

CHAPTER 1 MAGISTRATE DUTIES

General Provisions Applicable to Adults

There is no statutory definition of a “magistrate,” but Article 2.10, C.C.P., does tell us the duty of magistrates:

It is the duty of every magistrate to preserve the peace within his jurisdiction by the use of all lawful means; to issue all process intended to aid in preventing and suppressing crime; to cause the arrest of offenders by the use of lawful means in order that they may be brought to punishment.

The duty, as defined above, is broadly worded, but this chapter as well as Chapter 2 will outline in further detail many of the duties that municipal judges have as magistrates. As magistrates, municipal judges serve an important gate-keeping function in the adjudication of all criminal matters, playing an active role in the beginning stages of the life of a criminal action.

While every member of the judiciary in Texas is a magistrate, municipal judges and justices of the peace perform more magistrate duties than all other members of the judiciary combined. Magistrates have co-equal jurisdiction with all other magistrates within the county, and their jurisdiction is coextensive with the limits of the county. *Gilbert v. State*, 493 S.W.2d 783 (Tex. Crim. App. 1973), and *Ex parte Clear*, 573 S.W.2d 224 (Tex. Crim. App. 1978).

As magistrates, municipal judges are authorized to inform adult offenders of their respective rights as required by law. This is one of the most common and important functions of a magistrate. The duties of arresting peace officers and of magistrates are detailed in Article 14.06, C.C.P., which 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, C.C.P. 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. Article 15.17, C.C.P.

Texas law contains no specific term or phrase for the presentation of the accused before a magistrate. The lack of a statutory term has resulted in the use of various terms (e.g., “magistration,” “15.17 hearing”), which leads to potential confusion. In the past, the U.S. Supreme Court has referred to the accused’s presentation before the magistrate as an “initial appearance,” although the term “magistration” appears to be gaining popularity. In 2008, the U.S. Supreme Court in *Rothgery v. Gillespie County*, 554 U.S. 191, noted the lack of a formal term for what they acknowledged as “magistration.” While the Court of Criminal Appeals has shown no preference for any one term, it has taken issue with courts and attorneys erroneously referring to it as an “arraignment.” *Watson v. State*, 762 S.W.2d 591 (Tex. Crim. App. 1988). An arraignment involves fixing the identity of the offender and taking a plea. See Checklist 6-2.

Generally, a magistrate is involved in the preliminary stages of a criminal proceeding. Such proceedings involve adults accused of criminal offenses. Because juvenile justice laws in Texas are civil, the preliminary stages of a child being taken into custody are governed by Title 3, F.C., not Article 15.17, C.C.P. In this sense, children who are taken into custody are not “magistrated” in the same manner as adults. Magistrates are, however, frequently involved in the procedures governing the taking of a confession by a child. See Checklists 13-28 and 13-29.

For more information on the role of magistrates, see *The Municipal Judges Book*, Chapter 1.

General Provisions Applicable to Adults

1. Magistrate’s Warnings and Setting Bail for Adult

Checklist 1-1	Script/Notes
<p><input type="checkbox"/> 1. Determine whether the person has been (1) subject to custodial arrest; or (2) arrested and released after being issued a citation for an enumerated Class A or B misdemeanor.</p> <p><input type="checkbox"/> a. Subject to custodial arrest:</p> <p><input type="checkbox"/> (1) Determine probable cause.</p> <p><input type="checkbox"/> (A) If arrest is by a warrant, no further inquiry as to probable cause is needed.</p> <p><input type="checkbox"/> (B) If arrest is without a warrant, conduct a probable cause hearing either by sworn testimony or written affidavit to review the facts and circumstances of the arrest to determine if probable cause exists for continued detention of arrestee.</p> <p><input type="checkbox"/> (2) If there is no probable cause, release the arrestee.</p> <p><input type="checkbox"/> (3) If there is probable cause, proceed.</p> <p><input type="checkbox"/> (4) Appearance before a magistrate may be in person or through a videoconference allowing two-way communication of image. A record of the communication between the arrested person and the magistrate shall be made.</p>	<p><i>Gerstein v. Pugh</i>, 420 U.S. 103 (1975).</p> <p><i>County of Riverside v. McLaughlin</i>, 500 U.S. 44 (1991).</p> <p>Magistrate to use a practical common sense approach to determine probable cause by considering all facts presented under oath; the “totality of the circumstances” test to determine whether there is a fair probability that the arrestee committed the offense with which he or she is charged. <i>Guzman v. State</i>, 955 S.W. 2d 85 (Tex. Crim. App. 1997).</p> <p>See <i>TMCEC 2022 Forms Book</i>: Release: Magistrate’s Determination of No Probable Cause.</p> <p>Art 15.17, C.C.P. A videoconference includes secure internet conferencing.</p>

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| <ul style="list-style-type: none"> ☐ b. Citation for enumerated Class A or B misdemeanor: <ul style="list-style-type: none"> ☐ (1) If the person resides in the county where the offense occurred, a peace officer who is charging a person with committing an offense that is an enumerated Class A or B misdemeanor may, instead of taking the person before a magistrate pursuant to Article 14.06(a), C.C.P., issue a citation to the person that contains written notice of the time and place the person must appear before a magistrate, the name and address of the person charged, and the offense charged. ☐ (2) Citations may only be issued for the following enumerated Class A or B misdemeanors: <ul style="list-style-type: none"> ☐ (A) Possession of four ounces or less of marihuana; ☐ (B) Possession of four ounces or less of a substance in Penalty Group 2-A; ☐ (C) Criminal mischief, where the value of damage done was \$100 or more but less than \$750; ☐ (D) Graffiti, where the value of the damage done was \$100 or more but less than \$2,500; ☐ (E) Theft, where the value of the property stolen was \$100 or more but less than \$750, or the value of property obtained by a hot check was \$20 or more but less than \$500; ☐ (F) Theft of a service, where the value of the service stolen was \$100 or more but less than \$750; ☐ (G) Possession of contraband in a correctional facility, if the offense was punishable as a Class B misdemeanor; and | <p>Art. 14.06(c), C.C.P.</p>
<p>Art. 14.06(d), C.C.P.</p>
<p>Sec. 481.121(b)(1)-(2), H.S.C.</p>
<p>Sec. 481.1161(b)(1)-(2), H.S.C..</p>
<p>Sec. 28.03(b)(2), P.C.</p>
<p>Sec. 28.08(b)(2)-(3), P.C.</p>
<p>Sec. 31.03(e)(2)(A), P.C.</p>
<p>Sec. 31.04(e)(2), P.C.</p>
<p>Sec. 38.114, P.C.</p> |
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| <ul style="list-style-type: none"> <input type="checkbox"/> (H) Driving with an invalid license, if the defendant has a prior driving with invalid license conviction. | <p>Sec. 521.457(f), T.C.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> (3) If a person issued a citation pursuant to Article 14.06, C.C.P., appears before a magistrate, the magistrate shall perform the duties imposed by Art. 15.17, C.C.P., as if the person had been arrested and brought before the magistrate by a peace officer. | <p>Art. 15.17(g), C.C.P. This requirement applies to both those defendants issued a citation for an enumerated Class A or B misdemeanor and those issued a citation for a Class C misdemeanor.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> (4) After the magistrate performs the duties imposed by this article, the magistrate, except for good cause shown, may release the person on personal bond. | <p>Art. 15.17(g), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> (5) If a person issued a citation under Article 14.06(c) fails to appear as required by that citation, the magistrate before whom the person is required to appear shall issue a warrant for the arrest of the accused. | <p>Art. 15.17(g), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 2. Identify yourself to the arrestee. | |
| <ul style="list-style-type: none"> <input type="checkbox"/> 3. Determine if the arrestee sufficiently understands the English language or possesses any impairments. | |
| <ul style="list-style-type: none"> <input type="checkbox"/> 4. If necessary, swear in a qualified interpreter. | <p>Art. 38.30, C.C.P. See Checklist 12-5.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 5. If the arrestee is hearing impaired, obtain the services of an interpreter as provided by Article 38.31, C.C.P., to interpret the warning. | <p>Art. 15.17(c), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 6. Determine the arrestee’s age at the time of the offense. <ul style="list-style-type: none"> <input type="checkbox"/> a. If the arrestee has not reached his or her 17th birthday, or was under 17 at the time of the offense but is now 17 or older, use the juvenile admonishment (warning). <input type="checkbox"/> b. If the arrestee is at least 17 or was 17 at the time of the offense, continue. | <p>See Checklists 13-28 and 13-29.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 7. Determine whether arrestee is currently on bail for a separate offense. | <p>Art. 15.17(a), C.C.P.</p> |

