

EPO Reporting & Magistrate Duties for Clerks

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Resources

- Magistration Deskbook
- Recordkeeping & Reporting Deskbook
- TJCTC Bail Page: www.tjctc.org/bail
- Chapter 15 & 17 of the Code of Criminal Procedure

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TJCTC Website Resources

- Magistration Bench Cards and Flowcharts
- Magistration Forms
- Self-Paced Modules
 - General Magistration
 - Setting Bail Under the Damon Allen Act
- Webinars
 - Bail 2022: Implementation of the PSRS
 - EPOs and the Cycle of Violence

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What We Will Cover

- The Damon Allen Act and the PSRS
- Bond Conditions and Reporting
- Protective Orders
- Warrants
- Recordkeeping and Reporting

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Reminder

- Art. 2.09 of the Code of Criminal Procedure defines who is a magistrate
- Clerks are not able to perform functions, such as determining probable cause or setting bail, that are expressly reserved for magistrates

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Signature Stamps

- Another person may place a judge's signature on a document by using a signature stamp if:
 - the person using the stamp is under the judge's immediate authority, *and*
 - the judge has specifically directed the person to use the signature stamp to place the judge's signature on the document.

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Damon Allen Act & the PSRS

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Damon Allen Act - Background

- What?
- Why?
- Impact?

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PSRS – What is It?

- OCA contracted with a vendor, Automon, to create the Public Safety Report System (PSRS), which went live on April 1, 2022 (www.bail.txcourts.gov).
- The two main goals of the system are:
 - Provide a summary of criminal history information to magistrates so they can set bail and bond conditions more effectively. This summary is the **Public Safety Report (PSR)**.
 - Provide a mechanism of reporting bail decisions to OCA (**bail forms**).

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Public Safety Report (PSR) – Preparation

- The first step is that criminal history databases must be searched (“queried”) to find the defendant’s criminal history information.
- **How** – if person has been booked, should have SID# (State ID#) that ties to only that defendant. If no SID, can use name, DOB, etc.
- **Who** – up to local jurisdictions. Most frequently is jail/sheriff or pretrial services.

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PSR - Generation

- Once the defendant's name is entered, and the system is "queried" the PSRS will pull the criminal history into the system and create a "**public safety report (PSR).**"

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Who Prepares the Report?

- A magistrate may personally prepare the report before or while making a bail decision using the Public Safety Report System.
- Otherwise, the magistrate must order the report to be prepared and provided to the magistrate no more than 48 hours after the defendant's arrest.
 - The magistrate may not order the sheriff's office to prepare the report without their consent.
 - Art. 17.022, CCP

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What if You Have to Prepare the PSR?

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Criminal History Information Record Training

- All system users must obtain Criminal History Record Training
 - In addition to judicial education requirements
 - Two different levels applicable to judges/staff:
 - 8-hour TLETS Mobile Certification
 - Criminal Justice Practitioner Certification
- Which, if any, do you need?

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Criminal History Info Training – TLETS Mobile Certification

- Any person who is searching (“querying”) a criminal history database to pull up criminal history information must receive the **8-hour TLETS mobile certification course**.
 - The training is provided by DPS in-person.
 - New users have a 6-month grace period to complete the 8-hour training from the date they received TLETS access.
 - Recertification is required after two years.

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Criminal History Info Training – CJP Cert

- If a person is not searching (or “querying”) criminal history databases, but is instead simply reviewing or handling criminal history information, then they will only have to obtain and maintain a **Criminal Justice Practitioner (CJP) certification**.

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CJP Certification Procedure

The CJP certification can be obtained after a one-two hour self-paced online course. Recertification is required after two years.

A six-month grace period to receive this training is also provided, but TJCTC recommends receiving it as quickly as possible.

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Criminal History Info Training - Signup

A User Request Form must be completed by your jurisdiction's TAC or Administrator to request access to either certification training. This form is password protected as personal information is needed to create an account.

