

Magistration - Bail

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Resources

- www.tjctc.org
 - **Magistration Deskbook**
 - **Magistration Bench Cards and Flowcharts**
 - **Magistration Forms**
- Self-Paced Modules
 - TJCTC Magistration Duties Overview*
 - Interpreters
 - Extradition Hearings
- Chapters 14, 15, & 17 of the Code of Criminal Procedure (CCP)

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Please note:

SB 293 amended Tex. Gov't Code § 33.001(b) to expressly state that persistent or willful violations of Art. 17.15 is part of the definition of "willful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties" that can cause a judge's sanction or removal.

Legislature clearly concerned with compliance with magistration duties.

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General Rule: Magistration Open to the Public

Closing magistration hearings usually violates the First Amendment.

It may not be logically feasible for the public to be physically present, but this requirement can be satisfied via Zoom and YouTube.

See Texas Tribune v. Caldwell County case from the Fifth Circuit Court of Appeals

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Exception to the General Rule (1/2)

- Any evidence collected during a forensic medical examination performed on victims of sexual assault is confidential and shall be placed under seal of the court on the conclusion of the hearing, including a magistration hearing.
- Visual images that are evidence of an offense under Penal Code Sec. 21.15 (Invasive Visual Recording) are confidential.

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Exception to the General Rule (2/2)

A court may not allow the electronic transmission or broadcasting of certain court proceedings in which evidence or testimony is offered that depicts or describes acts of a sexual nature unless the court provides notice to and receives express consent for the transmission or broadcasting from:

- The victim or the parent/conservator/guardian of the victim;
- The attorney for the state; and
- The defendant.

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When an exception applies

The magistration should be a closed proceeding.

The magistrate should document in the file an order closing the proceeding, expressly stating the reason.

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What do you do in your county to make magistrations open to the public?

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What is bail?

- Bail is the security that a defendant puts up to make sure they show up for future court hearings and their trial.
- If they fail to show up, they may forfeit the bail in a bail forfeiture proceeding.

-- Art. 17.01; Magistration Deskbook, Chapter 2.

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The purpose of bail:

- Ensuring that the defendant appears in court as directed;
- Protecting the safety of the victim of the offense, if any, and the general safety of law enforcement and the community;
- Releasing the defendant from custody.

The purpose of bail is **not** to impose an additional punishment for an alleged offense and is not to keep a defendant locked up before trial!

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Defendant charged with a new felony while on bail

If a defendant is charged with committing a felony while released on bail for another felony, special rules apply.

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Committing new felony while on bail in the same county

If the new offense was committed **in the same county** as the previous offense, then the defendant may only be released on bail by:

- The court before whom the previous offense is pending; or
- Another court designated in writing by the court where the offense is pending.
 - TJCTC has a form for this designation.

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Committing new felony while on bail in another county

If the new offense was committed **in a different county** as the previous offense, then:

- electronic notice of the charge must be promptly given to the person designated to receive electronic notices for the county in which the previous offense was committed not later than the next business day
- for purposes of re-evaluating the original bail decision, determining whether any bail conditions were violated, or taking any other applicable action.
 - Art. 17.027, CCP

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The Damon Allen Act

- During the 2021 Legislative Session, a major bill was passed that significantly impacted how bail decisions are made in Texas.
- The largest impact was that the Office of Court Administration (OCA) was ordered to create the **Public Safety Report System (PSRS)** to help magistrates make and report bail decisions.
- In the two sessions since this bill was passed, there have continued to be changes to magistration laws. ***It is very important to keep up with these changes.***

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Resources for help with PSRS

- **TJCTC is unable to assist with PSRS login or technical issues.**
- OCA info page:
 - www.txcourts.gov/programs-services/public-safety-report-system/
- bail@txcourts.gov (OCA email for system/setup questions)
- Automon (company that creates 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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The goal of PSRS

- 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**).

The system is **not** designed to be a "one stop shop" for all magistrate duties or to keep records of all magistration information.

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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.

Defendant does not have to be in custody.

- The magistrate may not order the sheriff's office to prepare the report without their consent.

