

- BAIL & BONDS -

DURING THE DAYS OF COVID-19

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Objectives

- DEFINE THE PURPOSE OF BAIL & BOND
- IDENTIFY CONSIDERATIONS WHEN SETTING BOND
- EMPLOY TERMS & CONDITIONS OF BOND THAT INCREASES THE DEFENDANT'S COMPLIANCE TO APPEAR IN COURT, ALL THE WHILE ADDRESSING THE DEFENDANT'S NEEDS (MENTAL HEALTH, SUBSTANCE ABUSE, ETC...)

AND... what should we do
differently with the COVID-19 virus?

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The Eighth Amendment to the United States Constitution states: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

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“NOT TO BE USED AS A PUNITIVE ACTION”

WHAT IS BAIL?

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CODE OF CRIMINAL PROCEDURE

CHAPTER 17 - BAIL

Definitions...

- BAIL: BAIL IS THE SECURITY GIVEN (AMOUNT NEED TO) REASONABLY ENSURE THAT AN ACCUSED SHALL APPEAR AND ANSWER BEFORE THE PROPER COURT – ART. 17.01
- BAIL BOND: A BAIL BOND IS THE WRITTEN UNDERTAKING ENTERED INTO BY THE DEFENDANT THAT SHOWS THE DEFENDAN'TS OBLIGATION TO APPEAR AND ANSWER BEFORE THE PROPER COURT – ART. 17.02

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CODE OF CRIMINAL PROCEDURE

CHAPTER 17 - BAIL

Definitions...

- PERSONAL BOND: A PERSONAL BOND IS A SWORN AGREEMENT BY THE DEFENDANT THAT HE / SHE WILL RETURN TO COURT AS ORDERED AND WILL COMPLY WITH THE CONDITIONS PLACED ON HIS / HER RELEASE – ART. 17.03
- MENTAL HEALTH PERSONAL BOND: A MAGISTRATE SHALL RELEASE A DEFENDANT ON PERSONAL BOND UNLESS GOOD CAUSE IS SHOWN OTHERWISE, IF...

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A MAGISTRATE IS NOT PERMITTED TO ORDER PERSONAL BONDS IN THE FOLLOWING...

- (A) Section [19.03](#) (Capital Murder);
- (B) Section [20.04](#) (Aggravated Kidnapping);
- (C) Section [22.021](#) (Aggravated Sexual Assault);
- (D) Section 22.03 (Deadly Assault on Law Enforcement or Corrections Officer, Member or Employee of Board of Pardons and Paroles, or Court Participant);

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A MAGISTRATE IS NOT PERMITTED TO ORDER PERSONAL BONDS IN THE FOLLOWING...

NOTE: BURGLARY IS HABITATION / BUILDING ONLY

- (E) Section [22.04](#) (Injury to a Child, Elderly Individual, or Disabled Individual);
- (F) Section [29.03](#) (Aggravated Robbery);
- (G) Section [30.02](#) (Burglary);
- (H) Section [71.02](#) (Engaging in Organized Criminal Activity);
- (I) Section [21.02](#) (Continuous Sexual Abuse of Young Child or Children); or
- (J) Section [20A.03](#) (Continuous Trafficking of Persons);

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What does a judge look for when setting bond?

Art. 17.15...

1. BAIL IS SUFFICIENTLY HIGH ENOUGH TO GIVE REASONABLE ASSURANCE THAT THE UNDERTAKING WILL BE COMPLIED WITH
2. THE POWER TO REQUIRE BAIL IS NOT TO BE SO USED TO MAKE IT AN INSTRUMENT OF OPPRESSION
3. THE NATURE OF THE OFFENSE AND THE CIRCUMSTANCES UNDER WHICH IT WAS COMMITTED ARE TO BE CONSIDERED

Or how about... Sufficiently least?

