

MAGISTRATE DUTIES

32 Hour Judge's School
Austin, Texas
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Part of a Larger "Judicial Picture"...

- How many of you currently perform "magisterial duties?"
- How many Justice of the Peace are attending today?
- If you have already performed magisterial duties...
 - Do you magistrate all persons arrested?
 - Do you magistrate only Class C offenses?

T.C.C.P. ART. 2.09 – WHO ARE MAGISTRATES:

- Justices of the Supreme Court
- Judges of the Court of Criminal Appeals
- Justices of the Courts of Appeals
- Judges of the District Court
- County judges, Judges of County Courts at Law, County Criminal Courts, and statutory Probate Courts
- Associate Judges, Masters and specialized Magistrates appointed by District and County Judges as specifically authorized by statute.
- Justices of the Peace, and... AND...

T.C.C.P. Art. 2.09
Includes Municipal Judges

- Municipal Court Judges are specifically listed as magistrates.
- There is no rank of magistrates... There is no legally defined hierarchy of magistrates...
- A MAGISTRATE IS A MAGISTRATE... IS A MAGISTRATE...IS A MAGISTRATE....
- BUT... there are a few limitations on certain powers (we will discuss this later under warrants)

How is a Magistrate
Different from a Judge?

- JURISDICTION – Statutorily created authority to act after appointment or election
- Jurisdiction is different from Venue
- Judges have legal authority to make a final disposition or ruling in the matter before them
- Magistrates have a general authority to make initial determinations necessary for legal process or protection

Find your place in
the “Magisterial Universe”

- Local “County Custom” Prevails
- Speak with Your County Attorney, Judges (both District and County)
- Understand the Functions of Your Detention or jail facility
- Communicate with your Justice of the Peace

What Magistrates Are Not, may be Just As Important as What We Are!

Magistrates ARE NOT:

- Police Officers
- Prosecuting Attorneys or Agents of the State
- Defense Counsel or Legal Advisors to Accused
- Counselors or Life Coaches

A “Justice Opportunity”

- Magistrate’s are not there to act at the request of the police
- Magistrates are not here to advise defendants
- Be careful that your appearance, words and actions are neutral
- Jail is hardly a “open” environment (court)...
- Magistrates are obligated to see that justice is done and to protect rights

Magistrate’s Mission

T.C.C.P. Art. 2.10 (Duties of Magistrates)

- “preserve the peace”
- “issue all process intended to aid in preventing and suppressing crime”
- “cause the arrest of offenders by the use of lawful means in order that they may be brought to punishment”

Primary Duties of a Magistrate

- Issuance of Arrest Warrants
- Issuance of Search Warrants
- Magistration Hearings after Arrest or Detention (15.17 Hearings)
- Execution of Writs and Orders subsequent to arrest
- Determination of Bail subsequent to Arrest
- Orders for Emergency Protection

Additional Duties of a Magistrate

- Mental Health Emergency Commitments
- Examining Trials (Art. 39 Tx.C.C.P.)
- Property Hearings
- Dangerous Animal Determinations
- Peace Bonds

Justice of the Peace Also...

- A few Magistrate Functions are the exclusive purview of a Justice of the Peace, such as:
 - Inquests
 - Tow Hearings (municipal judges had this authority for a while)

Municipal Judges Also Have...

- Unsafe/ Unsound Building Determinations
- Property Assessment/ Civil Authority for Demolition
- Other Civil Jurisdiction Conferred by City Ordinance

All Authority Derived From Law

- U.S. Constitution
- Texas Constitution
- Texas Code of Criminal Procedure
- Texas Government Code
- Texas Local Government Code
- Property Code
- Texas Health & Safety Code

Magistrate Records

- A magistrate must maintain a record of all proceedings related to search warrants issued by him
- "Certified" record must be filed with the clerk of the Court
- Record must include the original warrant, affidavit, returns and inventory of seized items

Essential Resources

- Texas Code of Criminal Procedure
- Texas Penal Code
- While Chapter 45 may apply... only applicable in our capacity as judges of municipal courts or justices of the peace
- U.S. Constitution and Texas Constitution
- Other specific statutes and even case law

Essential "Jail" Resources

- In the context of jail, ALWAYS... ALWAYS... ALWAYS... have available to you...