- a. If a defendant is charged with a felony while released on bail in a pending felony case in the same county as the previous offense, the defendant may only be released on bail by the court before whom the case for the previous offense is pending or another court designated in writing by the court before whom the case for the previous offense is pending.
- b. If a defendant is charged with a felony while released on bail in a pending felony case in a different county from the previous offense, electronic notice of the charge must be promptly given to the court before whom the case for the previous offense is pending to reevaluate the bail decision, determine whether conditions were violated, and decide if other actions are necessary.
- 8. Advise the arrestee in clear language of the offense with which he or she is charged.
 - a. Name the offense.
 - b. Inform arrestee of any affidavit filed in the case.
- 9. Warn the arrestee of the following rights:
 - a. The right to remain silent;
 - b. That the arrestee is not required to make a statement and that any statement made can and will be used against the arrestee;
 - c. The right to have an attorney present during any interview with peace officers or prosecutors;
 - d. The right to terminate the interview at any time; and

Effective January 1, 2022.
Art. 17.027(a)(2), C.C.P.

Effective January 1, 2022.
Art. 17.027(a)(2), C.C.P.

See *TMCEC 2022 Forms Book*: Magistrate’s Warning.

“You are charged with the offense of _____. It is a _____ Degree/Class Misdemeanor/Felony.”

Although it is not constitutionally required for misdemeanors, it is a good practice to admonish all defendants of possible immigration consequences. *State v. Jimenez*, 987 S.W.2d 886 (Tex. Crim. App. 1999).

- e. The right to an examining trial if the offense charged is a felony.
 - f. If applicable, the magistrate shall inform the person that the person may file the ability to pay affidavit described by Art. 17.028(f), C.C.P.
10. The Vienna Convention on Consular Notifications requires that a foreign national be offered the opportunity to have his or her country's consulate notified that he or she is facing criminal action. The magistrate should do the following:
- a. Admonish the person of his or her right to request that his or her country's consular office be notified of this criminal action.

Effective January 1, 2022.
Art. 15.17(a), C.C.P.

Download the U.S. Dept. of State's *Consular Notification and Access* at <https://travel.state.gov/content/travel/en/consularnotification.html>.

Mandatory notification requirements arise from bilateral agreements between the United States and 56 countries. A full list can be found in the U.S. Dept. of State's *Consular Notification and Access*. All countries not listed as mandatory are considered permissive.

For example:
"If you are a non-United States citizen, you may request that your country's consular office here in the United States be notified of your situation. You may also communicate with your consular officers. A consular officer may be able to help you obtain legal representation and may contact your family and visit you in detention, among other things. You can request this notification now, or at any time in the future. You may first speak to your defense attorney about communicating with your consulate."

- b. If defendant requests notification, notify the consular office “without delay.”
- c. Document your notification, the detainee’s response, and any other relevant paperwork.
- 11. Warn arrestee of right to counsel and appointment of counsel.
 - a. Warn of the right to retain counsel.
 - b. Warn of the right to request appointment of counsel if the person cannot afford counsel.
 - c. Describe the local procedures, created by the district and county judges, for requesting appointment of counsel.
 - d. Ensure reasonable assistance in completing the necessary forms.
 - e. Appoint counsel, but only if the magistrate is designated by the local district and county judges as the appropriate authority under Article 26.04, C.C.P., to appoint counsel.
 - f. Forward the completed paperwork to the appropriate designee if not designated by the local district and county judges to appoint counsel:
 - (1) Without unnecessary delay; and

If the person requests consular notification, the magistrate should notify the consulate; it will not satisfy your duty to just let the defendant call the consulate.

See Checklist 1-9.

Only indigent defendants charged with a crime that may result in punishment by confinement are entitled to have an attorney appointed. However, if a court concludes that the interests of justice require representation by counsel, the court may appoint counsel. Art. 1.051, C.C.P. See Checklist 8-3 for indigence hearings.

- (2) Not later than 24 hours after request for appointment.
- 12. After determining whether the person is currently on bail for a separate criminal offense and whether the bail decision is subject to Art. 17.027, C.C.P., admit the person to bail if allowed by law.
- 13. A record must be made in each case in which a person is arrested and taken before a magistrate for an Article 15.17 hearing. It may be written, recorded, or in other form adopted by the county, and it should include:
 - a. The magistrate informing the person of his or her right to request appointment of counsel;
 - b. The magistrate asking the person whether he or she wants to request appointment of counsel; and
 - c. Whether the person requested appointment of counsel.
- 14. Inquire if the arrestee understands his or her rights.
 - a. A magistrate has a duty to clarify the rights if the arrestee indicates a lack of understanding.
 - b. A magistrate must ensure that reasonable assistance is given to the arrestee in completing the necessary forms for requesting appointment of counsel at the time of the Article 15.17 hearing.
 - c. A magistrate must ensure a defendant filing an alibity to pay affidavit under Art. 17.028(f) receives reasonable assistance in completing it.

Art. 15.17(a), C.C.P.

Art. 15.17(e), C.C.P. See *TMCEC 2022 Forms Book: Magistrate Warning*.

See Checklist 1-9 and Art. 26.04, C.C.P., if you are the designated authority to appoint counsel.

If a municipal judge appoints an attorney, the city may be responsible for paying the attorney, unless an interlocal agreement is entered to the contrary.

Effective January 1, 2022. Art. 17.028(g-1)(2), C.C.P.

☐ 15. Consider bail and pretrial release.

- ☐ a. A defendant charged with a felony or misdemeanor punishable by confinement may be released on bail only by a magistrate who is:

- ☐ (1) Any of the following:
 - (A) a resident of this state;
 - (B) a justice of the peace serving under Sec. 27.054 or 27.055, G.C.; or
 - (C) a judge or justice serving under Ch. 74, G.C.; and

A magistrate cannot require a defendant to post bail in cash only. *Ex parte Deaton*, 582 S.W.2d 151 (Tex. Crim. App. 1979); *Ex parte Rodriguez*, 583 S.W.2d 792 (Tex. Crim. App. 1979); Tex. Atty. Gen. Op. JM-363 (1985). The exception to this rule is when a bond forfeiture has been declared and the defendant is arrested on a *capias*. The court may then require a cash bond. Art. 23.05, C.C.P. For more on bail bonds, see Art. 17.02, C.C.P.

Art. 17.023, C.C.P. Effective January 1, 2022 but OCA has until April 1, 2022 to develop the training required by Art. 17.024, C.C.P. Note that a magistrate who is serving on April 1, 2022 is considered to be in compliance with the training requirements if the magistrate successfully completes the training course no later than December 1, 2022. See Art. 17.023(c), C.C.P for other eligibility parameters, such as removal from office by impeachment.

- (2) In compliance with the training requirements of Art. 17.024, C.C.P.
- b. A defendant may be released on bond by posting a cash deposit or surety bond, or by agreeing to a personal bond, if permitted by the magistrate.
- 16. A magistrate considering the release on bail of a defendant charged with a Class B misdemeanor or higher shall order that:
 - a. A public safety report be generated; and
 - b. The public safety report be provided to the magistrate as soon as is practicable but not later than 48 hours after the defendant's arrest.