-- Art. 17.022, CCP

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Generation of PSR

- 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)**."
- This must be done any time that a defendant has been arrested for any offense **other than a fine-only misdemeanor and** a bail decision needs to be made for their release.

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Contents of PSR

- the required factors for setting bail provided by Article 17.15(a),
- case & offense info and defendant's identifying information,
- information on the eligibility of the defendant for a personal bond;
- information regarding the applicability of any required or discretionary bond conditions;
- Whether the defendant is under community supervision, bail, or pretrial intervention, and
- in summary form, the criminal history of the defendant, including active warrants and protective orders.

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What if the system is down and the offense is a misdemeanor?

- Art. 17.022(f) of the Code of Criminal Procedure provides that if the PSRS is down for more than 12 hours, a defendant charged with only misdemeanor offenses may be magisterated without considering a PSR.
 - Best practice would be to consider criminal history from an alternate source if possible.

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But what if the system is down and the offense is a felony?

- The statute is silent as to what happens if the defendant is charged with a felony.
- TJCTC recommends:
 - performing the magistration and making the bail decision within the statutorily-mandated 48-hour time period,
 - considering criminal history from an alternate source if possible, and
 - considering a PSR when available, and scheduling a bond modification, if necessary.

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How do I make a bail decision?

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Rules for setting bail (1/2)

- Bail and bond conditions are to be set in accordance with the following rules:
 - The nature of the offense must be considered, including whether it involved violence under Art. 17.03 or violence against a peace officer.
 - The ability to make bail must be considered and proof may be taken on this point.
 - The future safety of the community, law enforcement and a victim are to be considered.

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Rules for setting bail (2/2)

- The criminal history record information for the defendant must be considered, including:
 - Information maintained in the Public Safety Report System
 - Any acts of family violence.
 - Other pending criminal charges.
 - Any instances in which the defendant failed to appear in court after release on bail.
- The citizenship status of the defendant.
 - Art. 17.15(a), CCP

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The bail decision

- After individualized consideration of all the factors listed above, the magistrate must order that the defendant be:
 - Granted a **personal bond** with or without conditions;
 - Granted a **bail bond** with or without conditions; or
 - **Denied bail** under the Texas Constitution and other law.
- This order must be made without unnecessary delay but no later than 48 hours after the defendant is arrested.

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Denial of bail, generally (1/2)

In most cases, a defendant may be denied bail **only by a district judge**, and only in specified situations.

Bail may also be denied by a judge or magistrate where a defendant charged with family violence violates a bond condition relating to the safety of the victim or the community.

And bail may be denied by a judge or magistrate where a defendant charged with certain felony offenses against a child younger than 14 violates a bond condition relating to the safety of the victim or the community.

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Denial of bail, generally (2/2)

- Defendants who are already on probation or parole and are being arrested for violations of those **may be denied bail** on request from the **trial judge** until they are brought before that judge.
- Defendants who are wanted for parole violations from another state are subject to the **Interstate Compact on Adult Offender Supervision** and may be denied bail as well.
 - See Magistration Deskbook, Chapter 2; Module on Extradition and Fugitives from Justice at TJCTC website.

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Denial of bail for specific offenses

Recent constitutional amendment

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Denial of bail possible if defendant alleged to have committed one of the following offenses:

1. Murder;
2. Capital Murder;
3. Aggravated Assault if the Person:
(A) Cause serious bodily injury or
(B) Used a firearm, club, knife, or explosive weapon;
4. Aggravated Kidnapping;
5. Aggravated Robbery;
6. Aggravated Sexual Assault;
7. Indecency with a child;
8. Trafficking of persons; or
9. Continuous trafficking of persons;

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Bail shall be denied if the State proves the following:

- By a preponderance of the evidence after a hearing that the granting of bail is insufficient to reasonably prevent the person's willful nonappearance in court; or
- By clear and convincing evidence after a hearing that the granting of bail is insufficient to reasonably ensure the safety of the community, law enforcement, and the victim of the alleged offense.