- **TEXAS PENAL CODE**

- **TEXAS CODE OF CRIMINAL PROCEDURE**

Code of Criminal Procedure

- T.C.C.P. Chapter Fourteen (14)
 - Arrest WITHOUT WARRANT
- T.C.C.P. Chapter Fifteen (15)
 - Arrest UNDER WARRANT
- T.C.C.P. Chapter Seventeen (17)
 - BAIL
- T.C.C.P. Chapter Eighteen (18)
 - SEARCH WARRANTS

LET'S START WITH THE
LAST ITEM ON OUR LIST....

WARRANTS

Two General Types of Warrants

- **SEARCH WARRANTS**
– Found under Article Eighteen (18) Tx.C.C.P.
- **ARREST WARRANTS**
– Found under Article Fifteen (15) Tx.C.C.P.

For Issuance of a Warrant...

THERE CAN BE NO WARRANT (both Search and Arrest) without a finding of:

PROBABLE CAUSE

U.S. Constitutional Protection

- Protection provided by the Fourth Amendment of the United States Constitution:
“the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Texas Constitutional Protections

- Protection provided by Art. I, Sec. 9 of the Texas Constitution:
“The people shall be secure in their persons, houses, papers, and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.”

Probable Cause is:

- Based on the factual and practical considerations of everyday life
- Deals with probabilities
- More than mere suspicion
- Less than evidence necessary for conviction or even a preponderance of evidence
- Must balance protection against unreasonable searches against law enforcement interests

A Probable Cause Affidavit Must...

- A Probable Cause affidavit must establish the officer or affiant’s ability to articulate the “who, what, when and how do you know”
- All facts to be considered by the magistrate must be established in writing within the body of the affidavit –
- Must satisfy the “Four Corners Rule”

Probable Cause is not:

- Not mere suspicion, a hunch, or a conclusion without supporting information
- Not evidence sufficient to convince a magistrate “*beyond a reasonable doubt*”
- Not limited to personal knowledge
- Cannot be based on “*stale*” information – must have occurred within a reasonable time prior to the affidavit

What is a Warrant?

Art. 15.01 C.C.P.

- A written order
- From a magistrate
- Directed to a peace officer or some other person
- Commanding the officer
- To take or seize a person
- To be dealt with according to law

Warrant vs. Capias vs. Capias Pro Fine

- A WARRANT is issued by a Magistrate
- A CAPIAS is issued by a Judge PRIOR to Judgment
- A CAPIAS PRO FINE is issued by a judge AFTER imposition of Judgment
- The terms are NOT interchangeable
- Magistrates may deal with all three

Requirements of Arrest Warrant

Art. 15.02

- The name of the person accused or a sufficient description of the person sought
- A statement that the affiant has reason to believe that an offense has been committed
- The date and place where the offense occurred
- The signature of the magistrate indicating the office in which he is acting in the body of the warrant or connected with his signature

Source of Information in Affidavit

- Personal knowledge of affiant
- Identified informant that has been reliable in the past or from a new informant or good citizen where information is provided to support reliability
- Anonymous informant bolstered by officer/affiant surveillance
- Co-defendant in declaration against interest

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Return of Warrant

- Arrest warrants extend to every part of the state (w/ exception of Mayors – only in County unless endorsed by Judge of a court of record)
- “Return of Warrant” made by arrest and “taking before a magistrate – T.C.C.P. 15.16
- “by contrast, Search Warrants are returned by written “Return” – T.C.C.P. 18.10

Search Warrants

- Search Warrants are authorized under Article Eighteen (18) of the Tx.C.C.P.
- Are issued for the seizure of items or property that are evidence of a crime
- A Search Warrant may also order the arrest of a person - if sufficient probable cause is established for arrest

What is a Search Warrant? Art. 18.01(a)

- A written order
- From a magistrate
- Directing a peace officer or some other person
- Commanding the officer
- To seize or search for a item or object
- And bring it before the magistrate

Requirements of Search Warrant Art. 18.01

- Issued in the name of "the State of Texas"
- Must identify the premises to be searched and the property to be seized
- If property identifiable by identifying number, should contain such number
- A command for the officer to search the property
- Contain the date and preferably the time issued by the magistrate

Other Requirements of Search Warrants

- Officer must safeguard property
- Property may not be removed from county without prior written approval
- Only a sheriff or peace officer may execute a search warrant – not a private citizen or security guard
- Any credible person may be affiant on a probable cause affidavit – not just a peace officer

What is Subject to a Search Warrant?