For access to the User Request Form, questions about the TLETS access trainings and certifications, or to verify if certifications are still valid, contact DPS via email at: TCIC.Training@DPS.Texas.gov

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CJIS Security Awareness

- In addition to one of those two certifications, **anyone** accessing the system will also need to take the CJIS Security Awareness Training.
 - Training shall be taken within six months and biennially thereafter.
 - For information on how to access the CJIS Security Awareness Training please have the Administrator email DPS at security.committee@dps.texas.gov or cjis.audit@dps.texas.gov.

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Bail Form

- The PSRS also generates “bail forms” which are simply tools to report the bail decisions made to OCA.
 - OCA maintains a searchable webpage (<https://topics.txcourts.gov/>) where bail forms are stored.
- A separate written order imposing the bail and conditions **must** be entered and given to the defendant (TJCTC has forms for this).

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What if You Have to Prepare the Bail Form?

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Requirements

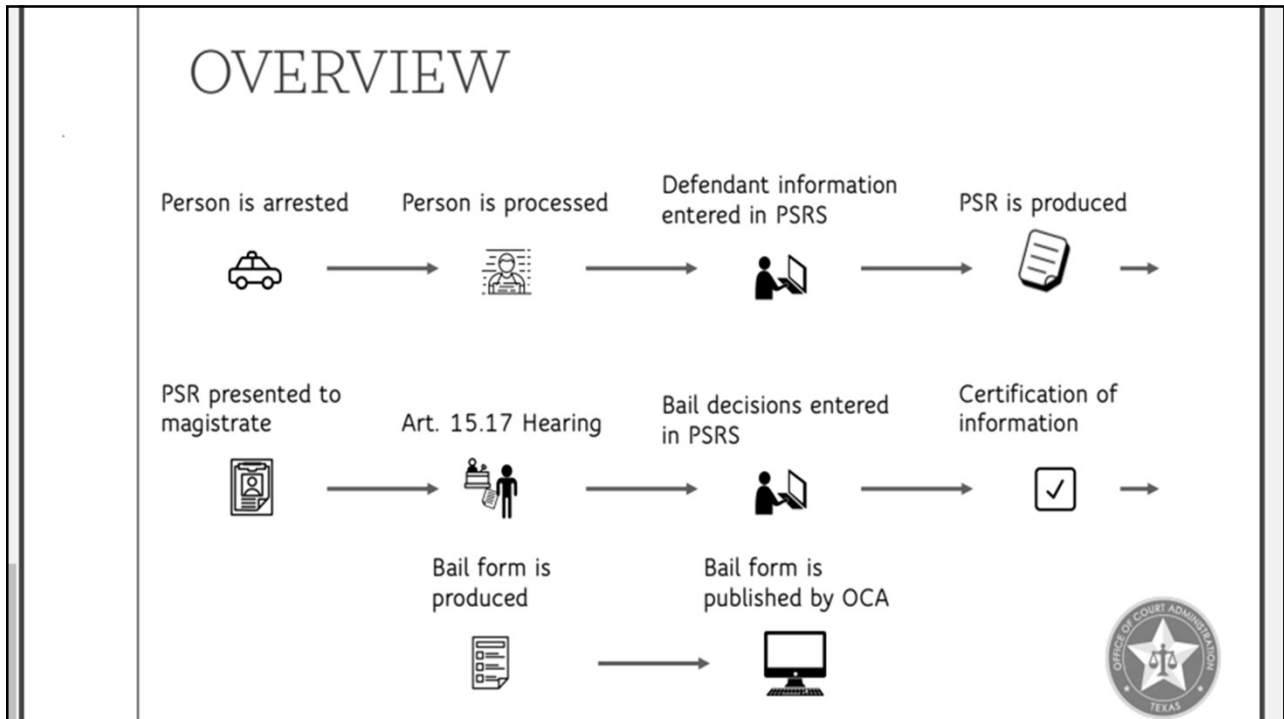
- Bail form must contain the name of whoever made the bail decision
- Also should contain name of whoever does the data entry itself
- What certifications would be necessary to enter bail forms?

