

By: Ortega

H.B. No. 3637

A BILL TO BE ENTITLED

AN ACT

relating to recording certain criminal proceedings.

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

SECTION 1. Articles 15.17(a) and (f), Code of Criminal Procedure, are amended to read as follows:

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

1 arrested of the person's right to request the appointment of  
2 counsel if the person cannot afford counsel. The magistrate shall  
3 inform the person arrested of the procedures for requesting  
4 appointment of counsel. If the person does not speak and understand  
5 the English language or is deaf, the magistrate shall inform the  
6 person in a manner consistent with Articles 38.30 and 38.31, as  
7 appropriate. The magistrate shall ensure that reasonable  
8 assistance in completing the necessary forms for requesting  
9 appointment of counsel is provided to the person at the same time.  
10 If the person arrested is indigent and requests appointment of  
11 counsel and if the magistrate is authorized under Article 26.04 to  
12 appoint counsel for indigent defendants in the county, the  
13 magistrate shall appoint counsel in accordance with Article 1.051.  
14 If the magistrate is not authorized to appoint counsel, the  
15 magistrate shall without unnecessary delay, but not later than 24  
16 hours after the person arrested requests appointment of counsel,  
17 transmit, or cause to be transmitted to the court or to the courts'  
18 designee authorized under Article 26.04 to appoint counsel in the  
19 county, the forms requesting the appointment of counsel. The  
20 magistrate shall also inform the person arrested that he is not  
21 required to make a statement and that any statement made by him may  
22 be used against him. The magistrate shall allow the person arrested  
23 reasonable time and opportunity to consult counsel and shall, after  
24 determining whether the person is currently on bail for a separate  
25 criminal offense, admit the person arrested to bail if allowed by  
26 law. A record [~~recording~~] of the communication between the  
27 arrested person and the magistrate shall be made. The record

1 ~~[recording]~~ shall be preserved until the earlier of the following  
2 dates: (1) the date on which the pretrial hearing ends; or (2) the  
3 91st day after the date on which the record ~~[recording]~~ is made if  
4 the person is charged with a misdemeanor or the 120th day after the  
5 date on which the record ~~[recording]~~ is made if the person is  
6 charged with a felony. The counsel for the defendant may obtain a  
7 copy of an electronic ~~[the]~~ recording, if an electronic recording  
8 was created, on payment of a reasonable amount to cover costs of  
9 reproduction. For purposes of this subsection, "videoconference"  
10 ~~["electronic broadcast system"]~~ means a two-way electronic  
11 communication of image and sound between the arrested person and  
12 the magistrate and includes secure Internet videoconferencing.

13 (f) A record required under Subsection (a) or (e) may  
14 consist of written forms, electronic recordings, or other  
15 documentation as authorized by procedures adopted in the county  
16 under Article 26.04(a).

17 SECTION 2. The heading to Article 27.18, Code of Criminal  
18 Procedure, is amended to read as follows:

19 Art. 27.18. PLEA OR WAIVER OF RIGHTS BY VIDEOCONFERENCE  
20 ~~[CLOSED-CIRCUIT VIDEO TELECONFERENCING]~~.

21 SECTION 3. Articles 27.18(a) and (b), Code of Criminal  
22 Procedure, are amended to read as follows:

23 (a) Notwithstanding any provision of this code requiring  
24 that a plea or a waiver of a defendant's right be made in open court,  
25 a court may accept the plea or waiver by videoconference ~~[broadcast~~  
26 ~~by closed circuit video teleconferencing]~~ to the court if:

27 (1) the defendant and the attorney representing the

1 state file with the court written consent to the use of  
2 videoconference [~~closed circuit video teleconferencing~~];

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

8 (3) on request of the defendant, the defendant and the  
9 defendant's attorney are able to communicate privately without  
10 being recorded or heard by the judge or the attorney representing  
11 the state.

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

17 SECTION 4. Article 27.18(c), Code of Criminal Procedure, as  
18 amended by Chapters 1341 (S.B. 1233) and 1031 (H.B. 2847), Acts of  
19 the 82nd Legislature, Regular Session, 2011, is reenacted and  
20 amended to read as follows:

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

1 SECTION 5. Article 27.18(c-1), Code of Criminal Procedure,  
2 as added by Chapter 1341 (S.B. 1233), Acts of the 82nd Legislature,  
3 Regular Session, 2011, is amended to read as follows:

4 (c-1) The defendant may obtain a copy of an electronic [a]  
5 recording, if an electronic recording was created, [made under  
6 Subsection (c)] on payment of a reasonable amount to cover the costs  
7 of reproduction or, if the defendant is indigent, the court shall  
8 provide a copy to the defendant without charging a cost for the  
9 copy.

10 SECTION 6. Articles 27.18(c-2) and (d), Code of Criminal  
11 Procedure, are amended to read as follows:

12 (c-2) The loss or destruction of or failure to create a  
13 court record or an electronic [make a video] recording of a plea  
14 entered under this article is not alone sufficient grounds for a  
15 defendant to withdraw the defendant's plea or to request the court  
16 to set aside a conviction, sentence, or plea.

17 (d) A defendant who is confined in a county other than the  
18 county in which charges against the defendant are pending may use  
19 the videoconference [teleconferencing] method provided by this  
20 article or by [the electronic broadcast system authorized in]  
21 Article 15.17 to enter a plea or waive a right in the court with  
22 jurisdiction over the case.

23 SECTION 7. Article 27.18(c-1), Code of Criminal Procedure,  
24 as added by Chapter 1031 (H.B. 2847), Acts of the 82nd Legislature,  
25 Regular Session, 2011, is repealed.

26 SECTION 8. Article 15.17, Code of Criminal Procedure, as  
27 amended by this Act, applies to an arrested person brought before a

1 magistrate on or after the effective date of this Act, regardless of  
2 whether the offense for which the person was arrested was committed  
3 before, on, or after that date.

4 SECTION 9. Article [27.18](#), Code of Criminal Procedure, as  
5 amended by this Act, applies to a plea of guilty or nolo contendere  
6 entered on or after the effective date of this Act, regardless of  
7 whether the offense with reference to which the plea is entered is  
8 committed before, on, or after that date.

9 SECTION 10. This Act takes effect September 1, 2017.