

By: Watson

S.B. No. 361

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the duties of a magistrate to inform an arrested person
3 of consequences of a plea of guilty or nolo contendere.

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

5 SECTION 1. Subsection (a), Article 15.17, Code of Criminal
6 Procedure, is amended to read as follows:

7 (a) In each case enumerated in this Code, the person making
8 the arrest or the person having custody of the person arrested shall
9 without unnecessary delay, but not later than 48 hours after the
10 person is arrested, take the person arrested or have him taken
11 before some magistrate of the county where the accused was arrested
12 or, to provide more expeditiously to the person arrested the
13 warnings described by this article, before a magistrate in any
14 other county of this state. The arrested person may be taken before
15 the magistrate in person or the image of the arrested person may be
16 presented to the magistrate by means of an electronic broadcast
17 system. The magistrate shall inform in clear language the person
18 arrested, either in person or through the electronic broadcast
19 system, of the accusation against him and of any affidavit filed
20 therewith, of his right to retain counsel, of his right to remain
21 silent, of his right to have an attorney present during any
22 interview with peace officers or attorneys representing the state,
23 of his right to terminate the interview at any time, and of his
24 right to have an examining trial. The magistrate shall inform the

1 person arrested that, if the person is not a citizen of the United
2 States of America, a plea of guilty or nolo contendere for the
3 offense charged may affect the person's immigration or residency
4 status and may result in deportation, the exclusion from admission
5 to this country, or the denial of naturalization under federal law.
6 The magistrate shall also inform the person arrested of the
7 person's right to request the appointment of counsel if the person
8 cannot afford counsel. The magistrate shall inform the person
9 arrested of the procedures for requesting appointment of counsel.
10 If the person does not speak and understand the English language or
11 is deaf, the magistrate shall inform the person in a manner
12 consistent with Articles 38.30 and 38.31, as appropriate. The
13 magistrate shall ensure that reasonable assistance in completing
14 the necessary forms for requesting appointment of counsel is
15 provided to the person at the same time. If the person arrested is
16 indigent and requests appointment of counsel and if the magistrate
17 is authorized under Article 26.04 to appoint counsel for indigent
18 defendants in the county, the magistrate shall appoint counsel in
19 accordance with Article 1.051. If the magistrate is not authorized
20 to appoint counsel, the magistrate shall without unnecessary delay,
21 but not later than 24 hours after the person arrested requests
22 appointment of counsel, transmit, or cause to be transmitted to the
23 court or to the courts' designee authorized under Article 26.04 to
24 appoint counsel in the county, the forms requesting the appointment
25 of counsel. The magistrate shall also inform the person arrested
26 that he is not required to make a statement and that any statement
27 made by him may be used against him. The magistrate shall allow the

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

17 SECTION 2. This Act takes effect September 1, 2013.