Effective January 1, 2022 but OCA has until April 1, 2022 to create the public safety report system and any related forms.

Art. 17.022(a)(1), C.C.P. OCA must develop and maintain a public safety report system, which provides certain required information such as requirements for setting bail, identifying information for the defendant, and criminal history. Art. 17.021, C.C.P. OCA must provide access to the system to applicable county and municipal officials at no cost. Art. 17.021, C.C.P. The system is designed to be used to prepare the public safety report. The personal bond officer, a suitably trained person (including judicial personnel or sheriff's department personnel with consent of the sheriff), or the magistrate may prepare the report. Art. 17.022, C.C.P.

Art. 17.022(a)(2), C.C.P.

17. A magistrate considering the release on bail of a defendant charged only with a misdemeanor punishable by fine only or a defendant given a citation under Art. 14.06(c), C.C.P., may order, prepare, or consider a public safety report, but is not required to.

Art. 17.022(e), C.C.P. Effective January 1, 2022 but OCA has until April 1, 2022 to create the public safety report system. If ordered, the report shall be prepared for the time and place for an appearance as indicated in the citation.

18. Setting Bail

See *TMCEC 2022 Forms Book: Magistrate's Determination of Bail and Commitment Form*.

a. Without unnecessary delay, but not more than 48 hours after the defendant is arrested, the magistrate shall make one of the following bail decisions after individualized consideration of all circumstances and of the factors required by Art. 17.15(a), C.C.P.:

Effective January 1, 2022. Art. 17.028(a), C.C.P. A magistrate may make a bail decision regarding a defendant charged only with a misdemeanor punishable by a fine only or a defendant who receives a citation under Art. 14.06(c), C.C.P. without considering the factor required by Art. 17.15(a)(6) (criminal history). Art. 17.028(m), C.C.P.

- (1) grant a personal bond with or without conditions;
- (2) grant a surety or cash bond with or without conditions; or
- (3) deny bail in accordance with the Texas Constitution and other law.

- ❑ b. Bail and any conditions of bail shall be sufficient to give reasonable assurance that the undertaking will be complied with. The power to require bail is not to be used to make bail an instrument of oppression.

- ❑ c. The magistrate shall impose the least restrictive conditions, if any, and the personal bond or cash or surety bond to reasonably ensure the defendant's appearance and safety of the community, law enforcement, and victim of the alleged offense.

- ❑ d. Bail schedules or standing orders inconsistent with Art. 17.028, C.C.P., or that authorize bail decisions not based on the factors of Art. 17.15(a), C.C.P., are not permitted.

Art. 17.15, C.C.P.
Unless specifically provided by other law, there is a rebuttable presumption that bail, conditions of release, or both bail and conditions of release are sufficient to reasonably ensure the defendant's appearance in court as required and the safety of the community, law enforcement, and the victim of the alleged offense. Art. 17.028(c), C.C.P. Effective January 1, 2022.

Effective January 1, 2022.
Art. 17.028(b), C.C.P.
Neither the requirement to impose the least restrictive conditions and an amount to reasonably ensure appearance and safety in Art. 17.028(b) nor the rebuttable presumption in Art. 17.028(c) require the court to hold an evidentiary hearing not required by other law. Art. 17.028(c-1), C.C.P.

Effective January 1, 2022.
Art. 17.028(d), C.C.P.

- ❑ e. If the defendant is charged with a Class B misdemeanor or higher and is unable to give bail in the amount required by a schedule or order described by Art. 17.028(e), other than a defendant who is denied bail, provide the defendant with the opportunity to file a sworn affidavit, which must be substantially in the form provided in Art. 17.028(f), C.C.P. This applies at any time before or during the bail proceeding.
 - ❑ (1) To allow the magistrate to assess information relevant to the defendant's financial situation, the defendant must also complete the form under Art. 26.04, C.C.P. used to request appointment of counsel or a form promulgated by OCA.
 - ❑ (2) The defendant is entitled to notice by the magistrate of the right to file this affidavit, reasonable assistance to complete the affidavit and the form, and prompt review by the magistrate on the bail amount.
 - ❑ (3) The magistrate shall consider the facts presented and the rules established by Art. 17.15(a), C.C.P. and shall set the defendant's bail.
 - ❑ (4) If the magistrate does not set the defendant's bail in an amount below the amount required by a schedule or order described by Art. 17.028(a), C.C.P., the magistrate shall issue written findings of fact supporting the bail decision. Art. 17.028(h), C.C.P.

Art. 17.028(f), C.C.P.
The requirements in this section from Art. 17.028, C.C.P. take effect January 1, 2022. Filing an affidavit is not required before a magistrate considers the defendant's ability to make bail under Art. 17.15, C.C.P. Art. 17.028(k), C.C.P.

Art. 17.028(g), C.C.P.
OCA must create this form by April 1, 2022.

Art. 17.028(g-1), C.C.P. The review may be conducted by the magistrate making the bail decision under Art. 17.028(a) or may occur as a separate proceeding.

Art. 17.028(h), C.C.P. A written or oral statement obtained under Art. 17.028, C.C.P. or evidence derived from the statement may be used only to determine whether the defendant is indigent, to impeach direct testimony of the defendant, or to prosecute the defendant for an offense under Ch. 37, P.C. Art. 17.028(l).

Art. 17.028(h), C.C.P.

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| <p><input type="checkbox"/> (5) If a delay occurs that will cause the review to be held later than 48 hours after the defendant's arrest, the magistrate or an employee of the court or of the county in which the defendant is confined must provide notice of the delay to the defendant's counsel or the defendant if he or she does not have counsel.</p> | <p>Art. 17.028(i), C.C.P. Each defendant for whom a review was not held within 48 hours of arrest must be reported to OCA.</p> |
| <p>(6) If the defendant does not appear capable of executing an affidavit, the magistrate may enter an order or take other action authorized by Art. 16.22, C.C.P. (Early Identification of Defendant Suspected of Having a Mental Illness or Intellectual Disability).</p> | <p>Art. 17.028(c), C.C.P.</p> |
| <p><input type="checkbox"/> f. In setting the amount of bail and any conditions of bail, the magistrate shall consider:</p> | <p>Art. 17.15(a), C.C.P. The amount of bail and any conditions of bail must be in accordance with Arts. 17.20, 17.21, and 17.22, C.C.P. and the rules in Art. 17.15(a), C.C.P.</p> |
| <p><input type="checkbox"/> (1) The nature of the offense and the circumstances under which the offense was committed, including whether the offense involved violence as defined by Article 17.03, C.C.P., or violence directed against a peace officer.</p> | <p>Art. 17.15(a)(3), C.C.P.</p> |
| <p><input type="checkbox"/> (2) The ability to make bail.</p> | <p>See Checklist 8-3 for determining ability to pay.</p> |
| <p><input type="checkbox"/> (3) The future safety of the victim of the alleged offense, law enforcement, and the community.</p> | |
| <p><input type="checkbox"/> (4) The defendant's criminal history record, including the public safety report and statewide telecommunications system maintained by DPS, any acts of family violence, other pending criminal charges, and any instances of failure to appear in court following release on bail.</p> | <p>Effective April 1, 2022.</p> |
| <p><input type="checkbox"/> (5) The citizenship status of the defendant.</p> | |

(6) The public safety report..

Art. 17.022(d)(1), C.C.P.
The public safety report system may not be the only item relied on by a judge or magistrate in making a bail decision. Art. 17.021(d)(1), C.C.P. Effective January 1, 2022 but OCA has until April 1, 2022 to create the public safety report system and any related forms.