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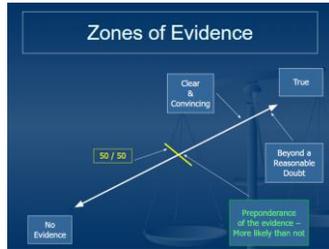
Burdens of proof

"preponderance of the evidence" = more likely than not.

"Clear and convincing" = enough evidence to form a firm belief or conviction of the facts

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Illustration of burdens of proof



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Facts to consider:

- (1) The likelihood of the person's nonappearance in court;
- (2) The nature and circumstances of the alleged offense;
- (3) The safety of the community, law enforcement, and the victim of the offense; and
- (4) The criminal history of the defendant.

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Magistrate who grants bail in accordance with this section shall

- (1) Set bail and impose conditions of release only necessary to reasonably:
 - (A) Prevent the person's willful nonappearance in court; and
 - (B) Ensure the safety of the community, law enforcement, and the victim of the offense; and
- (2) Prepare a written order that includes findings of fact and a statement explaining the magistrate's justification for the grant and the determinations required by this section.

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When do you have to make written findings of fact?

TJCTC's position is that the written findings are only required if the State asks that bail be denied and you grant bail after a hearing.

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Things to keep in mind

- These provisions do not limit any right a person has under other law to contest a denial of bail or to contest the amount of bail set by the judge or magistrate.
- This provision does not require testimonial evidence.
- The defendant is entitled to be represented by counsel at this hearing.

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Bail form

- The Damon Allen Act also requires that the PSRS generate "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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Determining amount and type of bail

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Who decides what type of bond is required

- The magistrate or judge who sets bail also decides whether the bond must be a bail bond, a personal bond or a "PR Bond."

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What is a personal bond?

A personal bond means that the defendant is **promising** to pay the amount of the bail if they don't show up.

But they are not required to have a surety co-sign the bond.

- So, if bail is set at \$5,000 and the defendant is allowed to sign a personal bond rather than a bail bond, and the defendant does not show up for court, the defendant is **liable** (on the hook) for the \$5,000 in a bail forfeiture proceeding.

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What is a PR bond?

• The term "PR Bond" or "Personal Recognizance Bond" is never used in any Texas statute!

- But it generally refers to a personal bond with no monetary bail amount attached.
- People often incorrectly call all personal bonds "PR bonds."

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Consequences of a PR Bond Violation

- The defendant promises to show up as a condition of being released but they are not liable in a bail forfeiture proceeding under Chapter 22.
 - But failing to appear on any bond, including a PR bond, is a criminal offense under Penal Code Sec. 38.10 ("Failure to Appear; Bail Jumping").
- So, a defendant who fails to appear after signing a "PR Bond" could be charged with a new criminal offense for that failure.

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PR vs. Personal Bond

- "PR Bonds" are generally used only in fine-only and other minor misdemeanor cases while personal bonds may be appropriate in other cases as well.

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Bail bond

- If a defendant is not allowed by the magistrate or by law to post a personal bond (or a PR bond), they will have to post a **bail bond**. There are two types of bail bonds:
 - **Cash bonds** – The defendant puts up cash in the amount of the bond. If they show up, they get it back. If they do not, bond forfeiture proceedings result.
 - **Surety bond** – Another person or entity, called a **surety**, promises to pay the bond amount if the defendant doesn't show up. Usually the surety is a bail bond company or the defendant's attorney.

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Bail bond companies

- Usually the defendant will have to pay 10% to the bail bond company up front (often a higher percentage if the bond amount is low). So if you set a \$2000 bond, and don't allow a personal bond, the defendant will have to pay \$200 to the bail bond company.
 - If the defendant then **doesn't show up for court**, the bail bond company must pay the \$2000.
 - If the defendant **does show up for court**, the bail bond company **still** keeps the defendant's \$200, even though they did what they were asked to do.

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What is a bail bond? – Cash Bond

- A defendant who is ordered to post a bail bond to be released from custody may deposit **cash** in the amount of the bail and in that case is not required to have a surety co-sign the bond.
- A magistrate **may not** require a defendant to post a cash bond unless the defendant has been re-arrested after already failing to appear on the original bond or in a surety surrender situation (discussed later).