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PSRS Process Overview

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Possible Roles of the Clerk

Preparation of the PSR

Data Entry/Prep of Bail Form

Administrator – Responsible for ensuring that everyone registered to an ORI has the required certifications

Local Administrative User (LAU) – Responsible for registering new users to the system and establishing permissions.

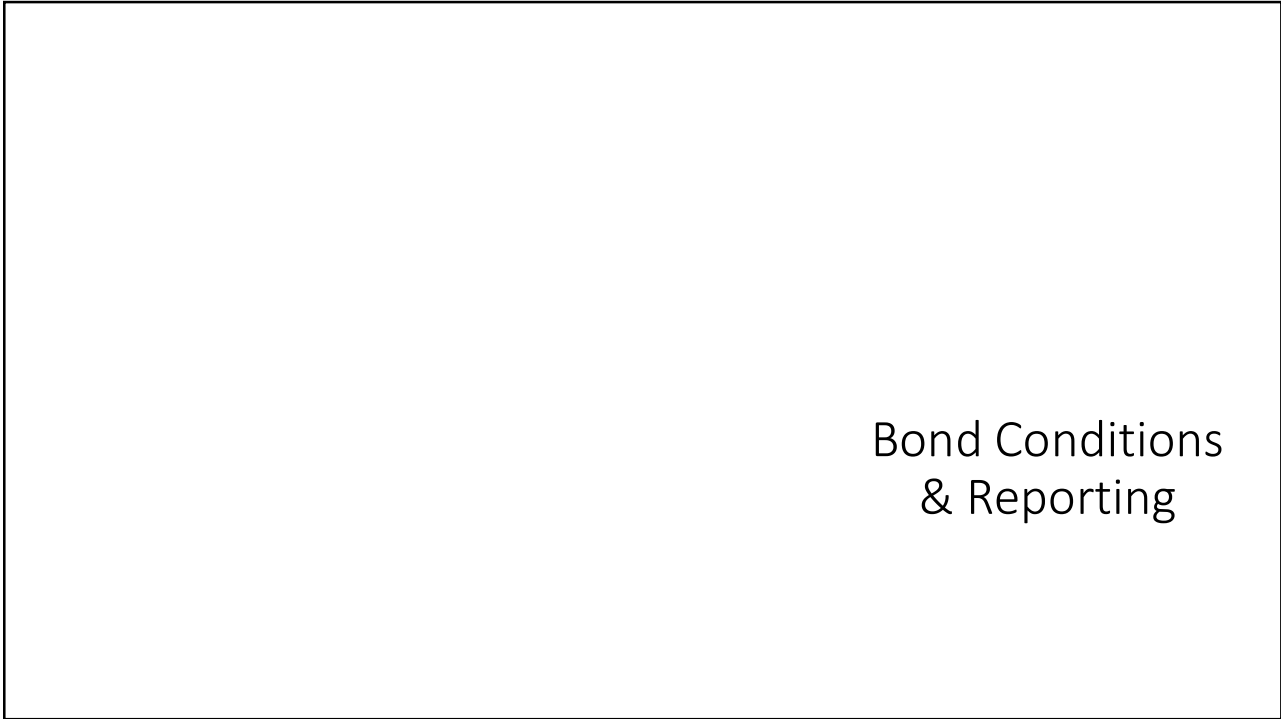
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Resources for Help With the PSRS

- ***TJCTC is unable to assist with PSRS login or technical issues.***
- OCA info pages:
 - www.txcourts.gov/programs-services/public-safety-report-system/
- bail@txcourts.gov (OCA email for system/setup questions)
- Automon (company that created PSRS)
 - 480-368-8555 option 2, support@automon.com
 - <https://help.automon.com/psrs/Content/using-help-center.htm>
- www.tjctc.org/bail has answers to many FAQ related to the PSRS, including how to get signed up.

