

House Bill 3165
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

SENATE VERSION (IE)

CONFERENCE

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 arrested of the person's right to request the appointment of counsel if the person cannot afford counsel. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel. If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate. The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. If the

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person arrested is indigent and requests appointment of counsel and if the magistrate is authorized under Article 26.04 to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051. If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel. The magistrate shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall, after determining whether the person is currently on bail for a separate criminal offense, admit the person arrested to bail if allowed by law. A record [~~recording~~] of the communication between the arrested person and the magistrate shall be made. The record [~~recording~~] shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91st day after the date on which the record [~~recording~~] is made if the person is charged with a misdemeanor or the 120th day after the date on which the record [~~recording~~] is made if the person is charged with a felony. [~~The counsel for the defendant may obtain a copy of the recording on payment of a reasonable amount to cover costs of reproduction.~~] For purposes of this subsection, "videoconference" [~~"electronic broadcast system"~~] means a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure Internet videoconferencing. [FA1(1)]

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(f) A record required under Subsection (a) or (e) may consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Article 26.04(a). The counsel for the defendant may obtain a copy of the record on payment of a reasonable amount to cover the costs of reproduction or, if the defendant is indigent, the court shall provide a copy to the defendant without charging a cost for the copy. [FA1(2)]

No equivalent provision.

SECTION __. Article 15.21, Code of Criminal Procedure, is amended to read as follows:

Art. 15.21. RELEASE ON PERSONAL BOND [PRISONER DISCHARGED] IF NOT TIMELY DEMANDED. If the proper office of the county where the offense is alleged to have been committed does not demand an [the] arrested person described by Article 15.19 and take charge of the arrested person before the 11th day after the date the person is committed to the jail of the county in which the person is arrested, a magistrate in the county where the person was arrested shall:

- (1) release the arrested person on personal bond without sureties or other security; and
- (2) forward the personal bond to:
 - (A) the sheriff of the county where the offense is alleged to have been committed; or
 - (B) the court that issued the warrant of arrest [the arrested person shall be discharged from custody]. [FA2]

No equivalent provision.

SECTION __. Article 15.21, Code of Criminal Procedure, applies only to a person who is arrested on or after the

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SECTION 1. Section 5(a), Article 17.42, Code of Criminal Procedure, is amended to read as follows:

(a) A personal bond pretrial release office established under this article shall:

- (1) prepare a record containing information about any accused person identified by case number only who, after review by the office, is released by a court on personal bond before sentencing in a pending case;
- (2) update the record on a monthly basis; and
- (3) file a copy of the record with the district or county clerk, as applicable based on court jurisdiction over the categories of offenses addressed in the records, in any county served by the office.

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

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

- (1) the office's operating budget;
- (2) the number of positions maintained for office staff;
- (3) the number of accused persons who, after review by the office, were released by a court on personal bond before sentencing in a pending case; and
- (4) the number of persons described by Subdivision (3):
 - (A) ~~[who were convicted of the same offense or of any felony~~

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effective date of this Act. A person arrested before the effective date of this Act is governed by the law in effect on the date the person was arrested, and the former law is continued in effect for that purpose. [FA2]

SECTION 2. Same as House version.

SECTION 3. Same as House version.

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~~within the six years preceding the date on which charges were filed in the matter pending during the person's release;~~
~~[(B)]~~ who failed to attend a scheduled court appearance;
~~(B)~~ ~~[(C)]~~ for whom a warrant was issued for the ~~[person's]~~ arrest of those persons for failure to appear in accordance with the terms of their ~~[the person's]~~ release; or
~~(C)~~ ~~[(D)]~~ who, while released on personal bond, were arrested for any other offense in the same county in which the persons were released ~~[while]~~ on ~~[the personal]~~ bond.

No equivalent provision.

No equivalent provision.

SENATE VERSION (IE)

SECTION 4. The heading to Article 27.18, Code of Criminal Procedure, is amended to read as follows:
Art. 27.18. PLEA OR WAIVER OF RIGHTS BY VIDEOCONFERENCE ~~[CLOSED—CIRCUIT—VIDEO TELECONFERENCING]~~.

SECTION 5. Articles 27.18(a) and (b), Code of Criminal Procedure, are amended to read as follows:
(a) Notwithstanding any provision of this code requiring that a plea or a waiver of a defendant's right be made in open court, a court may accept the plea or waiver by videoconference ~~[broadcast—by—closed—circuit—video teleconferencing]~~ to the court if:
(1) the defendant and the attorney representing the state file with the court written consent to the use of videoconference ~~[closed-circuit-video teleconferencing]~~;
(2) the videoconference ~~[closed-circuit-video teleconferencing system]~~ provides for a simultaneous, compressed full motion video, and interactive communication of image and sound between the judge, the attorney representing the state, the

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defendant, and the defendant's attorney; and
(3) on request of the defendant, the defendant and the defendant's attorney are able to communicate privately without being recorded or heard by the judge or the attorney representing the state.
(b) On motion of the defendant or the attorney representing the state or in the court's discretion, the court may terminate an appearance by videoconference [~~closed circuit video teleconferencing~~] at any time during the appearance and require an appearance by the defendant in open court.

No equivalent provision.

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

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

No equivalent provision.

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

(c-1) The defendant may obtain a copy of the record, including any electronic [a] recording, [~~made under~~

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~~Subsection (e)]~~ on payment of a reasonable amount to cover the costs of reproduction or, if the defendant is indigent, the court shall provide a copy to the defendant without charging a cost for the copy. [FA1(3)]

No equivalent provision.

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

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

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

No equivalent provision.

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

No equivalent provision.

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

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No equivalent provision.

SECTION 3. This Act takes effect September 1, 2017.

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

SECTION 12. Same as House version.

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