Art. 18.02

- Property acquired by theft
- Property designed for or commonly used in a crime
- Arms or munitions kept for insurrection or riot
- Prohibited weapons
- Gambling devices or equipment
- Obscene materials for commercial distribution
- Illegal drugs
- Any property prohibited by law
- Instruments used in the commission of a crime
- Items constituting evidence of a crime (mere evidence)
- A person
- Contraband subject to forfeiture

Mere Evidence Search Warrants

- Art. 18.02(10) provides for the seizure of “mere evidence” of a crime
- However, under 18.02(c) only an attorney judge of a municipal court of record or county court, statutory County Court, or District Judge, appellate or supreme court justice may issue such warrants (w/ exception)
- No longer limited to Courts of Record
- Mere evidence does not include contraband or illegal items

**Exception Related to “Mere Evidence”
– Art. 18.01 (c)**

- A search warrant may not be issued under Article 18.02(10) unless:
Except as provided by Subsections (d), (i), and (j), only a judge of a municipal court of record or a county court who is an attorney licensed by the State of Texas, a statutory county court judge, a district court judge, a judge of the Court of Criminal Appeals, including the presiding judge, a justice of the Supreme Court of Texas, including the chief justice, or a magistrate with jurisdiction over criminal cases serving a district court may issue warrants under Article 18.02(10).

Exception Related to “Mere Evidence” – Art. 18.01 (i)

- (i) In a county that does not have a judge of a municipal court of record who is an attorney licensed by the state, a county court judge who is an attorney licensed by the state, or a statutory county court judge, any magistrate may issue a search warrant under Subdivision (10) or Subdivision (12) of Article 18.02 of this code. This subsection is not applicable to a subsequent search warrant under Subdivision (10) of Article 18.02 of this code.

Exception Related to “Mere Evidence” – Art. 18.01 (j)

- (j) Any magistrate who is an attorney licensed by this state may issue a search warrant under Article 18.02(10) to collect a blood specimen from a person who:
 - (1) is arrested for an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code; and
 - (2) refuses to submit to a breath or blood alcohol test.

Officer's Return of Warrant

Art. 18.10

- A search warrant must be returned to the issuing magistrate
- With a written return or statement as to how and when the warrant was executed
- Attached to the warrant or on the back or end of the warrant w/ inventory of the items seized
- Within three (3) days of issuance not including date of issuance or date of return (18.07)
- Within 15 days if issued for DNA, blood or saliva

Protection of Property Seized

- There is no specific authorization for service of a search warrant outside of the County in which it was issued
- Copy must be left w/ property or person in control (18.06)
- Property seized may not be removed from county without order by magistrate from county where property seized
- May be sent out for analysis / testing
- Property may be searched only once, unless warrant issued by a District Court Judge

**INITIAL APPEARANCE OF
ARRESTED OR DETAINED PERSON
BEFORE A MAGISTRATE
(T.C.C.P. 15.17 HEARINGS)**

Commonly referred to as...
"Arraignment"

Art. 15.17 “Magistrations”

Art. 15.16 and 15.17 C.C.P. require that a person arrested by a peace officer take a detained person before any magistrate of the county where the arrest occurred, without unnecessary delay, or if more expeditious, before a magistrate in a bordering county of the county of arrest

Purpose of 15.17 Magistrations

- Four main components:
 - Determination of probable cause
 - Issuance of statutory warnings
 - Issuance of necessary orders or writs
 - Setting of appropriate bail

Nature of 15.17 Hearings

- A record of 15.17 hearings must be maintained by the magistrate
- 15.17 hearings may be conducted via closed circuit television so long as a record of the hearing is maintained until the date pretrial ends or the 91st day on misdemeanor cases or 120 days on felony cases
- If the defendant is deaf, the accused must be provided with a certified interpreter for the deaf
- If no probable cause is found for arrest, the accused must be released immediately

15.17 Magistrations are Not:

- 15.17 proceedings are not adversarial
- As they are not adversarial, there is no right to appointed counsel (Green v. State)
- The magistrate is not required to, and probably should not listen to the defendant's side of the story
- The magistrate is not required to admonish the defendant as to the affect on immigration status (State v. Patricia Jimenez)

