

TEXAS MUNICIPAL COURTS EDUCATION CENTER

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Article 15.17

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The duties of arresting peace officers and of magistrates are detailed in the Code of Criminal Procedure. Article 14.06 provides that peace officers must take the accused before a magistrate when a warrantless arrest is made pursuant to one of the exceptions to the warrant requirement. Such exceptions are stated in Chapter 14. Similarly, Article 15.17, C.C.P., requires that individuals arrested pursuant to a warrant also be brought before a magistrate. Presentation before a magistrate must take place without unnecessary delay, but in no event more than 48 hours after the person is arrested. When presentation takes place, municipal judges (as magistrates) must warn adult offenders of their respective rights as required under Article 15.17. This session will explore the many requirements of Article 15.17 and explore other related issues.

By the end of the session, participants will be able to:

1. Identify requirements of a magistrate under Article 15.17;
2. Demonstrate requirements of Article 15.17; and
3. Discuss constitutional issues and statutory requirements related to magistration.

Article 15.17 Hearings

Regional Judge's Seminar,
South Padre, Texas
May 7 & May 9, 2012

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Texas Municipal Courts Education Center

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CHAPTER FIFTEEN: ARREST UNDER WARRANT

Article 15.17. Duties of Arresting Officer and Magistrate

- (a) In each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in any other county of this state.

The arrested person may be taken before the magistrate in person or the image of the arrested person may be presented to the magistrate by means of an electronic broadcast system.

The magistrate shall inform in clear language the person arrested, either in person or through the electronic broadcast system, of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or

attorneys representing the state, of his right to terminate the interview at any time, and of his right to have an examining trial.

The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel.

If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate.

The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. If the person arrested is indigent and requests appointment of counsel and if the magistrate is authorized under Article 26.04 to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051. If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested

requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel.

The magistrate shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him.

The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall, after determining whether the person is currently on bail for a separate criminal offense, admit the person arrested to bail if allowed by law.

A recording of the communication between the arrested person and the magistrate shall be made. The recording shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91st day after the date on which the recording is made if the person is charged with a misdemeanor or the 120th day after the date on which the recording is made if the person is charged with a felony. The counsel for the defendant may obtain a copy

of the recording on payment of a reasonable amount to cover costs of reproduction. For purposes of this subsection, "electronic broadcast system" means a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure internet videoconferencing.

- (b) After an accused charged with a misdemeanor punishable by fine only is taken before a magistrate under Subsection (a) and the magistrate has identified the accused with certainty, the magistrate may release the accused without bond and order the accused to appear at a later date for arraignment in the applicable justice court or municipal court. The order must state in writing the time, date, and place of the arraignment, and the magistrate must sign the order.

The accused shall receive a copy of the order on release. If an accused fails to appear as required by the order, the judge of the court in which the accused is required to appear shall issue a warrant for the arrest of the accused. If the accused is arrested and brought before the judge, the judge may admit the accused to bail, and in admitting the accused to bail, the judge should set as the amount of bail an amount double that

generally set for the offense for which the accused was arrested.

This subsection does not apply to an accused who has previously been convicted of a felony or a misdemeanor other than a misdemeanor punishable by fine only.

(c) When a deaf accused is taken before a magistrate under this article or Article 14.06 of this Code, an interpreter appointed by the magistrate qualified and sworn as provided in Article 38.31 of this Code shall interpret the warning required by those articles in a language that the accused can understand, including but not limited to sign language.

(d) If a magistrate determines that a person brought before the magistrate after an arrest authorized by Article 14.051 of this code was arrested unlawfully, the magistrate shall release the person from custody.

If the magistrate determines that the arrest was lawful, the person arrested is considered a fugitive from justice for the purposes of Article 51.13 of this code, and the disposition of the person is controlled by that article.

(e) In each case in which a person arrested is taken

before a magistrate as required by Subsection (a), a record shall be made of:

(1) the magistrate informing the person of the person's right to request appointment of counsel;

(2) the magistrate asking the person whether the person wants to request appointment of counsel; and

(3) whether the person requested appointment of counsel.

