

By: Anchia

H.B. No. 823

A BILL TO BE ENTITLED

AN ACT

relating to the duties of a magistrate to inform an arrested person of consequences of a plea of guilty or nolo contendere.

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

SECTION 1. Article 15.17(a), Code of Criminal Procedure, is 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 an electronic broadcast system. The magistrate shall inform in clear language the person arrested, either in person or through 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

1 inform the person arrested that, if the person is not a citizen of
2 the United States of America, a plea of guilty or nolo contendere
3 for the offense charged may affect the person's immigration or
4 residency status and may result in deportation, the exclusion from
5 admission to this country, or the denial of naturalization under
6 federal law. The magistrate shall also inform the person arrested
7 of the person's right to request the appointment of counsel if the
8 person cannot afford counsel. The magistrate shall inform the
9 person arrested of the procedures for requesting appointment of
10 counsel. If the person does not speak and understand the English
11 language or is deaf, the magistrate shall inform the person in a
12 manner consistent with Articles 38.30 and 38.31, as
13 appropriate. The magistrate shall ensure that reasonable
14 assistance in completing the necessary forms for requesting
15 appointment of counsel is provided to the person at the same
16 time. If the person arrested is indigent and requests appointment
17 of counsel and if the magistrate is authorized under Article 26.04
18 to appoint counsel for indigent defendants in the county, the
19 magistrate shall appoint counsel in accordance with Article
20 1.051. If the magistrate is not authorized to appoint counsel, the
21 magistrate shall without unnecessary delay, but not later than 24
22 hours after the person arrested requests appointment of counsel,
23 transmit, or cause to be transmitted to the court or to the courts'
24 designee authorized under Article 26.04 to appoint counsel in the
25 county, the forms requesting the appointment of counsel. The
26 magistrate shall also inform the person arrested that he is not
27 required to make a statement and that any statement made by him may

1 be used against him. The magistrate shall allow the person
2 arrested reasonable time and opportunity to consult counsel and
3 shall, after determining whether the person is currently on bail
4 for a separate criminal offense, admit the person arrested to bail
5 if allowed by law. A recording of the communication between the
6 arrested person and the magistrate shall be made. The recording
7 shall be preserved until the earlier of the following dates: (1)
8 the date on which the pretrial hearing ends; or (2) the 91st day
9 after the date on which the recording is made if the person is
10 charged with a misdemeanor or the 120th day after the date on which
11 the recording is made if the person is charged with a felony. The
12 counsel for the defendant may obtain a copy of the recording on
13 payment of a reasonable amount to cover costs of reproduction. For
14 purposes of this subsection, "electronic broadcast system" means a
15 two-way electronic communication of image and sound between the
16 arrested person and the magistrate and includes secure Internet
17 videoconferencing.

18 SECTION 2. This Act takes effect September 1, 2013.