

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Phillips, Moody, Herrero

H.B. No. 107

A BILL TO BE ENTITLED

AN ACT

relating to allowing for certain criminal proceedings in the  
absence of certain defendants.

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

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

Art. 27.19. PLEA BY CERTAIN DEFENDANTS.

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

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

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

(A) in the writing, the defendant waives the  
right to be present at the taking of the plea or to have counsel  
present; and

(B) if the defendant is charged with a felony,  
judgment and sentence are rendered in accordance with the  
conditions and the procedure established by Article 42.14(b).

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

SECTION 2. Article 42.14, Code of Criminal Procedure, is

1 amended to read as follows:

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

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

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

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

10 (A) that is listed in Section 3g(a)(1), Article  
11 42.12; or

12 (B) for which it is alleged that:

13 (i) a deadly weapon was used or exhibited  
14 during the commission of the offense or during immediate flight  
15 from the commission of the offense; and

16 (ii) the defendant used or exhibited the  
17 deadly weapon or was a party to the offense and knew that a deadly  
18 weapon would be used or exhibited;

19 (3) the defendant in writing before the appropriate  
20 court having jurisdiction in the county in which the penal  
21 institution is located:

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

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

27 (C) states that the defendant has entered into a

1 written plea agreement with the attorney representing the state in  
2 the prosecution of the case; and

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

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

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

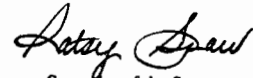
10 (c) In this article, "deadly weapon" and "penal  
11 institution" have the meanings assigned by Section 1.07, Penal  
12 Code.

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

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

# ADOPTED


MAY 21 2009

  
Secretary of the Senate

By: Phillips et al. / Seliger

H.B. No. 107

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

By: 

C.S. H.B. No. 107

## A BILL TO BE ENTITLED

1 AN ACT

2 relating to allowing for certain criminal proceedings in the  
3 absence of certain defendants.

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

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

7 Art. 27.19. PLEA BY CERTAIN DEFENDANTS.

8 (a) Notwithstanding any other provision of this code, a court  
9 shall accept a plea of guilty or nolo contendere from a defendant  
10 who is confined in a penal institution if the plea is made:

11 (1) in accordance with the procedure established by  
12 Article 27.18; or

13 (2) in writing before the appropriate court having  
14 jurisdiction in the county in which the penal institution is  
15 located, provided that:

16 (A) the defendant is notified by the court of  
17 original jurisdiction of the right to counsel and the procedures  
18 for requesting appointment of counsel, and is provided a reasonable  
19 opportunity to request a court-appointed lawyer;

20 (B) if the defendant elects to proceed without  
21 counsel, the defendant must waive the right to counsel in  
22 accordance with Article 1.051;

23 (C) the defendant must waive the right to be  
24 present at the taking of the plea or to have counsel present, if the

1 defendant has counsel; and

2 (D) if the defendant is charged with a felony,  
3 judgment and sentence are rendered in accordance with the  
4 conditions and the procedure established by Article 42.14(b).

5 (b) In this article, "penal institution" has the meaning  
6 assigned by Section 1.07, Penal Code.

7 SECTION 2. Article 42.14, Code of Criminal Procedure, is  
8 amended to read as follows:

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

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

14 (1) the defendant is confined in a penal institution;  
15 (2) the defendant is not charged with a felony  
16 offense:

17 (A) that is listed in Section 3g(a)(1), Article  
18 42.12; or

19 (B) for which it is alleged that:

20 (i) a deadly weapon was used or exhibited  
21 during the commission of the offense or during immediate flight  
22 from the commission of the offense; and

23 (ii) the defendant used or exhibited the  
24 deadly weapon or was a party to the offense and knew that a deadly  
25 weapon would be used or exhibited;

26 (3) the defendant in writing before the appropriate  
27 court having jurisdiction in the county in which the penal

1 institution is located:

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

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

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

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

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

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

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

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

25 (e) If a defendant enters a plea of guilty or nolo  
26 contendere under Article 27.19, the attorney representing the state  
27 may request at the time the plea is entered that the defendant

1 submit a fingerprint of the defendant suitable for attachment to  
2 the judgment. On request for a fingerprint under this subsection,  
3 the county in which the defendant is confined shall obtain a  
4 fingerprint of the defendant and use first-class mail or other  
5 means acceptable to the attorney representing the state and the  
6 county to forward the fingerprint to the court accepting the plea.

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

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





**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 21, 2009**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB107** by Phillips (Relating to allowing for certain criminal proceedings in the absence of certain defendants.), **As Passed 2nd House**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend the Code of Criminal Procedure to allow the acceptance of a plea of guilty or nolo contendere and for the rendering of a judgment and sentence of certain defendants who are confined in a penal institution, provided certain procedures occur and the defendant is notified of certain information related to their rights.

If a defendant were to enter a plea of guilty or nolo contendere under provisions of the bill, the attorney representing the state would be authorized to request at the time the plea is entered that the defendant submit a fingerprint of the defendant suitable for attachment to the judgment. The county in which the defendant is confined would be required to obtain the fingerprint and forward it to the court via first-class mail or other means acceptable to the state's attorney and the county.

The bill would take effect September 1, 2009.

To the extent the bill would result in reduced costs relating to transporting defendants confined in penal institutions to courts for rendering of sentences, no significant fiscal implication to the State is anticipated.

**Local Government Impact**

Savings to counties related to transportation and incarceration costs would vary and would depend on the number of defendants in a penal institution who choose to waive the right to be present at the rendering of the judgment and sentence.

