of  
1-26 original jurisdiction of the right to counsel and the procedures  
1-27 for requesting appointment of counsel, and is provided a reasonable  
1-28 opportunity to request a court-appointed lawyer;

1-29 (B) if the defendant elects to proceed without  
1-30 counsel, the defendant must waive the right to counsel in  
1-31 accordance with Article 1.051;

1-32 (C) the defendant must waive the right to be  
1-33 present at the taking of the plea or to have counsel present, if the  
1-34 defendant has counsel; and

1-35 (D) if the defendant is charged with a felony,  
1-36 judgment and sentence are rendered in accordance with the  
1-37 conditions and the procedure established by Article 42.14(b).

1-38 (b) In this article, "penal institution" has the meaning  
1-39 assigned by Section 1.07, Penal Code.

1-40 SECTION 2. Article 42.14, Code of Criminal Procedure, is  
1-41 amended to read as follows:

1-42 Art. 42.14. IN ABSENCE OF DEFENDANT. (a) In a misdemeanor  
1-43 case, the [The] judgment and sentence [in a misdemeanor case] may be  
1-44 rendered in the absence of the defendant.

1-45 (b) In a felony case, the judgment and sentence may be  
1-46 rendered in the absence of the defendant only if:

1-47 (1) the defendant is confined in a penal institution;

1-48 (2) the defendant is not charged with a felony  
1-49 offense:

1-50 (A) that is listed in Section 3g(a)(1), Article  
1-51 42.12; or

1-52 (B) for which it is alleged that:

1-53 (i) a deadly weapon was used or exhibited  
1-54 during the commission of the offense or during immediate flight  
1-55 from the commission of the offense; and

1-56 (ii) the defendant used or exhibited the  
1-57 deadly weapon or was a party to the offense and knew that a deadly  
1-58 weapon would be used or exhibited;

1-59 (3) the defendant in writing before the appropriate  
1-60 court having jurisdiction in the county in which the penal  
1-61 institution is located:

1-62 (A) waives the right to be present at the  
1-63 rendering of the judgment and sentence or to have counsel present;

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

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

(D) requests the court to pronounce sentence in the case in accordance with the plea agreement;

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

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

(c) A judgment and sentence may be rendered under this article in the absence of the defendant only after the defendant is notified by the court of original jurisdiction of the right to counsel and the defendant requests counsel or waives the right to counsel in accordance with Article 1.051.

(d) In this article, "deadly weapon" and "penal institution" have the meanings assigned by Section 1.07, Penal Code.

(e) If a defendant enters a plea of guilty or nolo contendere under Article 27.19, the attorney representing the state may request at the time the plea is entered that the defendant submit a fingerprint of the defendant suitable for attachment to the judgment. On request for a fingerprint under this subsection, the county in which the defendant is confined shall obtain a fingerprint of the defendant and use first-class mail or other means acceptable to the attorney representing the state and the county to forward the fingerprint to the court accepting the plea.

SECTION 3. Article 27.19, Code of Criminal Procedure, as added by this Act, and Article 42.14, Code of Criminal Procedure, as amended by this Act, apply to a plea entered or to a judgment and sentence rendered in a criminal case on or after the effective date of this Act, regardless of whether the offense for which the plea is entered or judgment and sentence are rendered is committed before, on, or after that date.

SECTION 4. This Act takes effect September 1, 2009.

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