(f) A record required under Subsection (e) may consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Article 26.04(a).

(g) If a person charged with an offense punishable as a misdemeanor appears before a magistrate in compliance with a citation issued under Article 14.06(b) or (c), the magistrate shall perform the duties imposed by this article in the same manner as if the person had been arrested and brought before the magistrate by a peace officer.

After the magistrate performs the duties imposed by this article, the magistrate except for good cause shown may release the person on personal bond. If a person

who was issued a citation under Article 14.06(c) fails to appear as required by that citation, the magistrate before which the person is required to appear shall issue a warrant for the arrest of the accused.

Commentary

Complying with Art. 15.17 will eliminate compliance issues with Miranda requirements. Clark v. State, 627 S.W.2d 693, 704 (Tex. Crim. App. 1982).

Officers are not required to bring an arrested person before a magistrate immediately after arrest, even if a magistrate is available. See Jenkins v. State, 912 S.W.2d 793, 807 (Tex. Crim. App. 1995). In Jenkins, there was no violation when the officers brought the arrested person before a magistrate sixteen hours after his arrest even though a magistrate was available. Id. Failure to bring an arrested person before a magistrate in a timely manner will not invalidate a confession unless there is proof of causal connection between the delay and confession. Cantu v. State, 842 S.W.2d 667, 680 (Tex. Crim. App. 1992).

Magistrates have no legal duty to inform arrested persons of the significance of signing confessions and their failure to inform the arrested

persons does not make the confession involuntary. Robinson v. State, 851 S.W.2d 216, 234 (Tex. Crim. App. 1993).

In Texas, after an arrested person expressly requests appointment of an attorney at an Art. 15.17 warning hearing and adversarial proceedings have begun, a written waiver is insufficient to justify police-initiated interrogations. Nehman v. State, 721 S.W.2d 319, 322 (Tex. Crim. App. 1986) (citing Michigan v. Jackson, 475 U.S. 625 (1986), overruled by Montejo v. Louisiana, 129 S. Ct. 2079 (2009); Edwards v. Arizona, 451 U.S. 477 (1981)). In Montejo, the Supreme Court held that states may continue to prevent police officers from requesting interviews with represented defendants but that it is not a constitutional requirement to do so. Montejo, 129 S. Ct. at 2089.

In Texas, a defendant's Sixth Amendment right to counsel "attaches" or begins when he is brought before a magistrate as required by Art. 15.17. That does not necessarily mean that he should get an attorney at that time, but it means that he is entitled to one at any "critical stage" that occurs thereafter. Rothgery v. Gillespie County, 554 U.S. 191, 211-12 (2008). A defendant's initial appearance before a magistrate judge,

where he learns the charge against him and his liberty is subject to restriction, marks the initiation of adversary judicial proceedings that trigger the Sixth Amendment right to counsel. *Id.* at 212. Police may still interrogate defendants after the right to counsel attaches as long as the officers first read the defendants their Miranda rights and obtain a waiver of counsel as permitted under *Miranda. Montejo*, 129 S. Ct. 2079 (2009) (overruling *Michigan v. Jackson*, 475 U.S. 625, which forbade police to initiate interrogation of a criminal defendant once he had invoked his right to counsel at an arraignment or similar proceeding).

Magistrate may NOT receive stipend above salary to perform magistrate hearing. See, Tx AG Op. No. GA-193, 2004

Law Enforcement Agency: _____
Date Of Arrest: _____
Time Of Arrest: _____
Place Of Arrest: _____

Court #: _____
County/State: _____
Warrant #, If Any: _____
Bail Set: \$ _____

HAS A PROBABLE CAUSE AFFIDAVIT BEEN FILED? YES NO

MAGISTRATE'S WARNING

THE STATE OF TEXAS §
COUNTY OF _____ §

Before me, the undersigned, magistrate of _____ County, Texas on the _____ day of _____, at _____ O'clock AM/PM, appeared _____ I gave said person the following warning:

