

1-1 By: Moody (Senate Sponsor - Rodríguez) H.B. No. 3165  
 1-2 (In the Senate - Received from the House May 3, 2017;  
 1-3 May 5, 2017, read first time and referred to Committee on Criminal  
 1-4 Justice; May 19, 2017, reported adversely, with favorable  
 1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;  
 1-6 May 19, 2017, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16			X	
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 3165 By: Whitmire

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to certain pretrial procedures in criminal cases.  
 1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
 1-23 SECTION 1. Articles 15.17(a) and (f), Code of Criminal  
 1-24 Procedure, are amended to read as follows:  
 1-25 (a) In each case enumerated in this Code, the person making  
 1-26 the arrest or the person having custody of the person arrested shall  
 1-27 without unnecessary delay, but not later than 48 hours after the  
 1-28 person is arrested, take the person arrested or have him taken  
 1-29 before some magistrate of the county where the accused was arrested  
 1-30 or, to provide more expeditiously to the person arrested the  
 1-31 warnings described by this article, before a magistrate in any  
 1-32 other county of this state. The arrested person may be taken before  
 1-33 the magistrate in person or the image of the arrested person may be  
 1-34 presented to the magistrate by means of a videoconference [~~an~~  
 1-35 ~~electronic broadcast system~~]. The magistrate shall inform in clear  
 1-36 language the person arrested, either in person or through a  
 1-37 videoconference [~~the electronic broadcast system~~], of the  
 1-38 accusation against him and of any affidavit filed therewith, of his  
 1-39 right to retain counsel, of his right to remain silent, of his right  
 1-40 to have an attorney present during any interview with peace  
 1-41 officers or attorneys representing the state, of his right to  
 1-42 terminate the interview at any time, and of his right to have an  
 1-43 examining trial. The magistrate shall also inform the person  
 1-44 arrested of the person's right to request the appointment of  
 1-45 counsel if the person cannot afford counsel. The magistrate shall  
 1-46 inform the person arrested of the procedures for requesting  
 1-47 appointment of counsel. If the person does not speak and understand  
 1-48 the English language or is deaf, the magistrate shall inform the  
 1-49 person in a manner consistent with Articles 38.30 and 38.31, as  
 1-50 appropriate. The magistrate shall ensure that reasonable  
 1-51 assistance in completing the necessary forms for requesting  
 1-52 appointment of counsel is provided to the person at the same time.  
 1-53 If the person arrested is indigent and requests appointment of  
 1-54 counsel and if the magistrate is authorized under Article 26.04 to  
 1-55 appoint counsel for indigent defendants in the county, the  
 1-56 magistrate shall appoint counsel in accordance with Article 1.051.  
 1-57 If the magistrate is not authorized to appoint counsel, the  
 1-58 magistrate shall without unnecessary delay, but not later than 24  
 1-59 hours after the person arrested requests appointment of counsel,  
 1-60 transmit, or cause to be transmitted to the court or to the courts'

2-1 designee authorized under Article 26.04 to appoint counsel in the  
 2-2 county, the forms requesting the appointment of counsel. The  
 2-3 magistrate shall also inform the person arrested that he is not  
 2-4 required to make a statement and that any statement made by him may  
 2-5 be used against him. The magistrate shall allow the person arrested  
 2-6 reasonable time and opportunity to consult counsel and shall, after  
 2-7 determining whether the person is currently on bail for a separate  
 2-8 criminal offense, admit the person arrested to bail if allowed by  
 2-9 law. A record [~~recording~~] of the communication between the  
 2-10 arrested person and the magistrate shall be made. The record  
 2-11 [~~recording~~] shall be preserved until the earlier of the following  
 2-12 dates: (1) the date on which the pretrial hearing ends; or (2) the  
 2-13 91st day after the date on which the record [~~recording~~] is made if  
 2-14 the person is charged with a misdemeanor or the 120th day after the  
 2-15 date on which the record [~~recording~~] is made if the person is  
 2-16 charged with a felony. The counsel for the defendant may obtain a  
 2-17 copy of an electronic [~~the~~] recording, if an electronic recording  
 2-18 was created, on payment of a reasonable amount to cover costs of  
 2-19 reproduction. For purposes of this subsection, "videoconference"  
 2-20 [~~"electronic broadcast system"~~] means a two-way electronic  
 2-21 communication of image and sound between the arrested person and  
 2-22 the magistrate and includes secure Internet videoconferencing.

2-23 (f) A record required under Subsection (a) or (e) may  
 2-24 consist of written forms, electronic recordings, or other  
 2-25 documentation as authorized by procedures adopted in the county  
 2-26 under Article 26.04(a).

2-27 SECTION 2. Section 5(a), Article 17.42, Code of Criminal  
 2-28 Procedure, is amended to read as follows:

2-29 (a) A personal bond pretrial release office established  
 2-30 under this article shall:

2-31 (1) prepare a record containing information about any  
 2-32 accused person identified by case number only who, after review by  
 2-33 the office, is released by a court on personal bond before  
 2-34 sentencing in a pending case;

2-35 (2) update the record on a monthly basis; and

2-36 (3) file a copy of the record with the district or  
 2-37 county clerk, as applicable based on court jurisdiction over the  
 2-38 categories of offenses addressed in the records, in any county  
 2-39 served by the office.

