

By: Collier

H.B. No. 405

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the appearance of an arrested person before a
3 magistrate and to the retention of certain related records.

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

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

7 (a)(1) In each case enumerated in this Code, the person
8 making the arrest or the person having custody of the person
9 arrested shall without unnecessary delay, but not later than 48
10 hours after the person is arrested, take the person arrested or have
11 the person [~~him~~] taken before some magistrate of the county where
12 the person [~~accused~~] was arrested or, to provide more expeditiously
13 to the person arrested the warnings described by this article,
14 before a magistrate in any other county of this state. The arrested
15 person may be taken before the magistrate in person or the image and
16 sound of the arrested person may be presented to the magistrate by
17 means of a videoconference. For purposes of this subsection,
18 "videoconference" means a two-way electronic communication of
19 image and sound between the arrested person and the magistrate and
20 includes secure Internet videoconferencing.

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

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

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

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

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

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

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

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

14 (H) [~~. The magistrate shall also inform the~~
15 ~~person arrested of~~] the person's right to request the appointment
16 of counsel if the person cannot afford counsel;i and

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

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

22 (4) If the arrested person does not speak and
23 understand the English language or is deaf, the magistrate shall
24 inform the person in a manner consistent with Articles 38.30 and
25 38.31, as appropriate.

26 (5) If the proceeding is conducted through a
27 videoconference, the magistrate shall ensure that the arrested

1 person is able to connect to and understand the image and sound of
2 the videoconference.

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

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

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

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

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

20 (9) If the arrested person [~~arrested~~] is indigent and
21 requests appointment of counsel and if the magistrate is authorized
22 under Article 26.04 to appoint counsel for indigent defendants in
23 the county, the magistrate shall appoint counsel in accordance with
24 Article 1.051. If the magistrate is not authorized to appoint
25 counsel, the magistrate shall without unnecessary delay, but not
26 later than 24 hours after the arrested person [~~arrested~~] requests
27 appointment of counsel, transmit, or cause to be transmitted to the

1 court or to the courts' designee authorized under Article 26.04 to
2 appoint counsel in the county, the necessary forms for requesting
3 and ruling on the appointment of counsel. [~~The magistrate shall~~
4 ~~also inform the person arrested that he is not required to make a~~
5 ~~statement and that any statement made by him may be used against~~
6 ~~him.~~]

7 (10) The magistrate shall allow the arrested person
8 [~~arrested~~] reasonable time and opportunity to consult counsel and
9 shall, after determining whether the person is currently on bail
10 for a separate criminal offense and whether the bail decision is
11 subject to Article 17.027, admit the person [~~arrested~~] to bail if
12 allowed by law.

13 (11) A record of the communication between the
14 arrested person and the magistrate shall be made. [~~The record shall~~
15 ~~be preserved until the earlier of the following dates:~~

16 [~~(1) the date on which the pretrial hearing ends; or~~
17 [~~(2) the 91st day after the date on which the record is~~
18 ~~made if the person is charged with a misdemeanor or the 120th day~~
19 ~~after the date on which the record is made if the person is charged~~
20 ~~with a felony. For purposes of this subsection, "videoconference"~~
21 ~~means a two-way electronic communication of image and sound between~~
22 ~~the arrested person and the magistrate and includes secure Internet~~
23 ~~videoconferencing.]~~

24 (f) A record required under Subsection (a) or (e) may
25 consist of written forms, electronic recordings, or other
26 documentation as authorized by procedures adopted in the county
27 under Article 26.04(a). The record must be retained for at least

1 three years after final judgment is entered in the case or the
2 proceedings are otherwise terminated. The counsel for the defendant
3 may obtain a copy of the record on payment of a reasonable amount to
4 cover the costs of reproduction or, if the defendant is indigent,
5 the court shall provide a copy to the defendant without charging a
6 cost for the copy.

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

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