- You are charged with the offense of _____ a felony a misdemeanor
- You have a right to hire an attorney to represent you.
- You have the right to have an attorney present prior to and during any interview and questioning by peace officers or attorneys representing the State.
- You have the right to remain silent.
- You are not required to make a statement, and any statement you make can and may be used against you in court.
- You have the right to stop any interview or questioning at any time.
- You have the right to have an examining trial (felonies only).
- You have the right to request appointment of counsel if you cannot afford counsel. *

***THE MAGISTRATE SHALL ENSURE THAT THE PERSON IS INFORMED OF THE FOLLOWING PROCEDURES:**

- a. That an application for a court appointed attorney must be completed to determine if he/she qualifies for a court appointed attorney;
- b. That reasonable assistance will be provided to him/her when filling out the application for a court appointed attorney, if needed;
- c. That a financial affidavit must be signed;
- d. That an affidavit is a written or printed declaration or statement of facts made voluntarily and confirmed by oath before a person having authority to administer such oath;
- e. That if he/she meets indigence standards he/she will qualify for court appointed attorney; and,
- f. Attorney should attempt to contact him/her by the end of the first working day after appointment and to interview him/her as soon as practicable after appointment. If appointment is made when the accused is before the court, the accused will be given attorney's name, address, and phone number.

If you are not a United States citizen and you have been arrested or detained, you may be entitled to have us notify your country's consular representatives here in the United States. Do you want us to notify your country's consular officials?

- NO. _____ YES. _____
- If you responded "YES," what country? _____

If you are a citizen of a country that requires us to notify your country's consular representative, we shall notify them as soon as possible.

THE ACCUSED DOES / DOES NOT WANT TO REQUEST COURT APPOINTED ATTORNEY.

Circle One

I acknowledge that I was given the above warning (This is NOT an admission of guilt):

Magistrate _____

Person warned _____

Place of warning: _____

Time: _____

Date: _____

Accused refused to sign acknowledgement of warning:

Witness (if any):

Name: _____

Address: _____

Magistrate

Remarks: _____

This hearing was interpreted by: _____
(Name of Interpreter)

**Note: THIS IS A TWO-SIDED FORM: SPANISH ONE SIDE, ENGLISH OTHER SIDE
ESTE FORM TIENE DOS LADOS: EN ENGLIS UN LADO Y ESPANOL EN LO OTRO**

Dependencia del orden público: _____
Fecha del arresto: _____
Hora del arresto: _____
Lugar del arresto: _____

Juzgado #: _____
Condado / Estado: _____
No. de la orden de aprehensión, si existe: _____
Fianza fijada en: \$ _____

¿SE HA PRESENTADO UNA DECLARACIÓN DE CAUSA PRESUNTA? SÍ NO

ADVERTENCIAS DEL JUEZ DE INSTRUCCIÓN

ESTADO DE TEXAS §
CONDADO DE _____ §

Ante mí, el juez de instrucción del condado de _____, Texas, el día _____ de _____, a las _____ horas de la mañana/tarde, compareció _____, a quien se le dieron las siguientes advertencias:

- Usted está acusado del siguiente delito: _____ delito mayor (*felony*) delito menor (*misdemeanor*)
- Tiene derecho a contratar a un abogado que lo represente.
- Tiene derecho a que su abogado esté presente cuando usted sea entrevistado o interrogado por los agentes del orden público o abogados fiscales del estado, o antes de participar de una entrevista o interrogatorio.
- Tiene derecho a guardar silencio.
- No se le puede exigir que declare nada, pero cualquier declaración que haga puede ser y va a ser usada en su contra en el tribunal.
- Tiene derecho a interrumpir su interrogatorio o entrevista en cualquier momento.
- Tiene derecho a una audiencia previa al juicio para examinar la acusación (sólo para delitos mayores).
- Tiene derecho a que le nombren un abogado que lo represente si no tiene los recursos necesarios para contratar uno.*