A magistrate may set bail for a defendant charged only with a misdemeanor without ordering, preparing, or considering a public safety report if the system is unavailable for longer than 12 hours due to a technical failure at OCA. Art. 17.022(f), C.C.P.

g. The court may also consider any other issues deemed appropriate including any or all of the following:

(1) The range of punishment for the offense charged;

(2) The arrestee's community ties;

(3) Work record; or

(4) Family ties.

h. If a pretrial services agency operates in the judicial district or county, order the arrestee to be interviewed and the information brought to you immediately.

i. The magistrate may impose any reasonable condition related to safety of the victim or safety of the community.

Do you live in _____
County? How will you
get to court if you are
released? Does anyone else
live with you?

Art. 17.40, C.C.P.

- j. Bail may only be denied or temporarily denied in certain instances.
- k. If bail is denied or temporarily denied, make a written finding explaining the legal basis.

- l. Set the amount of bail.
- m. Set conditions of bail.
 - (1) Record each condition in writing; or
 - (2) Recite each condition into the record; and
 - (3) Require the arrestee to acknowledge that he or she understands each condition.
 - (4) Provide written notice to the defendant of the conditions of release on bond and the penalties for violating a condition of release (or designate someone to provide the notice).

See Checklist 1-2.

A defendant who is denied bail or who is unable to give bail in the amount required by any bail schedule or standing order shall be provided with the warnings in Art. 15.17, C.C.P. Art. 17.028(e), C.C.P. Effective January 1, 2022.

“I now set bail at \$_____.”

See Checklist 1-6. “Further, I am setting the following conditions and I order you to abide by each and every one of them.” Where the alleged victim is a child younger than 18 years of age, see Art. 17.41, C.C.P. and *TMCEC 2022 Forms Book: Bail Condition Where Child is Alleged Victim*.

“Do you understand each of these conditions?”

Art. 17.51(e), C.C.P. This must be a separate record. Art. 17.51(f), C.C.P. OCA must promulgate a form to provide this notice. Art. 17.51(g), C.C.P. Effective January 1, 2022 but OCA has until April 1, 2022 to create the public safety report system and any related forms.

- (5) As soon as practicable but not later than the next business day after the date a magistrate issues an order imposing, modifying, or removing a condition of release on bond, the clerk of the court shall send a copy of the order to the attorney representing the State and the sheriff of the county where the defendant resides. If the order prohibits the defendant from going near a child care facility or school, the clerk shall send a copy to the facility or school.

- n. The magistrate shall, promptly but not later than 72 hours after the time bail is set, submit the bail form described by Sec. 72.038, G.C., in accordance with that section.

- 19. Consider the arrestee for release on personal bond.

- 20. Set conditions of personal bond, if arrestee qualifies.
 - a. Ensure that the arrestee acknowledges and understands each condition.

 - b. Provide written notice to the defendant of the conditions of release on bond and the penalties for violating a condition of release (or designate someone to provide the notice).

Effective January 1, 2022. Art. 17.51, C.C.P. This may be sent electronically or in another manner that can be accessed by the recipient. Art. 17.51(d), C.C.P. The clerk may delay sending the copy of the order only if he or she lacks information necessary to ensure service and enforcement. Art. 17.51(b), C.C.P.

Art. 17.022(d)(2), C.C.P. Effective January 1, 2022 but OCA has until April 1, 2022 to create this form. Note that Sec. 72.038(c), G.C. provides that the person setting bail, an employee of the court that set the defendant’s bail, or an employee of the county in which the defendant’s bail was set must provide the form electronically to OCA through the public safety report system.

See Checklist 1-5.

See Checklist 1-5.

Art. 17.51(g), C.C.P. Effective January 1, 2022 but OCA has until April 1, 2022 to develop a form to provide this notice.

This must be a separate record. Art. 17.51(f), C.C.P.

- c. As soon as practicable but not later than the next business day after the date a magistrate issues an order imposing, modifying, or removing a condition of release on bond, the clerk of the court shall send a copy of the order to the attorney representing the State and the sheriff of the county where the defendant resides. If the order prohibits the defendant from going near a child care facility or school, the clerk shall send a copy to the facility or school.

- 21. Other restrictions:
 - a. Magistrate does not have discretion to restrict the type of bail, cash, or surety, to the exclusion of the other. A magistrate may require a cash bond only when a forfeiture of bail has been declared. A magistrate may designate that personal recognizance bond be denied by stating “cash or surety” on the bail setting.
 - b. A magistrate may not set differential bail based on the type of bond (e.g., \$200 cash or \$500 surety).
 - c. A magistrate should not set bail as an instrument of oppression (i.e., too high in light of financial resources).

- 22. Other consideration: If applicable, enter magistrate’s “Order for Emergency Protection.”

- 23. Special procedures for fine-only offenses:
 - a. Magistrate may set surety/cash appearance bond.
 - b. Magistrate may set personal bond.
 - c. Magistrate may release without setting bond:
 - (1) Only in fine-only misdemeanors;

Art. 17.51(b), C.C.P. Effective January 1, 2022. Art. 17.51, C.C.P. This may be sent electronically or in another manner that can be accessed by the recipient. Art. 17.51(d), C.C.P. The clerk may delay sending the copy of the order only if he or she lacks information necessary to ensure service and enforcement.

Ex parte Deaton, 582 S.W.2d 151 (Tex. Crim. App. 1979); *Ex parte Rodriguez*, 583 S.W.2d 792 (Tex. Crim. App. 1979); Art. 23.05, C.C.P.

Bail that is more than what the court would accept as a fine in a fine-only misdemeanor case is probably too high when there is no history of failing to appear.

See Checklist 1-8.

Art. 15.17(b), C.C.P.

Art. 15.17(b), C.C.P.

See *TMCEC 2022 Forms Book*: Release: With Order to Appear.

- (2) Magistrate must give defendant the time and place to appear to answer to the charges against him or her in writing;
 - (3) Release without bond is not available if defendant has a prior felony or Class A or B misdemeanor conviction.
24. A magistrate may take a plea of guilty if person was arrested under warrant for a **fine-only offense** issued in a county other than the one in which the person is arrested.
- a. Magistrate has discretion to take a plea in lieu of setting bail.
 - b. Defendant must make written plea of guilty or nolo contendere and waiver of jury trial.
 - c. Magistrate shall:
 - (1) Set fine;
 - (2) Determine costs;
 - (3) Accept payment;
 - (4) Give credit for time served:
 - (A) Determine a period of time between eight and 24 hours;
 - (B) Credit of at least \$150 for each period of time.
 - (5) Determine indigence;
 - (6) On satisfaction of judgment, discharge the defendant.
 - d. Magistrate must, before the 11th business day following the plea, transmit to the court with jurisdiction the following:
 - (1) Written plea;
 - (2) Any orders entered in the case; and

Art. 15.18, C.C.P. See *TMCEC 2022 Forms Book: Out-of-County Magistrate's Bench Judgment.*

Art. 45.048, C.C.P.

See Checklist 8-3.

Art. 15.18(b), C.C.P.

- (3) Any fine or cost collected in the case.

 - 25. If the arrested person fails or refuses to give bail as provided in Article 15.18, C.C.P., the magistrate shall commit the person to the jail of the county where the person was arrested. It is the magistrate's duty to immediately notify the sheriff of the county in which the offense was committed: (1) that the arrest and commitment occurred; and (2) whether the person was also arrested under a warrant issued under Section 508.251, G.C., in relation to the conditions of his or her parole or mandatory supervision.
 - a. The sheriff, upon receiving notice under Article 15.19, C.C.P., of a person's arrest pursuant to a warrant for violation of a condition of parole or mandatory supervision, should have the arrested person brought before the proper magistrate or court before the 11th day after the day the person was committed to jail.