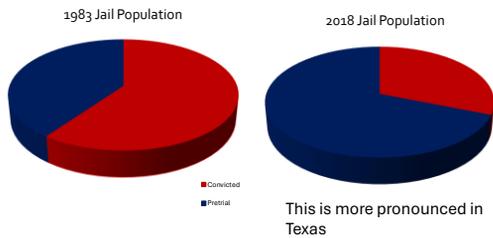
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Why use personal bonds?

- Impact on Defendants
- Short- and Long-Term Costs
- No Reduction in Efficiency vs. Bail Bonds in Studies
 - Especially when notifications of trial settings are sent to defendants

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National jail population breakdown



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In Texas

- As of summer 2025, on any given day, there were more than 53,000 individuals who have not been convicted being held in Texas Jails, at a cost per day to local governments of more than \$2 million or nearly **\$1.2 billion annually**.

Source: <https://www.aclutx.org/en/news/texas-money-bail-system-unfair-and-ineffective#:~:text=Magistrates%20routinely%20set%20bail%20amounts,measures%20that%20keep%20communities%20safe>

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When personal bonds must be used

- A personal bond **must** be given under certain circumstances for the defendant to receive mental health treatment as described by Art. 17.032, CCP.
- Can't be charged or "previously convicted" or a "violent offense" (as defined).
- Exception: Good cause shown.

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Requirements for this type of personal bond

- (1) Defendant is examined by jail's service provider or other mental health or intellectual and developmental disability expert
- (2) The expert concludes that the defendant is competent to stand trial but has mental illness or developmental disability and the expert recommends treatment;
- (3) The magistrate determines that appropriate community-based mental health or intellectual and developmental disability services are available
- (4) The magistrate determines that release on personal bond would reasonably ensure the defendant's appearance in court and the safety of the community and victim.

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Conditions of mental health personal bond

Defendant submit to outpatient or inpatient mental health treatment if

- (1) mental illness or intellectual disability is chronic in nature; or
- (2) ability to function independently will continue to deteriorate if the defendant does not receive the recommended treatment or services.

The magistrate can require additional conditions reasonably necessary to ensure the defendant's appearance in court as required and the safety of the community and the victim.

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Personal bond required if no determination of probable cause

If a defendant was **arrested without a warrant** and no determination has been made of whether or not probable cause exists (usually because no magistrate was available in the required timeframe), then the defendant **must** be released on a personal bond:

- No later than **24 hours** after arrest and in an amount of no more than **\$5000** if the offense is a **misdemeanor**.
- No later than **48 hours** after arrest and in an amount of no more than **\$10,000** if the offense is a **felony**.

- Art. 17.033, Code of Criminal Procedure;

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No determination of probable cause

- Many counties have a policy that all defendants arrested without a warrant must be seen by a magistrate within 24 hours to avoid triggering this requirement.
- Remember that if you determine there is **no probable cause**, the defendant is released **without** requiring a bond (not even a PR bond).
 - No legal reason to have them in custody, so cannot make them put up anything, even a promise, to get out of that custody.

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"No PC" vs. "No Determination of PC"

- Ask yourself: **Is there probable cause for the warrantless arrest?**
 - If your answer is **yes**, **set bail** as normal.
 - If your answer is **no**, the defendant must be **immediately released without bail**.
 - If your answer is "**that hasn't been determined yet**," the defendant must be **released on a personal bond as described above**.
 - This could occur when a magistrate was unavailable, or possibly where the officer needs to fix a technicality on a PC affidavit, but was unable to do so quickly.

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No release on personal bond

Only the court before whom the case is pending (i.e. not you) may release a defendant on a personal bond if charged with:

- Burglary (Section 30.02, Penal Code);
- Engaging in organized criminal activity (Section 71.02, Penal Code); or
- Certain felonies under the Controlled Substances Act or under Section 485.033, Health and Safety Act (inhalant paraphernalia).