***EL JUEZ DE INSTRUCCIÓN SE ASEGURARÁ QUE EL ACUSADO ESTÉ INFORMADO DE LOS SIGUIENTES PROCEDIMIENTOS:**

- g. Debe completarse una solicitud para el nombramiento de un abogado defensor para que el tribunal determine si el acusado reúne los requisitos necesarios para dicho nombramiento.
- h. En caso de ser necesario, se le ayudará al acusado en la medida de lo razonable, a llenar la solicitud para que le nombren un abogado.
- i. Debe firmarse la declaración de situación económica del acusado (*financial affidavit*).
- j. La declaración (*financial affidavit*) debe ser por escrito, detallar los hechos relacionados al estado económico del acusado, debe ser dada por propia voluntad, y bajo juramento de decir verdad ante una autoridad competente.
- k. En caso de que se demuestre que el acusado es indigente, se le nombrará un abogado para que represente al acusado, y
- l. El abogado defensor nombrado por el tribunal debe comunicarse con el acusado en el transcurso del primer día hábil después de su nombramiento. Si el acusado está ante el juez en el momento del nombramiento, se le hará saber el nombre, dirección y teléfono del abogado.

Si usted no es ciudadano de los Estados Unidos y ha sido arrestado o detenido, posiblemente tenga derecho a que se notifique a los representantes consulares de su país en los Estados Unidos. ¿Desea que notifiquemos al consulado de su país?

No. _____ Sí. _____

Si respondió afirmativamente, ¿de que país es usted? _____

Si usted es ciudadano de un país que nos exige notificar a sus representantes consulares, notificaremos a los mismos tan pronto sea posible.

**EL ACUSADO DESEA / NO DESEA SOLICITAR UN ABOGADO NOMBRADO POR EL TRIBUNAL PARA DEFENDERLO.
indicar la opción**

He sido informado de las advertencias mencionadas anteriormente (Ésta NO es una admisión de culpabilidad):

Persona a la que se le dieron las advertencias

El acusado rehusó firmar el reconocimiento de las advertencias of warning:

Juez de instrucción
Comentarios:

Juez de instrucción

Lugar en que se dieron las advertencias:

Hora:

Fecha:

Testigo (si hay):

Nombre y apellido:

Dirección:

Esta audiencia fue interpretada por:

(Nombre del intérprete)

**Note: THIS IS A TWO-SIDED FORM: SPANISH ONE SIDE, ENGLISH OTHER SIDE
ESTE FORM TIENE DOS LADOS: EN ENGLIS UN LADO Y ESPANOL EN LO OTRO**

Article 15.17 Initial Appearance
“Magistration”
Post-September 1, 2011

Inform in clear language¹:

- ___ the nature of the accusation against him & of any affidavit filed therewith
- ___ right to remain silent
- ___ he is not required to make a statement
 - * any statement made can be used against him
 - * right to terminate the interview at any time
 - * right to have an attorney present during any interview with officers/prosecutors
- ___ right to retain counsel of his own choice
- ___ right to request appointment of counsel & how to request if unable to afford counsel
- ___ right to have an examining trial (FELONY ONLY)

Make a record of:

- ___ **inform** the person of the right to request appointment of counsel
- ___ the magistrate must **ask the person if they request** appointment of counsel
- ___ **whether the person does request** the appointment of counsel

Probation Revocation Warnings

- ___ perform all 15.17 duties
 - * only judge issuing arrest warrant has authority to authorize bail
 - * if no bail → probation revocation hearing within 20 days

After id and magistration, magistrate can release Class C arrestee without bond:

- ___ must give arrestee order of time/date/place to appear for offense & sign the order
 - * if FTA → issue warrant. Set bond 2 times standard for offense.
 - * does NOT apply if arrestee has prior conviction for other than Class C misdemeanor