 - b. The arrested person shall be released on personal bond without sureties or other security if the proper office of the county where the offense is alleged to have been committed does not demand an arrested person and take charge of the person before the 11th day after the date the person is committed to the jail of the county in which the person is arrested. The Magistrate shall forward the personal bond to the sheriff of the county where the offense is alleged to have been committed.
- Art. 15.19, C.C.P.
- Art. 15.20, C.C.P.
- Art. 15.21, C.C.P.
See *TMCEC 2022 Forms Book*: Release: Personal Bond after No Timely Demand.

CHAPTER 1 MAGISTRATE DUTIES

General Provisions Applicable to Adults

2. When Bail May Be Denied or Delayed

Checklist 1-2	Script/Notes
<p><input type="checkbox"/> 1. Bail may be denied in capital cases when the State presents proof evident that conviction and death sentence will result from trial.</p> <p><input type="checkbox"/> 2. A district judge may deny bail in non-capital cases when there is a substantial showing by the State within seven days of arrest that the defendant:</p> <p style="padding-left: 40px;"><input type="checkbox"/> a. Is guilty of the charged felony, with two prior convictions; the second being subsequent to the first:</p> <p style="padding-left: 80px;"><input type="checkbox"/> (1) Both in point of time of commission of the offense; and</p> <p style="padding-left: 80px;"><input type="checkbox"/> (2) Conviction;</p> <p style="padding-left: 40px;"><input type="checkbox"/> b. Committed a felony while on bail for a prior felony for which he or she was indicted;</p> <p style="padding-left: 40px;"><input type="checkbox"/> c. Committed a felony involving the use of a deadly weapon after being convicted of a prior felony; or</p>	<p>Art. I, Sec. 11, Tex. Const.</p> <p>When a person accused of a felony is brought before a magistrate, the magistrate should contact the district court. Art. 17.21, C.C.P. If the court is not in session, then the magistrate may set the bail. Art. 17.22, C.C.P. Because Art. I, Sec. 11a, Tex. Const., provides that only a district judge may deny bail in non-capital cases and that the order denying the bail must be entered within seven calendar days of a defendant’s incarceration, a municipal judge exercising his or her authority as a magistrate should notify the district court immediately and send the warning sheet to the district court as soon as possible.</p> <p><i>Bills v. State</i>, 796 S.W.2d 194 (Tex. Crim. App. 1990).</p>

- d. Committed a violent or sexual offense while under the supervision of a criminal justice agency of the State or political subdivision of the State for a prior felony.
- 3. The State's burden is:
 - a. To prove guilt of the defendant in Steps 2(a) and 2(c) above; or
 - b. That the offense was committed while on bail in Steps 2(b) or 2(d) above.
- 4. A judge or magistrate may deny bail pending trial for a defendant:
 - a. Charged with a felony offense from the following provisions of the Penal Code, if committed against a child younger than 14 years of age:
 - (1) Chapter 21 (Sexual Offenses);
 - (2) Section 25.02 (Prohibited Sexual Conduct); or
 - (3) Section 43.25 (Sexual Performance by a Child);
 - (4) Section 20A.02 (Trafficking of Persons), if the defendant is alleged to have trafficked the child with the intent or knowledge that the child would engage in sexual conduct as defined under Section 43.25 or if the defendant benefited from participating in a venture that involved a trafficked child engaging in sexual conduct as defined under Section 43.25; or
 - (5) Section 43.05(a)(2) (Compelling Prostitution); or

Art. I, Sec. 11a, Texas Const.

Art. 17.153, C.C.P.

- ❑ b. Who has been found, by the magistrate or judge at a hearing by a preponderance of the evidence, to have violated a condition of bond set under Article 17.41, C.C.P., related to the safety of the victim or the safety of the community.

- ❑ 5. The court's order is reduced to writing.

- ❑ 6. In non-capital cases only, set aside the order after 60 days and set bail if the defendant has not been tried.

- ❑ 7. A district judge at a subsequent hearing to set or reinstate bail may deny bail to any person accused of a felony who is released on bail pending trial and whose bail is subsequently revoked or forfeited for a violation of a condition of release related to the safety of a victim of the alleged offense or to the safety of the community.

- ❑ 8. A magistrate or judge may deny bail to any person who is accused of a felony or an offense involving family violence if the person has previously been released on bail and whose bail is subsequently revoked or forfeited for a violation of a condition of release. In order to deny bail, a magistrate or judge must determine by a preponderance of the evidence at a subsequent hearing that the person violated a condition of release related to the safety of a victim of the alleged offense or to the safety of the community.

- ❑ 9. A magistrate or judge may deny bail to any person who is arrested for (1) violating an order for emergency protection, (2) an offense involving family violence, (3) violating an active protective order rendered by a court in a family violence case (including a temporary ex parte order that has been served on the person), or (4) engaging in conduct that constitutes an offense involving the violation of any of the proceeding orders. Subsequent to being taken into custody, bail may be denied if, following a hearing, a judge or magistrate determines by a preponderance of the evidence that the person violated the order or engaged in the conduct constituting the offense.

Art. I, Sec. 11b, Tex. Const.

Art. I, Sec. 11b, Tex. Const. (added Nov. 6, 2007)

Art. I, Sec. 11c, Tex. Const. (added Nov. 6, 2007)

CHAPTER 1 MAGISTRATE DUTIES

General Provisions Applicable to Adults

3a. Release Because a Magistrate Has Not Determined Whether Probable Cause Exists

Checklist 1-3(a)	Script/Notes
<p><input type="checkbox"/> 1. All persons arrested must be brought before a magistrate without unnecessary delay, never later than 48 hours after arrest.</p>	<p>Art. 15.17(a), C.C.P. See <i>TMCEC 2022 Forms Book</i>: Release: Magistrate’s Determination of No Probable Cause.</p>
<p><input type="checkbox"/> 2. A person arrested without a warrant must be released if a magistrate has not determined whether probable cause exists to believe that the person committed the offense within a certain time frame.</p>	<p>This law presumably is used in the absence of a magistrate, as the release is triggered not when a magistrate has determined there is no probable cause, but rather when a magistrate has not determined whether probable cause exists at all.</p>
<p><input type="checkbox"/> 3. In misdemeanor cases, if a magistrate has not determined whether probable cause exists:</p> <p><input type="checkbox"/> a. A defendant arrested without a warrant must be released on bond not to exceed \$5,000, not later than the 24th hour after the arrest; or</p> <p><input type="checkbox"/> b. The arrestee must be released on a personal bond if arrestee is unable to make or secure surety/cash appearance bond.</p>	<p>Art. 17.033(a), C.C.P.</p>
<p><input type="checkbox"/> 4. In felony cases, if a magistrate has not determined whether probable cause exists:</p> <p><input type="checkbox"/> a. A defendant must be released on bond not to exceed \$10,000 not later than the 48th hour after the arrest; or</p> <p><input type="checkbox"/> b. The arrestee must be released on a personal bond if arrestee is unable to make or secure surety/cash appearance bond.</p>	<p>Art. 17.033(b), C.C.P.</p>
<p><input type="checkbox"/> 5. On application by the prosecutor, the magistrate may postpone release for not more than 72 hours from arrest.</p> <p><input type="checkbox"/> a. Application must state the reason why a magistrate has not made a probable cause determination.</p>	<p>Art. 17.033(c), C.C.P.</p>

- ❑ 6. The time limits for release as outlined above do not apply to a person arrested without a warrant who is taken to a medical facility before being taken before a magistrate. Such an arrestee's time limit begins to run at the time of release from the facility rather than from the time of arrest.

Art. 17.033(d), C.C.P.