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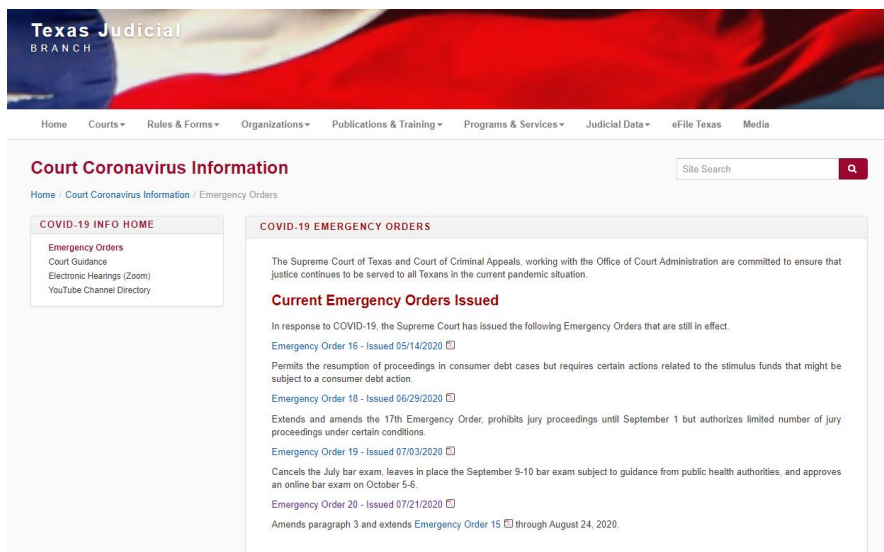
What does a judge look for when setting bond?

Art. 17.15...

4. THE ABILITY TO MAKE BAIL IS TO BE REGARDED, AND PROOF MAY BE TAKEN UPON THIS POINT
5. THE FUTURE OF SAFETY OF A VICTIM OF THE ALLEGED OFFENSE AND THE COMMUNITY SHALL BE CONSIDERED

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TEXAS SUPREME COURT EMERGENCY ORDERS



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SPECIFIC CONDITIONS OF BOND

- ★ • Art. 17.40 - Victim of Community Safety
- ★ • Art. 17.41 - Where Child is Alleged Victim
- Art. 17.43 - Home Curfew and Electronic Monitoring
- Art. 17.44 - Home Confinement, Electronic Monitoring & Drug Testing
- ★ • Art. 17.441 - Ignition Interlock Devices
- Art. 17.45 - AIDS and HIV Testing
- ★ • Art. 17.46 - Conditions Related to Stalking
- Art. 17.47 - Requiring a DNA Specimen
- ★ • Art. 17.49 - Conditions of Bond Family Violence

★ MOST COMMON

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TERMS AND CONDITIONS OF BOND

- “any reasonable condition of bond related to the safety of a victim of the alleged offense or to the safety of the community” – Art. 17.40(a)
- “At a hearing limited to determining whether the defendant violated a condition of bond imposed under Subsection (a), the magistrate may revoke the defendant's bond only if the magistrate finds by a preponderance of the evidence that the violation occurred. If the magistrate finds that the violation occurred, the magistrate shall revoke the defendant's bond and order that the defendant be immediately returned to custody. Once the defendant is placed in custody, the revocation of the defendant's bond discharges the sureties on the bond, if any, from any future liability on the bond. A discharge under this subsection from any future liability on the bond does not discharge any surety from liability for previous forfeitures on the bond.” – Art. 17.40(b)

