

By: Hodge

H.B. No. 1425

A BILL TO BE ENTITLED

1 AN ACT

2 relating to procedures and evidence in a hearing on a motion in a
3 criminal case to suppress evidence, a confession, or a statement.

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

5 SECTION 1. Section 1, Article 28.01, Code of Criminal
6 Procedure, is amended to read as follows:

7 Sec. 1. The court may set any criminal case for a pre-trial
8 hearing before it is set for trial upon its merits, and direct the
9 defendant and his attorney, if any of record, and the State's
10 attorney, to appear before the court at the time and place stated in
11 the court's order for a conference and hearing. The defendant must
12 be present at the arraignment, and his presence is required during
13 any pre-trial proceeding. The pre-trial hearing shall be to
14 determine any of the following matters:

15 (1) Arraignment of the defendant, if such be
16 necessary; and appointment of counsel to represent the defendant,
17 if such be necessary;

18 (2) Pleadings of the defendant;

19 (3) Special pleas, if any;

20 (4) Exceptions to the form or substance of the
21 indictment or information;

22 (5) Motions for continuance either by the State or
23 defendant; provided that grounds for continuance not existing or
24 not known at the time may be presented and considered at any time

1 before the defendant announces ready for trial;

2 (6) Motions to suppress evidence--When the court
3 grants a hearing on a [~~the~~] motion to suppress evidence [~~is~~
4 ~~granted~~], the court may determine the merits of the [~~said~~] motion on
5 oral testimony or, unless either party objects, on the motions
6 themselves[~~7~~] or on [~~upon~~] opposing affidavits[~~7~~, ~~or upon oral~~
7 ~~testimony, subject to the discretion of the court~~];

8 (7) Motions for change of venue by the State or the
9 defendant; provided, however, that such motions for change of
10 venue, if overruled at the pre-trial hearing, may be renewed by the
11 State or the defendant during the voir dire examination of the jury;

12 (8) Discovery;

13 (9) Entrapment; and

14 (10) Motion for appointment of interpreter.

15 SECTION 2. Chapter 38, Code of Criminal Procedure, is
16 amended by adding Article 38.01 to read as follows:

17 Art. 38.01. EVIDENCE ON MOTION TO SUPPRESS. Notwithstanding
18 Rules 101(d) and 104, Texas Rules of Evidence, the Texas Rules of
19 Evidence apply to a proceeding on a motion to suppress evidence, a
20 confession, or a statement.

21 SECTION 3. This Act takes effect September 1, 2005.