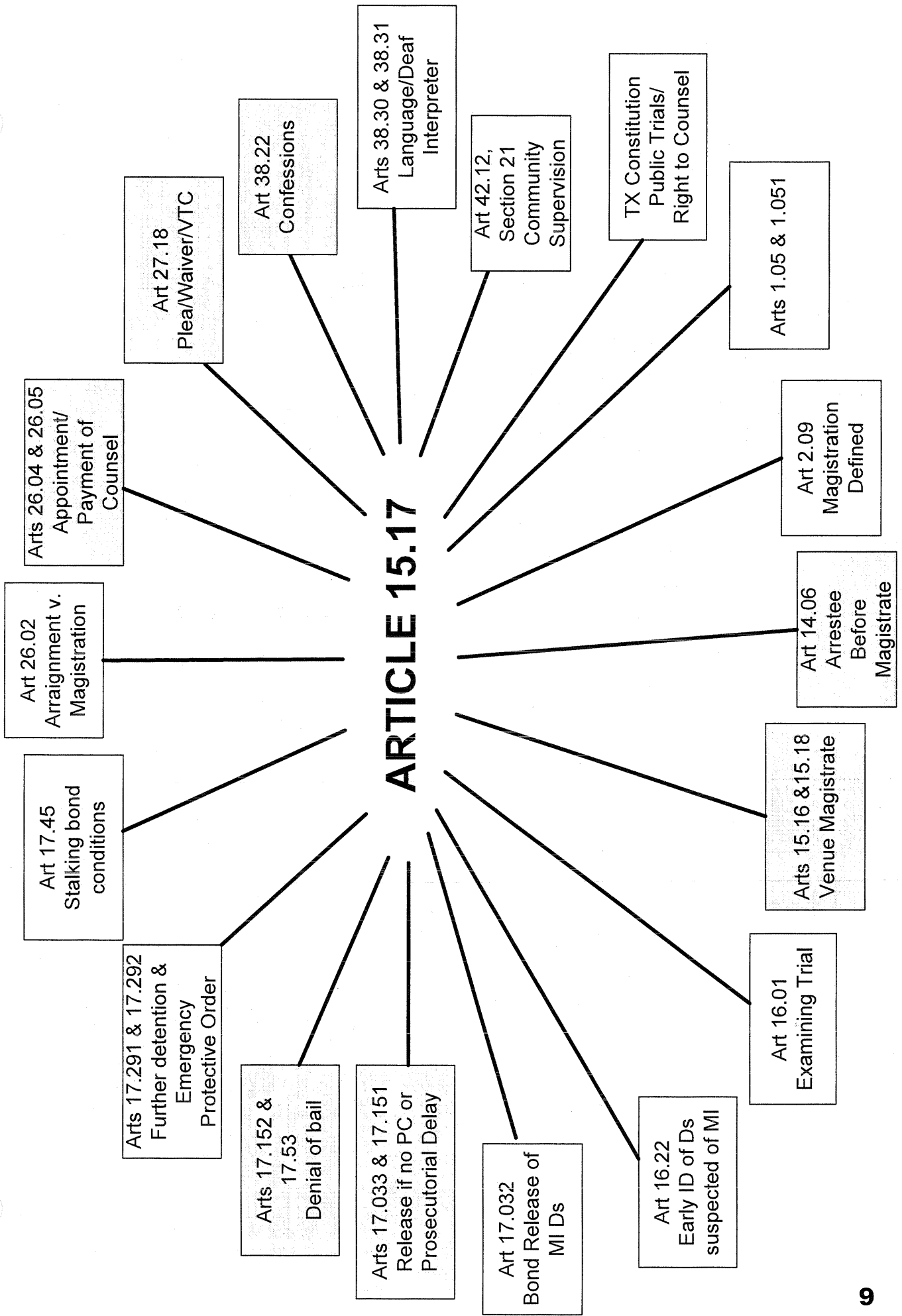
Miscellaneous

- ___ If foreign national: can affect ability to status, ability to stay & ability to become citizen
 - * right to contact consulate/embassy - do they want us to contact?