Timeliness- Unnecessary Delay

- Once arrested, the accused must be brought before a magistrate "without unnecessary delay" but not later than 48 hours after arrest (Art. 15.17)
- C.C.P. further requires that misdemeanor offenses require release on personal bond if there has not been a finding of probable cause by a magistrate within 24 hours of arrest
- Case law suggests that 24 hours may be the more prudent approach
- 15.17 warnings and finding of probable cause can always occur much sooner than either 24 or 48 hours

"On-Sight" vs. Arrest on Warrant

- Magistrate must distinguish between an arrest made pursuant to a warrant vs. an arrest that has been made "on-sight" or "on-view" by a peace officer
- Art. 17.033 provides for "automatic kick-out" of defendant if no finding of probable cause within:
 - 24 hours in case of misdemeanor
 - 48 hours in case of a felony

Art. 17.033 – Release

- Art. 17.033 requires that a person who is arrested without a warrant and who is detained in jail must be released on bond:
 - in an amount not to exceed \$5,000, not later than the 24th hour after the person's arrest if the person was arrested for a misdemeanor and a magistrate has not determined whether probable cause exists to believe that the person committed the offense
 - in an amount not to exceed \$10,000, not later than the 48th hour after the person's arrest if the person was arrested for a felony and a magistrate has not determined whether probable cause exists to believe that the person committed the offense

Magistrate Must Inform the Accused of:

- The nature of the accusation
- The content of any affidavit filed (or lack thereof)
- The right to retain legal counsel or to request appointment of counsel if the accused is indigent
- The right to remain silent
- The right to have an attorney present during questioning by officers or representatives of the state
- The right to terminate any interview at any time
- The right to an examining trial in felony cases
- That the defendant is not required to make a statement, but that any statement they make can be used against him or her at a later time

Indigence and Appointed Counsel

- Art. 15.17 provides for the process for appointment of counsel for indigent defendants has been more clearly defined
- Burden is on the magistrate to inquire whether or not the defendant is indigent and whether or not the defendant will be requesting court appointed counsel
- The magistrate must provide the defendant with reasonable assistance in the process necessary for appointment of counsel
- The process may vary by county, but must be an approved and adopted process for the appointment of indigent counsel
- The magistrate must communicate or transmit the defendant's request for appointment of counsel to the appropriate county authority
- The magistrate must communicate this information in a manner that the defendant can understand (translator need not be certified)

Continued Detention

- Magistrate must determine if “probable cause” exists for further detention of the defendant
- Probable Cause may be established by
 - A sufficient probable cause affidavit
 - Confirmation of a finding of probable cause affidavit in the form of a warrant issued by some other magistrate

Art. 17.15. RULES FOR FIXING AMOUNT OF BAIL

- Art. 17.15. RULES FOR FIXING AMOUNT OF BAIL. The amount of bail to be required in any case is to be regulated by the court, judge, magistrate or officer taking the bail; they are to be governed in the exercise of this discretion by the Constitution and by the following rules:

Art. 17.15. RULES FOR FIXING AMOUNT OF BAIL

- 1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.
- 2. The power to require bail is not to be so used as 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.
- 4. The ability to make bail is to be regarded, and proof may be taken upon this point.
- 5. The future safety of a victim of the alleged offense and the community shall be considered.

Orders and Writs

- If the defendant has been arrested “on-sight” or “on-view”, magistrate must issue all necessary orders or writs for continued detention
- If the defendant is detained based on a warrant issued by another magistrate (agency or department), the magistrate should confirm the existence of that warrant

Communication and Understanding

- Always determine if the defendant understands the warnings and information provided
- It is easy to become cynical
- Be aware of issues related to language
- Spanish is not the only “other language”
- Special considerations for the deaf

Subject of Public Scrutiny

- Do not be influenced by police officers
- Do not be influenced by public outcry or fear of public criticism
- Be mindful of your comments – those comments can come back to haunt you
- Some case can be very “public”

Important Magistrate Statutes

- Art. 14 – Warrants
- Art. 15 – Arrest without Warrant
 - 15.17 Hearings
- Art. 17 – Bail
 - 17.033 – Time Release
 - 17.15 – Rules for Determination of Bail
- Art. 18 – Search Warrants

Other Issues to be Examined

- Magistrate’s Orders for Emergency Protection under Art. 17.292
- Orders for Further Detention (17.293)
- Examining Trial (Art. 16 TCCP)
- Bail Determinations and Special Conditions