CHAPTER 1 MAGISTRATE DUTIES

General Provisions Applicable to Adults

3b. When the Defendant Must Be Released Because the State is Not Ready

Checklist 1-3(b)	Script/Notes
<p>The magistrate that enters orders under Article 15.17, C.C.P., keeps jurisdiction of the defendant’s charge until a charging instrument (indictment, information, or complaint) is filed in a court with jurisdiction. Once the charging instrument has been filed in the cause, the magistrate has no further jurisdiction or responsibility.</p> <ul style="list-style-type: none"> <input type="checkbox"/> 1. When the State is not ready and the defendant is unable to post the bail previously set, the defendant must be released on personal bond, or reasonable bail that the defendant can make must be set, if the defendant is charged with: <ul style="list-style-type: none"> <input type="checkbox"/> a. Any grade of felony and he or she has been incarcerated for 90 days; <input type="checkbox"/> b. A misdemeanor punishable by 180 days in jail or more and he or she has been incarcerated for 30 days; <input type="checkbox"/> c. A misdemeanor punishable by 180 days in jail or less and he or she has been incarcerated for 15 days; or <input type="checkbox"/> d. A misdemeanor punishable by fine-only and he or she has been incarcerated for five days; and <p>The defendant is not otherwise:</p> <ul style="list-style-type: none"> <input type="checkbox"/> e. Serving a sentence of confinement for another offense; <input type="checkbox"/> f. Being detained pending trial of another case and time has not yet lapsed on that case; <input type="checkbox"/> g. Incompetent to stand trial, during a period of incompetence; or 	<p><i>Guerra v. Garza</i>, 987 S.W.2d 593 (Tex. Crim. App. 1999).</p> <p>Art. 17.151, C.C.P.; <i>Jones v. State</i>, 803 S.W.2d 712 (Tex. Crim. App. 1991).</p>

- h. Being detained for a violation of the conditions of a previous release related to the safety of a victim of the alleged offense or to the safety of the community.

- 2. When defendant is indigent, either reduce bail to an amount the defendant can post or release the defendant on personal bond.

Absent a violation of bond condition, Art. 17.151, C.C.P., requires release on personal bond if the State is not ready to proceed to trial without consideration of the safety of either victims or the community. *Ex parte Gill*, 413 S.W.3d 425 (Tex. Crim App. 2013).

CHAPTER 1 MAGISTRATE DUTIES

General Provisions Applicable to Adults

4. Requisites and Filing of a Bail Bond

Checklist 1-4	Script/Notes
<p><input type="checkbox"/> 1. Requisites of a bail bond:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. Made payable to “The State of Texas;” <input type="checkbox"/> b. Defendant and surety, if any, bind themselves that the defendant will appear before the proper court or magistrate to answer the accusation against him or her; <input type="checkbox"/> c. States whether the defendant is charged with a felony or misdemeanor; <input type="checkbox"/> d. Signed by name or mark of the defendant and surety, if any, with a mailing address for each; <input type="checkbox"/> e. States the time and place, when and where the defendant binds himself or herself to appear; <input type="checkbox"/> f. States the court or magistrate before whom to appear; <input type="checkbox"/> g. States that the defendant is bound to appear before any court or magistrate before whom the matter may be pending at any time and place required under law or by any court or magistrate; <input type="checkbox"/> h. Conditioned that the defendant and sureties, if any, will pay all necessary and reasonable expenses incurred by any and all sheriffs or other peace officers in re-arresting the defendant if failure to appear before the court or magistrate named in the bond at the time stated therein; and 	<p>Art. 17.08, C.C.P. See Art. 17.071, C.C.P., for the definition of and requirements for charitable bail organizations paying bail bonds.</p>

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| <ul style="list-style-type: none"> <input type="checkbox"/> i. Such expense shall be in addition to the principal amount of the bond. | |
| <ul style="list-style-type: none"> <input type="checkbox"/> j. In addition to the requirements of Article 17.08, a bail bond for a defendant charged with an offense under Section 20A.02, 20A.03, 43.02, 43.03, 43.031, 43.04, 43.041, or 43.05, Penal Code, must include the address, identification number, and state of issuance as shown on a valid driver's license or identification card for the defendant and any surety, including any agent executing the bail bond on behalf of a corporation acting as surety. | <p>Art. 17.081, C.C.P</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 2. Set any reasonable conditions that will assure the appearance of the defendant. | <p><i>Ex parte Anderer</i>; 61 S.W.3d 398 (Tex. Crim. App. 2001). See <i>TMCEC 2022 Forms Book: Magistrate's Determination of Bail and Commitment Form</i>.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 3. Sureties, generally: <ul style="list-style-type: none"> <input type="checkbox"/> a. If only one surety, must be worth at least double the amount of bail set less exempted, encumbered, or indebted property. <input type="checkbox"/> b. Must be a resident of this state. <input type="checkbox"/> c. A corporate surety must have a power of attorney designating an authorized agent on file. <input type="checkbox"/> d. A minor may not be a surety. | <p>Art. 17.13, C.C.P.</p> <p>Art. 17.07, C.C.P.</p> <p>Art. 17.10, C.C.P.</p> |

- e. A person who has signed as a surety on a bond and is in default is disqualified to sign as a surety as long as he or she is in default.

- f. A surety may file a motion for the purpose of discharging bail when no indictment or information has been timely presented against the defendant.

- 4. In any manner permitted by the county in which it is written, a bail bond may be filed electronically with the court, judge, magistrate, or other officer taking the bond.

Art. 17.11, Sec. 2, C.C.P. A surety is in default from the time execution may be issued on the final judgment in a bond forfeiture proceeding unless the final judgment is superseded by the posting of a supersedeas bond (a bond required of someone who petitions to set aside a judgment or execution). If surety is a corporation, see Section 1704.212(c), O.C. A corporation may not act as a bail bond surety in a county in which the corporation is in default on five or more bonds.

Art. 32.01, C.C.P.

Art. 17.026, C.C.P.

CHAPTER 1 MAGISTRATE DUTIES

General Provisions Applicable to Adults

5. Requisites of a Personal Bond

Other than in instances where probable cause is not determined in a timely manner (see Checklist 1-3(a)), the magistrate has discretion to grant personal bonds. As described in the following checklist, depending on the offense, Texas law either requires or allows the magistrate to impose other conditions.

Checklist 1-5	Script/Notes
<ul style="list-style-type: none"> <li data-bbox="214 558 925 653"><input type="checkbox"/> 1. A personal bond must contain the requisites of a bail bond and identification information, including the defendant's: <ul style="list-style-type: none"> <li data-bbox="308 695 485 726"><input type="checkbox"/> a. Name; <li data-bbox="308 764 509 795"><input type="checkbox"/> b. Address; <li data-bbox="308 833 662 865"><input type="checkbox"/> c. Place of employment; <li data-bbox="308 903 682 934"><input type="checkbox"/> d. Date and place of birth; <li data-bbox="308 972 495 1003"><input type="checkbox"/> e. Height; <li data-bbox="308 1041 496 1073"><input type="checkbox"/> f. Weight; <li data-bbox="308 1110 672 1142"><input type="checkbox"/> g. Color of hair and eyes; <li data-bbox="308 1180 833 1255"><input type="checkbox"/> h. Driver's license number and state of issuance, if any; <li data-bbox="308 1293 914 1360"><input type="checkbox"/> i. Nearest relative's name and address, if any; and <li data-bbox="308 1398 469 1430"><input type="checkbox"/> j. Oath. 	<p data-bbox="1016 558 1230 590">See Checklist 1-4.</p> <p data-bbox="1016 1398 1401 1743">I swear that I will appear before (<i>the court or magistrate</i>) at (<i>address, city, county</i>), Texas, on the (<i>date</i>), at the hour of (<i>time, a.m. or p.m.</i>) or upon notice by the court, or pay to the court the principal sum of (<i>amount</i>) plus all necessary and reasonable expenses incurred in any arrest for failure to appear. Art. 17.04, C.C.P.</p>