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No personal bond – violent offenses

A defendant **may not** be released on a personal bond if the defendant:

- Is charged with an offense involving violence (see list in Ch. 2 of Magistration Deskbook); or
- Is currently released on bail or community supervision for an offense involving violence and is charged with committing a new felony or offense alleging assault, deadly conduct, terroristic threat or disorderly conduct involving a firearm.

-- Art. 17.03, CCP

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Do I have to use the bail amount listed on the warrant? (1/2)

For a **standard arrest warrant**, the amount listed on the warrant is a **recommended bond amount**. The magistrate has a duty to consider all of the factors listed above, which may result in the bond amount being increased or decreased from what the warrant says.

By “standard arrest warrant” we mean one:

- **where there is not a criminal case pending in a court;** or
- **where a magistrate has issued a warrant to arrest the defendant** based on probable cause that an offense has occurred.

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Do I have to use the bail amount listed on the warrant? (2/2)

In situations where another court has **jurisdiction** (authority) over the defendant, **you should follow the amount on the warrant**.

These situations include:

- Cases where the **trial court already has the case** filed, such as where the defendant has been indicted, and the trial court issued the warrant.
- Cases where the **defendant is on probation, parole, or deferred adjudication**.

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What if the warrant says “no bail?”

- Sometimes you will see a person who was arrested on a warrant that says “no bail”
- This may mean that the issuing magistrate didn’t determine bail.
- In this case, you should set bail as you normally would

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“No bail” warrant

Or it may mean they wish the defendant to be **denied bail**.

- In a case where a district court may deny bail as described above, contact county officials immediately to determine the proper course of action.
- In a case where the issuing court has authority to deny bail, such as probation/parole/ICAOS warrants, inform the defendant that the court which issued the warrant has denied them bail.
- Otherwise, set the bail as you normally would. Contact the issuing magistrate if necessary to determine what their intention was.

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Preset bail schedules

- Many counties in Texas have traditionally used a bail schedule that magistrates are instructed to follow.
- These schedules are based on a single factor: the nature of the crime committed.
- They require bail bonds in all cases rather than personal bonds.
- Magistrates do not typically take the defendant’s ability to pay into account in setting bail.

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This has led to lawsuits

- Federal Court lawsuits:
 - *O’Donnell v. Harris County*
 - *Daves v. Dallas County*
 - *Booth v. Galveston County* (Aug. 7, 2019)
- Harris and Dallas County cases held the secured money bail system unconstitutional
- Galveston County case upheld the practices there because they had changed in light of the Harris County case

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Bail Schedules and Standing Orders

- A judge may not adopt a bail schedule or a standing order that authorizes a magistrate to make a bail decision without considering each factor listed in Art. 17.15(a).
- Each case considered on its own merits.

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Inability to afford payment of bail amount

- A defendant charged with a Class B or higher offense who is unable to give bail in the amount required by a bail schedule or standing order must be:
- Told of their right to file an **affidavit** (sworn statement) stating that they do not have the means to pay \$___ and requesting that an appropriate bail be set; and
- Given the opportunity to file the affidavit with a financial info form

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New bail decision/findings of fact

- The magistrate must consider the facts presented and the factors in Art. 17.15 and must set the bail.
- If the magistrate does not set the defendant's bail below the amount required by a bail schedule or standing order the magistrate must issue written findings of fact supporting the bail decision.

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Failure to conduct review within 48 hours

- If the magistrate or criminal trial judge fails to conduct a review within 48 hours, they must report this to OCA.
- If a delay occurs that will cause the review to be held more than 48 hours after the defendant's arrest, notice of the delay must be given to defendant's counsel or to the defendant if he does not have counsel.

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Bond conditions

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Purpose of bond conditions

In addition to (or instead of) setting a dollar amount on the defendant's bond, the magistrate can order the defendant to follow certain **conditions** in order to remain out of custody while awaiting trial.

-- Art. 17.40, Code of Criminal Procedure; see Magistration Bench Card No. 8

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Mandatory and discretionary bond conditions

Magistration Bench Card 8 gives a list of bond conditions that **may**, and in some cases **must**, be imposed in specific circumstances or on specific offenses.