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TERMS AND CONDITIONS OF BOND		ABSTAIN FR / DRUGS & ALCOHOL	PRE-TRIAL SERVICES
Check all applicable conditions...	1. Completely abstain from the use of alcohol or drugs while on bond.		
() 2. Report to the 33 rd Judicial District Community Supervision and Corrections Department within 24 hours of release as follows:	Contact Matthew Southinghouse at (512) 756-5471. Continue to report each Tuesday morning and by such other times as directed by the CSCD.	DRUG AND ALCOHOL TESTING	ENGAGE IN MENTAL HEALTH AND / OR SUBSTANCE ABUSE SERVICES
() 3. Submit to drug tests for the purpose of determining if you are using or are under the influence of alcohol, narcotic drugs or any other controlled substance as directed by the Court, Magistrate or the CSCD, and	() Pay the cost of the testing. () The cost of the testing will be charged as Court costs.		
() 4. Participate in () an alcohol, () a drug abuse, () treatment, () education program as directed by the Court, Magistrate or the CSCD.	() Contact Bluebonnet Trails Community Services, (512) 863-8968, to participate in their Outpatient Treatment Program (See attached Bluebonnet Trails Judge's Order Information Page).	FIND / KEEP A JOB	DO NOT CONTACT ALLEGED VICTIM AND / OR EPO
() 5. Maintain or actively seek gainful employment.		REMAIN IN HOME	SCRAMx (ALCOHOL MONITORING DEVICE, IGNITION INTERLOCK, GPS TRACKING)
() 6. Do not communicate with the alleged victim of the offense or go near the residence, school, place of employment or any other location frequented by the alleged victim. Do not violate any conditions of the Magistrate's Order for Emergency Protection.			DO NOT GET ARRESTED / CHARGED AGAIN
() 7. Must remain at all times within your home and/or within 100 feet of your home.			PRE-TRIAL BOND SUPERVISION FEES
() 8. Must have:	() SCRAMx (Secure Continuous Remote Alcohol Monitor) Ankle Bracelet under the supervision of the CSCD. Monitor MUST BE INSTALLED BEFORE LEAVING THE BURNET COUNTY JAIL. () Ignition Interlock Device installed on vehicle by _____ (date).		ADDITIONAL TERMS (CHILD SEX CRIMES)
() 9. Not be arrested or charged for violation of any criminal law of the State of Texas or of the United States.			PROHIBITED FAMILY VIOLENCE / ASSAULT / STALKING (42.072)
() 10. Pay bond supervision fees in the amount of \$40.00 each month.			
() 11. Must comply with attached "Additional Conditions of Bond for Defendants Accused of Any Sexual Crime Against a Child".			
() 12. Prohibited from committing: family violence or an assault on the alleged victim or an act in furtherance of an offense under Section 42.072, Penal Code.			
() 13. To be determined by the county of jurisdiction.			
() 14. Within 72 hours of your release from jail, you must contact any Justice of the Peace court or County Court of Law to inquire about your eligibility and/or application for an Occupational Driver's License.			DWLI – ORDERED TO CONTACT CO. COURT / JP COURT TO INQUIRE ABOUT ELIGIBILITY / APPLICATION OF OCCUPATIONAL DRIVERS LICENSE
() 15. Other:			
Defendant Signature _____	Date _____		
Judge Presiding _____	Office Held _____	Right Thumb Print _____	

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So what's around the corner?

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**Commissioners Court
July 30, 2019**

**Commissioner Ellis speaks
on historic misdemeanor
bail reform settlement**



Rodney Ellis
COMMISSIONER
PRECINCT ONE

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James Cadogan, LJAF Vice President – Criminal Justice

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READ MORE ABOUT THE LJAF STUDY...
THE HIDDEN COSTS OF PRETRIAL DETENTION

The Harris County Plaintiff expert relied
substantially on the principals of this study...

<https://nicic.gov/hidden-costs-pretrial-detention>

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The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges

Princeton University Study...

“We find that pre-trial release significantly decreases the probability of conviction, primarily through a decrease in guilty pleas. Pre-trial release increases pre-trial crime and failures to appear in court, but reduces crime following case disposition, leading to no detectable net effect on future crime.”

<https://www.nber.org/papers/w22511>

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Or how about... Sufficiently least?

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**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS – HOUSTON DIVISION**

**MEMORANDUM AND OPINION SETTING OUT FINDINGS
OF FACT AND CONCLUSIONS OF LAW**

“ACCORDING TO THE MOST RECENT AND CREDIBLE EVIDENCE, SECURED FINANCIAL CONDITIONS OF PRETRIAL RELEASE DO NOT OUTPERFORM ALTERNATIVE NONFINANCIAL OR UNSECURED CONDITIONS OF PRETRIAL RELEASE IN ENSURING THE APPEARANCE OF MISDEMEANOR DEFENDANTS AT HEARINGS” – PAGE 110 OF 193

**ARE YOU A BELIEVER THAT THIS IS
WHERE WE'RE GOING? TRUST ZOLTAR...**

Resources...

- **IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION (MEMORANDUM AND OPINION / FINDINGS OF FACT AND CONCLUSIONS OF LAW)**
- **IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, CASE: 18-20466 (APPEAL)**
- **UNITED STATES DISTRICT COURT FOR THE SOUTHER DISTRICT OF TEXAS, HOUSTON DIVISION (CONSENT DECREE)**
- **UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, GALVESTON DIVISION (MEMORANDUM AND RECOMMENDATION)**
- **UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION (CLASS ACTION LAWSUIT)**
- **IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION (PRELIMINARY INJUNCTION)**
- **AMERICAN BAR ASSOCIATION, THE JUDGES' JOURNAL (AUGUST 2018, VOL 57 NO 3) "BAIL REFORM"**

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RULINGS, OPINIONS, AND SETTLEMENTS...

OPEN DISCUSSION & QUESTIONS

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