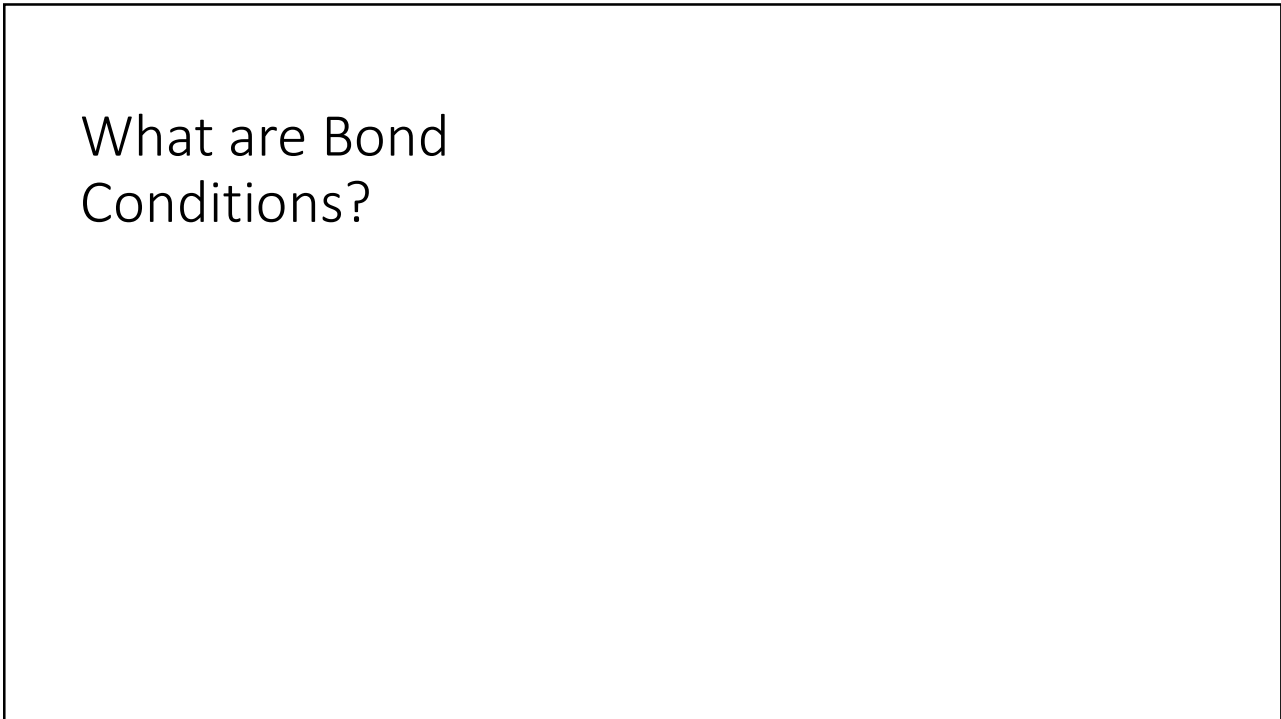
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Bond Conditions
& Reporting

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What are Bond
Conditions?

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Notice of Bond Conditions for Violent Offenses (Magistrate)

A magistrate who imposes a bond condition on a defendant for a violent offense (listed in Art. 17.50(a)(3)) or for stalking must notify the sheriff of the condition **no later than the next day**.

The magistrate must also notify the sheriff of any bond modification or revocation for a violent offense or disposition of the underlying charges (if aware).

-- Art. 17.50, CCP

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Notice of Bond Conditions – All Offenses (Magistrate)

The magistrate or their designee must provide a written notice to the defendant of the bond conditions and the penalties for violating a bond condition.

The magistrate must make a separate record of the notice provided to the defendant.

OCA must create a form for the magistrate to provide notice to the defendant.

• Art. 17.51, CCP

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Notice of Bond Conditions (Clerk)

- The clerk of the court must send a copy of an order imposing a bond condition, or modifying or removing a bond condition, to the prosecutor and the sheriff of the county where the defendant resides.
 - The clerk must do this as soon as practicable but no later than the next business day after a magistrate issues the order
 - The clerk may delay sending a copy of the order only if they lack information necessary to ensure service and enforcement.