- This information is also provided in **Public Safety Reports** in the PSRS.

TJCTC has bond condition forms online, including forms that provide for the conditions listed in the chart. Make sure that all of the bond conditions are given to the defendant **in writing**.

- Art. 17.51, CCP

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Common bond conditions

- Commit no additional offenses while on bond.
- Report to the **probation department** for monitoring.
 - Probation department is often called **CSCD** for Community Supervision and Corrections Department.
 - CSCD may impose a fee of **\$25-60 per month** for monitoring.

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Creative bond conditions

The magistrate has **broad** discretion to impose conditions, not limited just to those listed in the bench card.

- Discretion is **not** unlimited! Don't violate the rights of the defendant by ordering things like "You must donate blood" or "You must attend church" or "You must enlist in the Marines."

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Interlock ignition device

- One of the most frequently imposed bond conditions is requiring a defendant to install an **ignition interlock device (IID)** on their car and not drive any car that doesn't have an IID installed.

-- See Magistration Bench Card 9

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When IID is mandatory

This bond condition is **mandatory** if the defendant was arrested for:

- Intoxication Assault,
- Intoxication Manslaughter,
- DWI or BWI with Child Passenger, or
- 2nd or greater offense of Driving While Intoxicated, Flying While Intoxicated, or Boating While Intoxicated.

The magistrate can waive the imposition of this condition if it is "in the interest of justice."

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When IID might be waived

- An example of when you might waive IID is if you are imposing a condition that the defendant not consume alcohol and must wear a device that constantly monitors the defendant for alcohol in their system (called a **SCRAM device**).
- Since any alcohol consumption is already a violation of their bond conditions, the IID is less necessary.

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What if the defendant says they do not have a car to install an IID on?

- You should still order that the defendant not drive a car that does not have an IID installed.

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IID as discretionary bond condition

- A magistrate **may** also impose an IID in situations where it is not mandatory, as long as it is reasonably related to the safety of the victim or the community.
- For example, some counties have a policy of requiring an IID on a first offense DWI if the defendant's BAC is over 0.15.

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Bond conditions in family violence cases

- In family violence cases, bond conditions are often very appropriate and effective. For example:
 - You could order the accused not to have contact with the alleged victim of the offense.
 - You could order the defendant to not track or monitor personal property or vehicles in the possession of the alleged victim.
 - If the defendant was alleged to be intoxicated at the time of the assault, you could order them not to consume alcohol or other intoxicants.

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Emergency protective orders

- An additional order, a **Magistrate's Order of Emergency Protection (MOEP) also called an Emergency Protective Order (EPO)**, is also often useful and is required in certain cases.
 - Violating an EPO is a new criminal offense.
 - EPOs must be reported to an OCA database.
 - Uniform EPO form must be used More information on EPOs in recorded webinar on the TJCTC website, and Chapter 2 of the Magistrations Deskbook!

-- See Magistrations Bench Cards 10 and 11; Code of Criminal Procedure Art. 17.292

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Your duty to give notice to the defendant

- 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 is supposed to create this form.

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Magistrate's duty to provide notice for violent offenses

- A magistrate who imposes a bond condition on a defendant for stalking or a violent offense (listed in Art. 17.50(a)(3)) 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).

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What if the defendant doesn't make bail?

- If the defendant cannot post the bail set by the magistrate, they will remain in custody at the jail.
 - Remember the process if the defendant files an affidavit that they cannot afford bail set under a standing order or bail schedule
- However, the defendant **must** be released on a personal or reduced bond if the state is not ready for trial within:
 - 5 days for fine-only misdemeanors.
 - 15 days for misdemeanor with 180 days or less jail time.
 - 30 days for other misdemeanors.
 - 90 days for felonies.
 - Art. 17.151, Code of Criminal Procedure

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Exception: violation of bond conditions

- ***These release timeframes do not apply to someone re-arrested for violation of a bond condition related to safety of the victim or community.***
- This gives your bond conditions extra teeth, since the defendant violating those conditions means they can now be detained until trial.