- * if a *misdemeanor* and no PC w/i 24 hours, must release on \$0-5,000 bond or PR
- * if a *felony* and no PC w/i 48 hours, must release on \$0-10,000 bond or PR

Note: a magistrate **may** postpone release for not more than 72 hours with application by state attorney and a reason that PC has not been determined

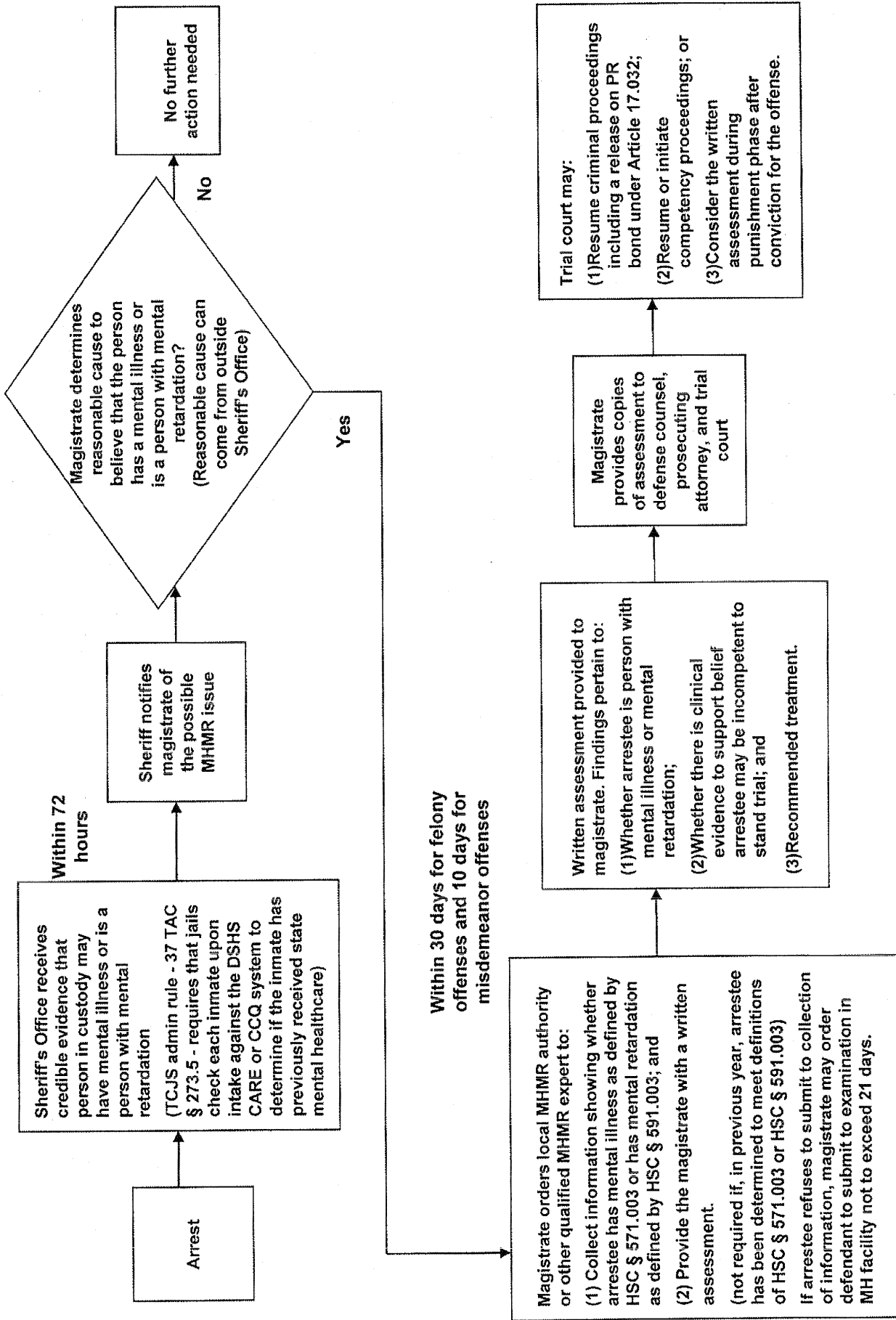
¹ If foreign language speaker or deaf → Art. 38.30 & 38.31.



U.S. Constitution

- 4th Amendment
- 5th Amendment
- 6th Amendment
- 8th Amendment

Article 16.22, CCP Early ID of Def. Suspected of having Mental Illness



Article 17.032, CCP Release on Bond of Certain Mentally Ill Defendants