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Notice to School or Child Care Facility of Bond Conditions (Clerk)

- If the bond condition order prohibits a defendant from going near a child-care facility or school, the clerk must also send a copy of the order to the facility or school.
- The copy of the order may be sent electronically.
 - Art. 17.51, CCP

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Ignition Interlock Monitoring

- The magistrate may designate an agency/entity to monitor ignition interlock installation and reports.
 - Code of Criminal Procedure Art.17.441.
- This may include the magistrate's staff.

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Protective Orders
& Registry

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What is an EPO?

Also called a “Magistrate’s Order
of Emergency Protection
(MOEP)”

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When is an EPO Issued?

- A magistrate can only issue an EPO after the defendant’s arrest for an eligible offense.
- An alleged victim cannot come get an EPO from a magistrate without the alleged offender being arrested.
- A magistrate cannot issue an EPO after an arrest for an offense other than those listed, even if evidence indicates family violence may be present.

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Sending Copies of EPOs - Clerk

- The clerk of the court **shall** send a copy of the order to the victim at the victim's last known address ASAP, not later than the next business day after issuance (as long as clerk has necessary information).
 - Code of Criminal Procedure Art. 17.292(h), (h-1).
- If restriction from going to or near a childcare facility or school, the magistrate shall send a copy of the order to the childcare facility or school.
 - Code of Criminal Procedure Art. 17.292(i).

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Sending Copies of EPOs – Police

- ASAP, not later than the next business day after the EPO is issued, the magistrate shall send a copy of the order to the chief of police in the municipality where the protected party resides, or to the sheriff of the county where the person resides, as applicable.

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Sending Copies of EPOs – Victim

- If the victim of the offense is not present when the order is issued, the magistrate issuing the order shall order an appropriate peace officer to make a good faith effort to notify, within 24 hours, the victim that the order has been issued by calling the victim's residence and place of employment.
- Additionally, the magistrate must send to DPS a notice suspending a handgun license, if any, held by the defendant.

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Protective Order Registry

OCA is required to maintain a protective order registry and a training program for magistrates, court personnel, and peace officers on how to use the registry.

EPOs issued by a justice of the peace are among the orders that would need to be entered into this registry.

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Protective Order Registry - Procedure

- Applications and orders (original or modified) must be entered as soon as possible, but not more than 24 hours after filing/issuance;
- A clerk can delay only to the extent that they lack the specific info required to be entered; and
- If an EPO is vacated or expired, the clerk shall update the status of the order in the registry.
 - Government Code § 72.151–72.158.

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Protective Order Registry - Info

- Location: <https://www.txcourts.gov/judicial-data/protective-order-registry/>
- Page with link to FAQ, forms, training, & instructions: <https://www.txcourts.gov/judicial-data/protective-order-registry/authorized-user-information-instructions/>

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Confidentiality of Mailing Address

- The mailing address of a person protected by an EPO may be kept confidential if the person requests it or if the magistrate determines that it is necessary.
 - Code of Criminal Procedure Art. 17.294.

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Confidentiality of Mailing Address

- This is done by entering an order:
 - requiring the protected person to disclose their address to the court, designate another person to receive any notices or documents on their behalf, and provide that person's address to the court;
 - requiring the clerk to strike the protected person's address from all public records and maintain a confidential record of the address for use only by the court, or by law enforcement; **and**
 - prohibiting the release of the address to the defendant.

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Warrants, Recordkeeping & Reporting

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Reporting Magistrated Cases to OCA

- The clerk of each court setting bail in criminal cases must report to OCA:
- The number of defendants for whom bail was set after arrest, including:
 - The number for each category of offense;
 - The number of personal bonds; and
 - The number of surety or cash bonds;
 - Government Code § 71.0351.

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Reporting Magistrated Cases to OCA cont.

Additionally, the following must be reported but OCA says by trial court, not magistrate court:

- The number of defendants released on bail who subsequently failed to appear;
- The number of defendants released on bail who subsequently violated a condition of release; and
- The number of defendants who committed an offense while released on bail or community supervision.