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Bond modification

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Bond modification hearing

- If it becomes necessary to modify a defendant's bond, **the court with jurisdiction of the case** may issue a **summons or warrant** to bring the defendant in. The hearing may be held on the court's own motion, or the state or defendant may make a motion to modify.
- There must be a hearing giving notice to the state to reduce a bond on certain serious offenses, found in the Magistration Deskbook.
 - See Magistration Bench Card 5

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Why might a bond be modified?

- Perhaps new facts have come to light showing a higher bond is appropriate, such as previous convictions.
- Perhaps a new bond condition might be appropriate.
- Perhaps an existing bond condition is unworkable.

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Bond revocation hearing

- If the defendant fails to comply with a condition of their release, **the court with jurisdiction of the case** may issue a **summons or warrant** to bring the defendant in for a hearing.
- If the defendant is shown to have violated the condition, the bond can be **revoked** (meaning the defendant stays in custody), or a new bond can be required (possibly with an increased amount or new conditions.)
- **Note, a JP magistrate cannot reduce the amount of bail or conditions if they were set by a district court judge.**

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Jurisdiction for modification or revocation (1/2)

So which court/judge has jurisdiction to hold these hearings? It depends!

Has the case been filed with the trial court? This means an **indictment** for a felony, or an **information or complaint** for a misdemeanor has been filed with the court who will hear the trial.

If yes, then the **trial court** should hear any issues related to bond or bond conditions.

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Jurisdiction for modification or revocation (2/2)

- **If the case has not been filed with the trial court**, then it depends on if the defendant was originally arrested with or without a warrant.
- **If the defendant was arrested on a warrant**, the magistrate who issued the warrant should hear any issues on bond until the case is filed with the trial court.
- **If the defendant was arrested without a warrant**, the magistrate who held the Art. 15.17 hearing would hear these issues until the case is filed with the trial court.
 - See Magstration Bench Cards 14 and 15

90

What about bond modifications? (1/2)

A PSR is not mandated.

However, since a magistrate has to consider all factors from Art. 17.15(a), including criminal history, a PSR might be a good idea.

91

What about bond modifications? (2/2)

- Also, a bail form must be submitted through the PSRS when the modification occurs, if either the bond type or amount is modified.
- If only the bond conditions are changed, a new bail form is not required, though there are separate bond condition reporting requirements.
- This requirement would apply to new bonds applied after a modification hearing or after a surety surrender or other bond modification process.

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Out of state warrants and fugitives from justice

93

Two different types of warrants

1. The Uniform Criminal Extradition Act – used when a person who is wanted to stand trial for a criminal offense in another state
2. Interstate Compact for Adult Offender Supervision – used when a person who was on probation or parole in another state has fled that state

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Two different types of out of state warrants (1/2)

1. **The Uniform Criminal Extradition Act – used when a person who is wanted to stand trial for a criminal offense in another state**
2. Interstate Compact for Adult Offender Supervision – used when a person who was on probation or parole in another state has fled that state

95

When is the Uniform Criminal Extradition Act applicable?

- It's used when a person who is wanted to stand trial for a criminal offense in another state has fled that state.

96

Complaint and issuance of warrant

- When a complaint is made to a magistrate that any person within their jurisdiction is a fugitive from justice from another state, the magistrate **shall** issue a warrant of arrest directing a peace officer to apprehend and bring the accused before the magistrate. *Code of Criminal Procedure Art. 51.03.*

97

The complaint is sufficient if it states:

1. The name of the accused;
2. The state from which the accused has fled;
3. The offense the committed by the accused;
4. That the accused has fled to this state from the state requesting return; and
5. That the act that is alleged to have been committed by the accused is a violation of the penal law from the state from which he fled

CCP Art. 51.04

98

Other requirements

- A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued **shall** be attached to the warrant. CCP Art. 51.03.
- When the accused is arrested under the magistrate's warrant, the accused shall be brought before the magistrate who issued the warrant or any other magistrate who may be available in, or convenient to, the place where the arrest was made. CCP Art. 51.13 § 13.