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| <ul style="list-style-type: none"> <input type="checkbox"/> k. No oath is required for an arrestee with a mental illness or intellectual disability, or if the defendant is released on personal bond under 17.032, C.C.P., or is found incompetent to stand trial. | <p>Art. 17.04(b), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 2. Arrestees charged with the following may not be released on personal bond (except as provided by Art. 15.21, 17.033, and 17.151, C.C.P.): <ul style="list-style-type: none"> <input type="checkbox"/> a. Offenses involving violence; <input type="checkbox"/> b. A felony assault under 22.01(a)(1), P.C.; <input type="checkbox"/> c. Deadly conduct under 22.05, P.C.; <input type="checkbox"/> d. Terroristic threat under 22.07, P.C.; or <input type="checkbox"/> e. Disorderly conduct involving a firearm while released on bail or community supervision for an offense involving violence; | <p>Art. 17.03(b-2), C.C.P.</p> <p>For a list of “offenses involving violence,” see Art. 17.03(b-3)(2), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 3. Only the court before whom the case is pending may release on personal bond a defendant who is charged with: <ul style="list-style-type: none"> <input type="checkbox"/> a. Burglary; <input type="checkbox"/> b. Organized criminal activity; <input type="checkbox"/> c. Any aggravated felony under Chapter 481 or Section 485.033, H.S.C.; or <input type="checkbox"/> d. Failure to submit to testing as required by the court or a magistrate or whose test results for alcohol or drugs are positive. | <p>Art 17.03(b), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 4. Order drug or alcohol testing, education, and treatment if you, or the investigating or arresting law enforcement officer, reasonably believe: <ul style="list-style-type: none"> <input type="checkbox"/> a. That drug or alcohol abuse was related to the offense; or <input type="checkbox"/> b. Drugs or alcohol are presently in the body of the defendant; and | <p>Art. 17.03(c), C.C.P.</p> |

- c. The condition will serve to reasonably assure the appearance of the defendant in court.
- 5. Costs of testing may be assessed as a condition of bond or as court costs.
- 6. If a charge has been filed in your municipal court, you may not assess a personal bond reimbursement fee.
- 7. Order the personal bond fee:
 - a. Paid before the defendant is released;
 - b. Paid as a condition of bond;
 - c. Paid as court costs;
 - d. Reduced; or
 - e. Waived.
- 8. Release an offender with a mental illness or intellectual disability, unless good cause is shown otherwise, if:
 - a. The defendant is not charged with and has not previously received deferred adjudication, community supervision or probation, any deferred final disposition of a case, or a final conviction for:
 - (1) Murder;

Art. 17.03(e), C.C.P.

A municipal judge releasing a defendant charged with a Class C misdemeanor under Article 45.016, C.C.P., may not assess a personal bond reimbursement fee. Art. 17.42(4)(a), C.C.P.

Arts. 17.03(g) and 17.42, C.C.P. Bond fees can be assessed only if a court releases a defendant on a personal bond at the recommendation of a personal bond office before sentencing on a pending case.

Art. 17.032(b), C.C.P. See *TMCEC 2022 Forms Book: Release: Personal Bond - Certain Mentally Ill Defendants*. This is a requirement notwithstanding Art. 17.03(b) or an adopted bond schedule or standing order entered by a judge.

- (2) Capital murder;
- (3) Kidnapping;
- (4) Aggravated kidnapping;
- (5) Indecency with a child;
- (6) Assault (Class A);
- (7) Sexual assault;
- (8) Aggravated assault;
- (9) Aggravated sexual assault;
- (10) Injury to a child, elderly person, or invalid;
- (11) Aggravated robbery;
- (12) Continuous sexual abuse of young child or children; or
- (13) Continuous trafficking of persons; and
- b. The defendant is examined by a mental health or intellectual and developmental disability expert as provided in Art. 16.22, C.C.P.;
- c. The written report submitted by the applicable expert under Art. 16.22, C.C.P. concludes the defendant is a person with mental illness and is nonetheless competent to stand trial and recommends treatment or services;
- d. Appropriate community based mental health or intellectual disability services are available for the defendant under Section 534.053 or 534.103, H.S.C., or through another mental health or intellectual and developmental disability services provider; and

See Checklist 1-11.

- c. The judge determines that a bail bond is necessary to secure the defendant's appearance in accordance with the Code of Criminal Procedure.
- 13. If a defendant required to give a bail bond by a municipal judge does not give a required bail bond within 48 hours of the bail bond being set, the justice or judge:
 - a. Shall reconsider the requirement for the defendant to give the bail bond and presume that the defendant does not have sufficient resources or income to give the bond; and
 - b. May require the defendant to give a personal bond.
- 14. If the defendant refuses to give a personal bond or, except as provided by Art. 45.016(c), C.C.P., refuses or otherwise fails to give a bail bond, the defendant may be held in custody.

Art. 45.016(c), C.C.P.

Art. 45.016(d), C.C.P.

CHAPTER 1 MAGISTRATE DUTIES

General Provisions Applicable to Adults

6. Conditions of Bail

Checklist 1-6	Script/Notes
<p><input type="checkbox"/> 1. Magistrates have the general discretion to impose any of the following as conditions of release for any offense:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. Any reasonable condition related to the safety of the victim of the alleged offense or the safety of the community. <input type="checkbox"/> b. Home curfew and electronic monitoring. <input type="checkbox"/> c. Weekly drug testing for controlled substances. <input type="checkbox"/> d. Providing to a local law enforcement agency one or more specimens for the purpose of creating a DNA record under Subchapter G, Chapter 411, G.C. <p><input type="checkbox"/> 2. Magistrates have the discretion to impose any of the following as conditions of release for the following specific offenses:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. An offense involving family violence: <ul style="list-style-type: none"> <input type="checkbox"/> (1) Refrain from going to or near a residence, school, place of employment, or other location as specifically described in the bond, frequented by an alleged victim of the offense; <input type="checkbox"/> (2) Carry or wear a global positioning system (GPS) device and pay the costs associated with the device; or 	<p>Art. 17.40, C.C.P.</p> <p>Arts. 17.43 and 17.44(a)(1), C.C.P.</p> <p>Art. 17.44(a)(2), C.C.P.</p> <p>Art. 17.47(a), C.C.P.</p> <p>Art. 17.49, C.C.P.</p> <p>Before imposing this condition, a magistrate must give the victim an opportunity to provide a list of areas from which the victim would like the defendant excluded. Art. 17.49(c), C.C.P.</p>

- (3) Pay the reimbursement fee associated with providing the victim a receptor that can receive information from the GPS device worn by the defendant and that notifies the victim if the defendant is at or near a prohibited location. Before imposing this condition, a magistrate must provide to an alleged victim information regarding:
 - (A) the victim’s right to participate in a global positioning monitoring system or to refuse to participate in that system and the procedure for requesting that the magistrate terminate the victim’s participation;
 - (B) the manner in which the global positioning monitoring system technology functions and the risks and limitations of that technology, and the extent to which the system will track and record the victim's location and movements;
 - (C) any locations that the defendant is ordered to refrain from going to or near and the minimum distances, if any, that the defendant must maintain from those locations;
 - (D) any sanctions that the court may impose on the defendant for violating a condition of bond imposed under Art. 17.49, C.C.P.;

If the magistrate determines that a defendant is indigent, the magistrate may require the defendant to pay a reimbursement fee based on a sliding scale established by local rule in an amount less than the full amount associated with operating the GPS system. Art. 17.49(h) and (i), C.C.P.

Art. 17.49(d), C.C.P.