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Electronic Records

- Electronic records as good as written copies.
 - *Government Code § 27.058; Code of Criminal Procedure Art. 45.017(b); Local Government Code Chapter 205; Texas Administrative Code Title 13, Chapter 7.*
- Links to standards and procedures, including destruction of source documents, on P. 6-7 of the Recordkeeping & Reporting Deskbook

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Destruction of Records

- TSLAC creates record retention schedules which govern when records can be destroyed (not just source documents).
- This link is found on P. 10 of the R&R Deskbook

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Restrictions on Destruction of Records

- A record may not be destroyed until the matter is resolved if it is involved in any ongoing:
 - litigation,
 - claim,
 - audit, or
 - open records request.
- *Local Government Code § 202.002*

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Access to Records

- Generally, case records are assumed to be open to the public unless they are sealed, or access is limited by common law or a specific statute or rule.
- Exceptions include common law privacy exception and “vehicle for improper purposes.”
 - See P. 31-32 of R&R Deskbook

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Surety Surrender Warrants

- Upon receiving notice that the incarceration has been verified by the sheriff, the magistrate or court must direct the clerk of the court to issue a *capias* for the arrest of the defendant, unless:
 - a warrant has been issued for the defendant's arrest and remains outstanding; or
 - the issuance of a *capias* would otherwise be unnecessary for the purpose of taking the defendant into custody. Code of Criminal Procedure Art. 17.16(c),(d).

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Search and Arrest Warrants

- Required contents listed in Ch. 3 of Magistration Deskbook

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Arrest Warrants Public Records

- The arrest warrant and any affidavit presented to the magistrate is public information, and beginning immediately when the warrant is executed, the clerk shall make a copy of the warrant and affidavit available for public inspection in the clerk's office during normal business hours.
 - Code of Criminal Procedure Art. 15.26.

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Disclosure of Victims of Sexual Offenses

- However, disclosure of identifying information of victims of sexual offenses who are under 17 years of age is prohibited by Art. 57.02(h), unless it is required or permitted by law.
- The Attorney General issued an opinion that courts should redact any identifying information of child sex abuse victims before releasing such documents to the public.
 - Attorney General Opinion KP-0275.

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Search Warrants Public Information

- Except as provided by Article 18.011, which provides for the sealing of records, the affidavit establishing probable cause becomes public information when the search warrant for which the affidavit was presented is executed, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.
 - Code of Criminal Procedure Art. 18.01(b)

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Unexecuted Warrants Not Public

- If a warrant has not been executed yet, that arrest warrant, search warrant, and/or supporting affidavit record (as applicable) must not be released.
- *Code of Criminal Procedure Arts. 15.26, 18.01(b).*

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Mental Health Records

- The general statute that requires mental health records to be kept confidential is Section 571.015 of the Texas Health and Safety Code.
- The language of this statute refers only to papers held by a county clerk.
- However, the best course of action would seem to be for justice courts to still treat all mental health records as confidential.

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Mental Health Records – Statute

- Under Section 571.015 of the Texas Health and Safety Code, mental health records are confidential unless:
 - the county or district judge makes a written order granting access;
 - the requestor is the patient or the patient's attorney; or
 - law enforcement needs information in the record in execution of a writ or warrant.

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Questions & Post-Test!

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Question 1

- Your judge requests you to generate a Public Safety Report (PSR). Can the judge require you to do this?
- If you generate the PSR, true or false, you only need to get the CJP certification since you aren't actually the person setting bail?

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Question 2

- The judge issues an EPO at 7:30pm on Saturday night. When does the EPO have to be entered into the Protective Order Registry?

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Question 3

- Who is the person responsible for adding new users to access the Public Safety Report System (PSRS)?

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Question 4

- Your judge issues a warrant for Sexual Assault of a Child. The warrant is executed. Your local news department calls asking for a copy of the affidavit.
- What happens now?

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Question 5

- Where would you find how long records of magistration hearings must be kept?

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How Does My County Switch to Remote Magistration?

- OCA offers technical assistance with remote proceedings by contacting OCA at zoomhelp@txcourts.gov
- Counties can use their "technology enhancement fund" to purchase software to perform video magistration software.
 - See CCP Art. 102.0173, Ch. 2 of the *Fines, Fees, and Costs Deskbook*.

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