99

Hearing following arrest

- The magistrate shall hear evidence to determine whether the accused is the person charged with having committed the crime and fled from justice.
- A certified copy of the complaint or indictment against the accused in the other state is sufficient to show that the accused is charged with the crime.

100

Commitment and setting bond

- If it appears to the magistrate from an examination that the accused is the person charged with having committed the crime alleged and fled from justice, the magistrate must commit the accused to the county jail for a specified time, not to exceed 30 days.
- The defendant may be released on bail, in an amount determined by the magistrate, instead of remaining in jail for that period **unless** the offense with which the accused is charged is an offense punishable by death or life imprisonment under the laws of the state in which it was committed.

101

Conditions of bond

- The bond should be conditioned that the person will appear at a specific time and place before the magistrate, and that the person will surrender upon issuance of a warrant by the Governor of Texas.
- If the accused is admitted to bail and fails to appear or surrender according to the conditions of the appearance bond, the magistrate shall declare the bond forfeited and order the accused's immediate arrest without warrant if the accused is within the state. *Code of Criminal Procedure Art. 51.13, § 18.*

102

Notification requirements

- If the magistrate determines the person is a fugitive from justice, the magistrate **shall** immediately notify the Secretary of State and district or county attorney of the magistrate's county, stating the name of the fugitive, the state the fugitive fled, and the crime with which the fugitive is charged. CCP Art. 51.06.
- Those officers so notified by the magistrate shall notify the Governor of the proper state. That state's governor may then request that the Governor of Texas issue a warrant for the person's transport back to the proper state.

103

Discharge or recommitment

- If the magistrate determines the person is a fugitive from justice, the magistrate **shall** immediately notify the Secretary of State and district or county attorney of the magistrate's county, stating the name of the fugitive, the state the fugitive fled, and the crime with which the fugitive is charged. CCP Art. 51.06.
- Those officers so notified by the magistrate shall notify the Governor of the proper state. That state's governor may then request that the Governor of Texas issue a warrant for the person's transport back to the proper state.

104

Arrest on governor's warrant

If a person is arrested on a Governor's warrant, they **must** immediately be taken before a judge of a court of record. Instead of being taken before a court of record, the person may be taken before a justice of the peace, **only** if the justice of the peace:

- serves a county bordering another state; **and**
- has taken, through TJCTC, a training course that focuses on extradition law.

105

Judge or JP shall inform the person

- the demand from the other state;
- of the crime which is charged; **and**
- that the person has the right to demand and procure legal counsel.

106

If defendant wants to contest the arrest

- The justice of the peace shall direct the prisoner to a court of record for the proceeding.

107

Before waiving extradition hearing

The judge or justice of the peace shall inform the person of the:

- right to the issuance and service of a warrant of extradition; **and**
- right to obtain a writ of habeas corpus.

108

Waiver of extradition hearing must be in writing

And in the presence of a judge of a court of record, or a JP only if:

- serves a county bordering another state; **and**
- has taken, through TJCTC, a training course that focuses on extradition law.

109

Once the waiver is executed ...

- it must be sent to the Governor of Texas' office. The judge or justice of the peace shall direct the officer, having such person in custody, to deliver the person to the agent or agents of the demanding state and shall deliver or cause to be delivered to such agent or agents, a copy of the waiver. *Code of Criminal Procedure Art. 51.13 § 25a.*

110

Two different types of out of state warrants (2/2)

1. The Uniform Criminal Extradition Act – used when a person who is wanted to stand trial for a criminal offense in another state
2. **Interstate Compact for Adult Offender Supervision – used when a person who was on probation or parole in another state has fled that state**

111

When is the ICAOS applicable?

- It's used when a person who was on probation or parole in another state has unlawfully fled that state.

112

When a warrant
is issued under
the retaking
procedures of
the ICAOS

**The offender may not
be released on bond.**

113

For more questions

Please review the ICAOS
2024 Bench Book,
located at
[https://www.interstateco
mpact.org/bench-book](https://www.interstateco
mpact.org/bench-book)

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