

By: Carona

S.B. No. 336

A BILL TO BE ENTITLED

AN ACT

relating to the referral of criminal cases to certain magistrates.

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

SECTION 1. Article 14.06(a), Code of Criminal Procedure, is amended to read as follows:

(a) Except as provided by Subsection (b), in each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall take the person arrested or have him taken without unnecessary delay, but not later than 48 hours after the person is arrested, before the magistrate who may have ordered the arrest, before some magistrate of the county where the arrest was made without an order, or, ~~[if necessary]~~ to provide more expeditiously to the person arrested the warnings described by Article 15.17 of this Code, before a magistrate in any other [a] county of this state ~~[bordering the county in which the arrest was made]~~. The magistrate shall immediately perform the duties described in Article 15.17 of this Code.

SECTION 2. Article 15.16, Code of Criminal Procedure, is amended to read as follows:

Art. 15.16. HOW WARRANT IS EXECUTED. (a) The officer or person executing a warrant of arrest shall without unnecessary delay take the person or have him taken before the magistrate who issued the warrant or before the magistrate named in the warrant, if

1 the magistrate is in the same county where the person is arrested.
2 If the issuing or named magistrate is in another county, the person
3 arrested shall without unnecessary delay be taken before some
4 magistrate in the county in which he was arrested.

5 (b) Notwithstanding Subsection (a), to provide more
6 expeditiously to the person arrested the warnings described by
7 Article 15.17, the officer or person executing the arrest warrant
8 may as permitted by that article take the person arrested before a
9 magistrate in a county other than the county of arrest.

10 SECTION 3. Article 15.17(a), Code of Criminal Procedure, is
11 amended to read as follows:

12 (a) In each case enumerated in this Code, the person making
13 the arrest or the person having custody of the person arrested shall
14 without unnecessary delay, but not later than 48 hours after the
15 person is arrested, take the person arrested or have him taken
16 before some magistrate of the county where the accused was arrested
17 or, ~~[if necessary]~~ to provide more expeditiously to the person
18 arrested the warnings described by this article, before a
19 magistrate in any other [a] county of this state ~~[bordering the~~
20 ~~county in which the arrest was made]~~. The arrested person may be
21 taken before the magistrate in person or the image of the arrested
22 person may be presented ~~[broadcast by closed circuit television]~~ to
23 the magistrate by means of an electronic broadcast system. The
24 magistrate shall inform in clear language the person arrested,
25 either in person or through the electronic broadcast system ~~[by~~
26 ~~closed circuit television]~~, of the accusation against him and of
27 any affidavit filed therewith, of his right to retain counsel, of

1 his right to remain silent, of his right to have an attorney present
2 during any interview with peace officers or attorneys representing
3 the state, of his right to terminate the interview at any time, and
4 of his right to have an examining trial. The magistrate shall also
5 inform the person arrested of the person's right to request the
6 appointment of counsel if the person cannot afford counsel. The
7 magistrate shall inform the person arrested of the procedures for
8 requesting appointment of counsel. If the person does not speak and
9 understand the English language or is deaf, the magistrate shall
10 inform the person in a manner consistent with Articles 38.30 and
11 38.31, as appropriate. The magistrate shall ensure that reasonable
12 assistance in completing the necessary forms for requesting
13 appointment of counsel is provided to the person at the same time.
14 If the person arrested is indigent and requests appointment of
15 counsel and if the magistrate is authorized under Article 26.04 to
16 appoint counsel for indigent defendants in the county, the
17 magistrate shall appoint counsel in accordance with Article 1.051.
18 If the magistrate is not authorized to appoint counsel, the
19 magistrate shall without unnecessary delay, but not later than 24
20 hours after the person arrested requests appointment of counsel,
21 transmit, or cause to be transmitted to the court or to the courts'
22 designee authorized under Article 26.04 to appoint counsel in the
23 county, the forms requesting the appointment of counsel. The
24 magistrate shall also inform the person arrested that he is not
25 required to make a statement and that any statement made by him may
26 be used against him. The magistrate shall allow the person arrested
27 reasonable time and opportunity to consult counsel and shall, after

1 determining whether the person is currently on bail for a separate
2 criminal offense, admit the person arrested to bail if allowed by
3 law. ~~[A closed circuit television system may not be used under this
4 subsection unless the system provides for a two-way communication
5 of image and sound between the arrested person and the magistrate.]~~

6 A recording of the communication between the arrested person and
7 the magistrate shall be made. The recording shall be preserved
8 until the earlier of the following dates: (1) the date on which the
9 pretrial hearing ends; or (2) the 91st day after the date on which
10 the recording is made if the person is charged with a misdemeanor or
11 the 120th day after the date on which the recording is made if the
12 person is charged with a felony. The counsel for the defendant may
13 obtain a copy of the recording on payment of a reasonable amount to
14 cover costs of reproduction. For purposes of this subsection,
15 "electronic broadcast system" means a two-way electronic
16 communication of image and sound between the arrested person and
17 the magistrate and includes secure Internet videoconferencing.

18 SECTION 4. Article 15.18, Code of Criminal Procedure, is
19 amended to read as follows:

20 Art. 15.18. ARREST FOR OUT-OF-COUNTY OFFENSE. (a) A person
21 arrested under a warrant issued in a county other than the one in
22 which the person is arrested shall be taken before a magistrate of
23 the county where the arrest takes place or, to provide more
24 expeditiously to the arrested person the warnings described by
25 Article 15.17, before a magistrate in any other county of this
26 state, including the county where the warrant was issued. The
27 magistrate ~~[who]~~ shall:

1 (1) take bail, if allowed by law, and, if without
2 jurisdiction, immediately transmit the bond taken to the court
3 having jurisdiction of the offense; or

4 (2) in the case of a person arrested under warrant for
5 an offense punishable by fine only, accept a written plea of guilty
6 or nolo contendere, set a fine, determine costs, accept payment of
7 the fine and costs, give credit for time served, determine
8 indigency, or, on satisfaction of the judgment, discharge the
9 defendant, as the case may indicate.

10 (b) Before the 11th business day after the date a magistrate
11 accepts a written plea of guilty or nolo contendere in a case under
12 Subsection (a)(2), the magistrate shall, if without jurisdiction,
13 transmit to the court having jurisdiction of the offense:

14 (1) the written plea;

15 (2) any orders entered in the case; and

16 (3) any fine or costs collected in the case.

17 (c) The arrested person may be taken before a magistrate by
18 means of an electronic broadcast system as provided by and subject
19 to the requirements of Article 15.17.

20 SECTION 5. Article 15.19(b), Code of Criminal Procedure, is
21 amended to read as follows:

22 (b) If a person is arrested and taken before a magistrate in
23 a county other than ~~[bordering]~~ the county in which the arrest is
24 made ~~[under the provisions of Article 15.17(a) of this code]~~ and if
25 the person is remanded to custody, the person may be confined in a
26 jail in the county in which the magistrate serves for a period of
27 not more than 72 hours after the arrest before being transferred to

1 the county jail of the county in which the arrest occurred.

2 SECTION 6. The changes in law made by this Act apply only to
3 an offense committed on or after the effective date of this Act. An
4 offense committed before the effective date of this Act is covered
5 by the law in effect when the offense was committed, and the former
6 law is continued in effect for that purpose. For the purposes of
7 this section, an offense is committed before the effective date of
8 this Act if any element of the offense occurs before that date.

9 SECTION 7. This Act takes effect September 1, 2005.