2-40 SECTION 3. Section 6(b), Article 17.42, Code of Criminal  
 2-41 Procedure, is amended to read as follows:

2-42 (b) In preparing an annual report under Subsection (a), the  
 2-43 office shall include in the report a statement of:

2-44 (1) the office's operating budget;

2-45 (2) the number of positions maintained for office  
 2-46 staff;

2-47 (3) the number of accused persons who, after review by  
 2-48 the office, were released by a court on personal bond before  
 2-49 sentencing in a pending case; and

2-50 (4) the number of persons described by Subdivision  
 2-51 (3):

2-52 (A) [~~who were convicted of the same offense or of~~  
 2-53 ~~any felony within the six years preceding the date on which charges~~  
 2-54 ~~were filed in the matter pending during the person's release,~~

2-55 [~~(B)~~] who failed to attend a scheduled court  
 2-56 appearance;

2-57 (B) [~~(C)~~] for whom a warrant was issued for the  
 2-58 [~~person's~~] arrest of those persons for failure to appear in  
 2-59 accordance with the terms of their [~~the person's~~] release; or

2-60 (C) [~~(D)~~] who, while released on personal bond,  
 2-61 were arrested for any other offense in the same county in which the  
 2-62 persons were released [~~while~~] on [~~the personal~~] bond.

2-63 SECTION 4. The heading to Article 27.18, Code of Criminal  
 2-64 Procedure, is amended to read as follows:

2-65 Art. 27.18. PLEA OR WAIVER OF RIGHTS BY VIDEOCONFERENCE  
 2-66 [~~CLOSED CIRCUIT VIDEO TELECONFERENCING~~].

2-67 SECTION 5. Articles 27.18(a) and (b), Code of Criminal  
 2-68 Procedure, are amended to read as follows:

2-69 (a) Notwithstanding any provision of this code requiring

3-1 that a plea or a waiver of a defendant's right be made in open court,  
3-2 a court may accept the plea or waiver by videoconference [~~broadcast~~  
3-3 ~~by closed circuit video teleconferencing~~] to the court if:

3-4 (1) the defendant and the attorney representing the  
3-5 state file with the court written consent to the use of  
3-6 videoconference [~~closed circuit video teleconferencing~~];

3-7 (2) the videoconference [~~closed circuit video~~  
3-8 ~~teleconferencing system~~] provides for a simultaneous, compressed  
3-9 full motion video, and interactive communication of image and sound  
3-10 between the judge, the attorney representing the state, the  
3-11 defendant, and the defendant's attorney; and

3-12 (3) on request of the defendant, the defendant and the  
3-13 defendant's attorney are able to communicate privately without  
3-14 being recorded or heard by the judge or the attorney representing  
3-15 the state.

3-16 (b) On motion of the defendant or the attorney representing  
3-17 the state or in the court's discretion, the court may terminate an  
3-18 appearance by videoconference [~~closed circuit video~~  
3-19 ~~teleconferencing~~] at any time during the appearance and require an  
3-20 appearance by the defendant in open court.

3-21 SECTION 6. Article 27.18(c), Code of Criminal Procedure, as  
3-22 amended by Chapters 1341 (S.B. 1233) and 1031 (H.B. 2847), Acts of  
3-23 the 82nd Legislature, Regular Session, 2011, is reenacted and  
3-24 amended to read as follows:

3-25 (c) A record of the communication shall be made by a court  
3-26 reporter or by electronic recording and preserved by the court  
3-27 reporter or by electronic recording until all appellate proceedings  
3-28 have been disposed of. A court reporter or court recorder is not  
3-29 required to transcribe or make a duplicate electronic [~~separate~~  
3-30 recording of a plea taken under this article unless an appeal is  
3-31 taken in the case and a party requests a transcript.

3-32 SECTION 7. Article 27.18(c-1), Code of Criminal Procedure,  
3-33 as added by Chapter 1341 (S.B. 1233), Acts of the 82nd Legislature,  
3-34 Regular Session, 2011, is amended to read as follows:

3-35 (c-1) The defendant may obtain a copy of an electronic [~~a~~  
3-36 recording, if an electronic recording was created, [~~made under~~  
3-37 ~~Subsection (c)~~] on payment of a reasonable amount to cover the costs  
3-38 of reproduction or, if the defendant is indigent, the court shall  
3-39 provide a copy to the defendant without charging a cost for the  
3-40 copy.

3-41 SECTION 8. Articles 27.18(c-2) and (d), Code of Criminal  
3-42 Procedure, are amended to read as follows:

3-43 (c-2) The loss or destruction of or failure to create a  
3-44 court record or an electronic [~~make a video~~] recording of a plea  
3-45 entered under this article is not alone sufficient grounds for a  
3-46 defendant to withdraw the defendant's plea or to request the court  
3-47 to set aside a conviction, sentence, or plea.

3-48 (d) A defendant who is confined in a county other than the  
3-49 county in which charges against the defendant are pending may use  
3-50 the videoconference [~~teleconferencing~~] method provided by this  
3-51 article or by [~~the electronic broadcast system authorized in~~  
3-52 Article 15.17 to enter a plea or waive a right in the court with  
3-53 jurisdiction over the case.

3-54 SECTION 9. Article 27.18(c-1), Code of Criminal Procedure,  
3-55 as added by Chapter 1031 (H.B. 2847), Acts of the 82nd Legislature,  
3-56 Regular Session, 2011, is repealed.

3-57 SECTION 10. Article 15.17, Code of Criminal Procedure, as  
3-58 amended by this Act, applies to an arrested person brought before a  
3-59 magistrate on or after the effective date of this Act, regardless of  
3-60 whether the offense for which the person was arrested was committed  
3-61 before, on, or after that date.

3-62 SECTION 11. Article 27.18, Code of Criminal Procedure, as  
3-63 amended by this Act, applies to a plea of guilty or nolo contendere  
3-64 entered on or after the effective date of this Act, regardless of  
3-65 whether the offense with reference to which the plea is entered is  
3-66 committed before, on, or after that date.

3-67 SECTION 12. This Act takes effect September 1, 2017.