88R3276 AJZ-F

By:  Collier H.B. No. 405

A BILL TO BE ENTITLED

AN ACT

relating to the appearance of an arrested person before a magistrate and to the retention of certain related records.

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)(1)  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 the person [~~him~~] taken before some magistrate of the county where the person [~~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 and sound of the arrested person may be presented to the magistrate by means of a videoconference. For purposes of this subsection, "videoconference" means a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure Internet videoconferencing.

(2)  The magistrate shall inform in clear language the person arrested, either in person or through a videoconference, of:

(A)  the accusation against the person [~~him~~] and of any affidavit filed with the accusation;

(B)  the person's [~~therewith, of his~~] right to retain counsel;

(C)  the person's [~~, of his~~] right to remain silent and to not make a statement;

(D)  the fact that any statement the person makes may be used against the person;

(E)  the person's [~~, of his~~] right to have an attorney present during any interview with peace officers or attorneys representing the state;

(F)  the person's [~~, of his~~] right to terminate the interview at any time;

(G)  the person's [~~, and of his~~] right to have an examining trial;

(H)  [~~. 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; and

(I)  [~~. The magistrate shall inform the person arrested of~~] the procedures for requesting appointment of counsel.

(3)  If applicable, the magistrate shall inform the arrested person that the person may file the affidavit described by Article 17.028(f).

(4)  If the arrested 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.

(5)  If the proceeding is conducted through a videoconference, the magistrate shall ensure that the arrested person is able to connect to and understand the image and sound of the videoconference.

(6)  If the magistrate has reasonable cause to believe that the arrested person has a mental illness or is a person with an intellectual disability, the magistrate shall follow the procedures under Article 16.22.

(7)  If the magistrate is unable to ensure that the arrested person is able to understand and participate in the proceeding, the magistrate shall:

(A)  if the magistrate has appointing authority, appoint counsel for the person; or

(B)  if the magistrate does not have appointing authority, notify the appointing authority of the person's inability to understand and participate in the proceeding.

(8)  The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the arrested person at the same time the person is informed of the person's rights under this subsection.

(9)  If the arrested 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 arrested 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 necessary forms for requesting and ruling on 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.~~]

(10)  The magistrate shall allow the arrested 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 and whether the bail decision is subject to Article 17.027, admit the person [~~arrested~~] to bail if allowed by law.

(11)  A record of the communication between the arrested person and the magistrate shall be made. [~~The record 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 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. For purposes of this subsection, "videoconference" means a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure Internet videoconferencing.~~]

(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 record must be retained for at least three years after final judgment is entered in the case or the proceedings are otherwise terminated. 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.

SECTION 2.  The change in law made by this Act applies only to a person who is arrested on or after the effective date of this Act. A person arrested before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 3.  This Act takes effect September 1, 2023.