Costs related to obtaining and forwarding a fingerprint would vary and would depend on the number of cases in which the request is made.

No significant fiscal impact to units of local government is anticipated.

**Source Agencies:** 696 Department of Criminal Justice

**LBB Staff:** JOB, DB, ESi, SD, TP, GG



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 15, 2009**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB107** by Phillips (Relating to allowing for certain criminal proceedings in the absence of certain defendants. ), **Committee Report 2nd House, Substituted**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend the Code of Criminal Procedure to allow the acceptance of a plea of guilty or nolo contendere and for the rendering of a judgment and sentence of certain defendants who are confined in a penal institution, provided certain procedures occur and the defendant is notified of certain information related to their rights.

If a defendant were to enter a plea of guilty or nolo contendere under provisions of the bill, the attorney representing the state would be authorized to request at the time the plea is entered that the defendant submit a fingerprint of the defendant suitable for attachment to the judgment. The county in which the defendant is confined would be required to obtain the fingerprint and forward it to the court via first-class mail or other means acceptable to the state's attorney and the county.

The bill would take effect September 1, 2009.

To the extent the bill would result in reduced costs relating to transporting defendants confined in penal institutions to courts for rendering of sentences, no significant fiscal implication to the State is anticipated.

**Local Government Impact**

Savings to counties related to transportation and incarceration costs would vary and would depend on the number of defendants in a penal institution who choose to waive the right to be present at the rendering of the judgment and sentence.

Costs related to obtaining and forwarding a fingerprint would vary and would depend on the number of cases in which the request is made.

No significant fiscal impact to units of local government is anticipated.

**Source Agencies:** 696 Department of Criminal Justice

**LBB Staff:** JOB, DB, ESi, SD, TP, GG



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 8, 2009**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB107** by Phillips (Relating to allowing for certain criminal proceedings in the absence of certain defendants.), **As Engrossed**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
--

The bill would amend the Code of Criminal Procedure relating to the rendering of a judgment and sentence in the absence of certain defendants charged with certain felonies. The bill would allow a sentence to be rendered in the absence of a defendant confined in a penal institution under certain conditions. The bill would take effect September 1, 2009.

To the extent the bill would result in reduced costs relating to transporting defendants confined in penal institutions to courts for rendering of sentences, no significant fiscal implication to the State is anticipated.

**Local Government Impact**

Savings to counties related to transportation and incarceration costs would vary and would depend on the number of defendants in a penal institution who choose to waive the right to be present at the rendering of the judgment and sentence. No significant fiscal impact is anticipated.

**Source Agencies:** 696 Department of Criminal Justice

**LBB Staff:** JOB, ESi, SD, DB, TP, GG



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**March 12, 2009**

**TO:** Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB107** by Phillips (Relating to the rendering of a judgment and sentence in the absence of certain defendants charged with certain felonies. ), **Committee Report 1st House, Substituted**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend the Code of Criminal Procedure relating to the rendering of a judgment and sentence in the absence of certain defendants charged with certain felonies. The bill would allow a sentence to be rendered in the absence of a defendant imprisoned in a penal institution under certain conditions. The bill would take effect September 1, 2009.

To the extent the bill would result in reduced costs relating to transporting defendants imprisoned in penal institutions to courts for rendering of sentences, no significant fiscal implication to the State is anticipated.

**Local Government Impact**

Savings to counties related to transportation and incarceration costs would vary and would depend on the number of defendants in a penal institution who choose to waive the right to be present at the rendering of the judgment and sentence. No significant fiscal impact is anticipated.

**Source Agencies:** 696 Department of Criminal Justice

**LBB Staff:** JOB, ESi, GG, DB





**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**March 2, 2009**

**TO:** Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB107** by Phillips (Relating to the rendering of a judgment and sentence in the absence of certain defendants charged with felonies.), **As Introduced**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend the Code of Criminal Procedure relating to the rendering of a judgment and sentence in the absence of certain defendants charged with felonies. The bill would allow a sentence to be rendered in the absence of a defendant imprisoned in a penal institution under certain conditions. The bill would take effect September 1, 2009.

To the extent the bill would result in reduced costs relating to transporting defendants imprisoned in penal institutions to courts for rendering of sentences, no significant fiscal implication to the State is anticipated.

**Local Government Impact**

Savings to counties related to transportation and incarceration costs would vary and would depend on the number of defendants in a penal institution who choose to waive the right to be present at the rendering of the judgment and sentence. No significant fiscal impact is anticipated.

**Source Agencies:** 696 Department of Criminal Justice

**LBB Staff:** JOB, ESi, DB



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**81ST LEGISLATIVE REGULAR SESSION**

**May 15, 2009**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB107** by Phillips (Relating to allowing for certain criminal proceedings in the absence of certain defendants.), **Committee Report 2nd House, Substituted**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, LM, TMP



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**81ST LEGISLATIVE REGULAR SESSION**

**May 11, 2009**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB107** by Phillips (Relating to allowing for certain criminal proceedings in the absence of certain defendants.), **As Engrossed**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, TMP



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**81ST LEGISLATIVE REGULAR SESSION**

**March 12, 2009**

**TO:** Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB107** by Phillips (Relating to the rendering of a judgment and sentence in the absence of certain defendants charged with certain felonies. ), **Committee Report 1st House, Substituted**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, GG





**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**81ST LEGISLATIVE REGULAR SESSION**

**February 25, 2009**

**TO:** Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB107** by Phillips (Relating to the rendering of a judgment and sentence in the absence of certain defendants charged with felonies.), **As Introduced**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, GG