

BILL ANALYSIS

Senate Research Center
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S.B. 815
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Criminal Justice
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Last session, Article 15.17(a), Code of Criminal Procedure, was modified by H.B. 3165. It changed the word "recording" to "record," including in Subdivision (2), which specifies how long magistration records must be preserved. According to the new law, "a record of the communication between the arrested person and the magistrate" has to be preserved until the earlier of (1) the date on which the pretrial hearing ends; or (2) the 91st day after the date on which the record is created in misdemeanors or 120th day in felonies.

Article 15.17(e) requires that a record be made of the magistrate informing the defendant of the right to request appointment of counsel, asking the defendant whether they want to request appointment of counsel, and whether the defendant requested counsel.

Article 15.17(f) states that a "record required under Article 15.17(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)."

Although there are no specific record preservation limits detailed in Article 15.17(e), the combined changes in Article 15.17(a) and (f) could be interpreted as allowing for records of requests for counsel to be destroyed according to the timelines in Article 15.17(a). This is especially true since magistration forms typically serve as the record for communications that occur under both Article 15.17(a) and (e).

This is a problem because magistration forms are a critically important document that the Texas Indigent Defense Commission (TIDC) policy monitors need to determine if magistrates are advising defendants of the right to counsel, whether defendants requested counsel, and when they requested counsel. TIDC uses the magistration forms to determine if counties are appointing counsel in a timely manner per the timelines in Article 1.051(c), Code of Criminal Procedure.

Judges also need to know if a defendant has requested counsel and ruled on the request in order to ensure that waivers of counsel are valid. A prosecutor may not communicate with a defendant who has requested counsel unless the court has denied the request and the defendant has been given a reasonable opportunity to retain counsel or waives counsel (Article 1.051(f-1)(2), Code of Criminal Procedure). If a defendant has requested counsel, the court may not direct or encourage the defendant to communicate with the prosecutor unless the court has denied the request and the defendant is given an opportunity to retain counsel or waives counsel (Article 1.051(f-2), Code of Criminal Procedure). A waiver obtained in violation of these provisions is presumed invalid (Article 1.051(f), Code of Criminal Procedure).

S.B. 815 would amend Article 15.17(a) and (f), clarifying that magistration records "must be retained in compliance with the applicable records retention schedule prepared by the director and librarian of the Texas State Library and Archives Commission under Section 441.158, Government Code."

As proposed, S.B. 815 amends current law relating to the creation and preservation of certain records of criminal proceedings.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Articles 15.17(a) and (f), Code of Criminal Procedures, as follows:

(a) Deletes existing text requiring a record of communication between the arrested person and the magistrate to 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 is made if the person is charged with a misdemeanor or the 120th day after the date on which the record is made if the person is charged with a felony.

(f) Authorizes a record required under Subsection (a) or (e) to consist of written forms, electronic recordings, or other documentation by procedures adopted in the county under Article 26.04(a) (relating to a requirement of certain judges to adopt and publish written procedures for appointing counsel for an indigent defendant). Requires the record to be retained in compliance with the applicable records retention schedule prepared by the director and librarian of the Texas State Library Archives Commission under Section 441.158 (Local Government Records Retention Schedules), Government Code.

SECTION 2. Amends Article 27.18, Code of Criminal Procedure, by amending Subsection (d) and adding Subsection (h), as follows:

(d) Authorizes a defendant who is confined in a county other than the county which charges against a defendant are pending to use the videoconference method provided by this article, rather than provided by this article or by Article 15.17 (Duties of Arresting Officer and Magistrate) to enter a plea or waive a right in the court with jurisdiction over the case.

(h) Defines "videoconference."

SECTION 3. Effective date: September 1, 2019.