	<p>(E) the procedure that the victim is to follow, and support services available to assist the victim, if the defendant violates a condition of bond or if the global positioning monitoring system equipment fails;</p> <p>(F) community services available to assist the victim in obtaining shelter, counseling, education, child care, legal representation, and other assistance available to address the consequences of family violence; and</p> <p>(G) the fact that the victim’s communications with the court concerning the global positioning monitoring system and any restrictions to be imposed on the defendant’s movements are not confidential.</p>	
<p><input type="checkbox"/> b. Prostitution:</p> <p><input type="checkbox"/> (1) Attend AIDS/HIV education; and/or</p> <p><input type="checkbox"/> (2) Attend AIDS/HIV counseling.</p>		<p>Art. 17.45, C.C.P.</p>
<p><input type="checkbox"/> c. Stalking:</p> <p><input type="checkbox"/> (1) No direct or indirect communication with the alleged victim; or</p> <p><input type="checkbox"/> (2) Prohibited from going near a residence, place of employment, or business of the victim or to go near a school, day-care facility, or similar facility where a dependent child of the victim is in attendance.</p>		<p>Art. 17.46, C.C.P.</p> <p>Note: The magistrate must specifically describe the prohibited locations and the minimum distances, if any, that the defendant must maintain from the locations.</p>

- 3. Magistrates are required to impose specific conditions of release for the following specific offenses:
 - a. If the charge is a subsequent “Driving, Flying or Boating While Intoxicated,” “Intoxication Assault” or “Intoxication Manslaughter,” the magistrate shall require on release that a defendant:
 - (1) Have installed on the motor vehicle owned or most regularly operated by the defendant a vehicle ignition interlock device;
 - (2) Not operate any motor vehicle unless the vehicle is equipped with that device;
 - (3) Have the device installed on appropriate motor vehicle within 30 days of release on bond; and
 - (4) Pay the expense of installation.
 - b. Trafficking of persons, sexual offenses, assaultive offenses, public indecency, or prohibited sexual conduct, if committed against a child under 18 years old:
 - (1) No direct communication with the alleged victim;
 - (2) Prohibited from going near a residence, school, or other location as specifically described in the bond, frequented by the alleged victim.

Art. 17.441, C.C.P. See *TMCEC 2022 Forms Book*: Bail with Ignition Interlock Condition. A magistrate may designate an appropriate agency to verify the installation of the device and to monitor the device. Magistrates may not require the installation of the device if the magistrate finds that to do so would not be in the best interest of justice.

Art. 17.41, C.C.P.

Note: To the extent that this condition conflicts with an existing court order granting possession or access to a child, this order prevails for a period specified by the magistrate, not to exceed 90 days.

- ☐ c. As a condition of release on bond for a defendant charged with an offense under section 20A.02, 20A.03, 43.03, 43.031, 43.04, 43.041, or 43.05, P.C., against a person 18 years of age or older, the magistrate shall require that the defendant not:
 - ☐ (1) Communicate directly or indirectly with the victim; or
 - ☐ (2) Go to or near the residence, place of employment, or business of the victim; or if applicable, go to or near a school, day care facility, or similar facility where a dependant child of the victim is in attendance.

- ☐ d. If the charge is “Aggravated Kidnapping with Intent to Inflict Injury or Sexual Abuse,” “Indecency with a Child,” “Sexual Assault,” “Aggravated Sexual Assault,” “Prohibited Sexual Conduct,” “Burglary of a Habitation with/or without Intent to Commit a Felony (excluding felony theft),” “Compelling Prostitution,” “Sexual Performance by a Child,” or “Possession or Promotion of Child Pornography,” the defendant shall provide to a local law enforcement agency one or more specimens for the purpose of creating a DNA record under Subchapter G, Chapter 411, G.C.

Art. 17.465, C.C.P.

Under Art. 17.465(c), C.C.P., the magistrate shall specifically describe the prohibited locations under subsection (b)(2) and the minimum distances, if any, that the defendant must maintain from the locations.

Art. 17.47(b), C.C.P.

CHAPTER 1 MAGISTRATE DUTIES

General Provisions Applicable to Adults

7. When Bail May Be Raised, Changed, or Forfeited

Checklist 1-7	Script/Notes
<p><input type="checkbox"/> 1. Bail may be changed if:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. The initial bail bond is defective; <input type="checkbox"/> b. The initial bail bond is excessive; <input type="checkbox"/> c. The initial bail bond is insufficient; <input type="checkbox"/> d. The sureties, if any, are not acceptable; <input type="checkbox"/> e. The initial bail was set prior to indictment and indictment is returned; or <input type="checkbox"/> f. The initial bail bond was conditioned upon treatment under Article 17.40, C.C.P., and that condition is violated. <p><input type="checkbox"/> 2. Bail may not be raised or forfeited:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. Without cause; <input type="checkbox"/> b. If the defendant fails to hire counsel as ordered by the court; or <input type="checkbox"/> c. If defendant appears within a reasonable time. 	<p>Art. 17.09, Sec. 3, C.C.P. In order to change bonds properly set by a magistrate, another judge must have jurisdiction of the case. Jurisdiction vests upon the filing of a charging instrument in the proper trial court. <i>Guerra v. Garza</i>, 987 S.W.2d 593 (Tex. Crim. App. 1999).</p> <p><i>Ex parte King</i>, 613 S.W.2d 503 (Tex. Crim. App. 1981).</p> <p>Art. 11.56, C.C.P.</p> <p>Art. 22.021, C.C.P.</p> <p>Art. 17.09, Sec. 3, C.C.P.</p> <p>Art. 22.02, C.C.P.</p> <p>Three to five minutes late is not enough to raise or forfeit bail, with no prior forfeiture history. <i>Meador v. State</i>, 780 S.W.2d 836 (Tex. App.—Houston [14th Dist.] 1989, no pet.).</p>

- ❑ 3. In certain instances, magistrates are required to provide reasonable notice of a proposed bail reduction and an opportunity for a hearing to the attorney representing the state or the defendant’s counsel.

Art. 17.091, C.C.P. Note: This requirement only applies to offenses listed in Section 3g, Article 42A.054, C.C.P., or an offense described by Article 62.001(5), C.C.P. (defining “reportable conviction or adjudication.”). Offenses include: murder, capital murder, aggravated sexual assault, aggravated robbery, continuous sexual assault of a young child, and trafficking of persons.

CHAPTER 1 MAGISTRATE DUTIES

General Provisions Applicable to Adults

8. Magistrate’s Order for Emergency Protection (MOEP), Article 17.292, C.C.P.

After an arrest involving family violence, stalking, sexual assault, indecent assault, or aggravated sexual assault, a magistrate may enter a magistrate’s order of emergency protection for either: (1) a period of not less than 31 days or more than 61 days; or (2) a period of not less than 61 days or more than 91 days if the alleged offense involves the use or exhibition of a deadly weapon. The order may be entered upon the magistrate’s own motion or upon request by the victim, the guardian of the victim, a peace officer, or by the attorney representing the State. If an order is issued, the defendant must be served by the magistrate or the magistrate’s designee in person or electronically. The MOEP no longer has to be presented in open court, but the magistrate shall make a separate record of the service in written or electronic format.

Article 17.292, C.C.P., requires courts to send protective orders to law enforcement and victims by the end of the next business day and permits transmission in electronic form. Law enforcement must enter the orders not later than the third day after receiving the orders. Delays sending or entering a copy of the order are permissible only if the magistrate, clerk, or law enforcement agency lacks information necessary to ensure service and enforcement.

Checklist 1-8	Script/Notes
<p><input type="checkbox"/> 1. Determine if any of the following persons are present, and whether there is a motion by any of the following for a MOEP:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. A peace officer involved in the arrest; <input type="checkbox"/> b. The attorney representing the State of Texas; <input type="checkbox"/> c. The victim; or <input type="checkbox"/> d. The guardian of the victim. <p><input type="checkbox"/> 2. If none of the above is present, consider requesting the presence of one or more of the above, or granting an order on the magistrate’s motion.</p> <p><input type="checkbox"/> 3. Determine if the case involves “trafficking of persons,” “continuous trafficking of persons,” “family violence,” “stalking,” “sexual assault,” “indecent assault,” or “aggravated sexual assault.” Family violence could be:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. An act or threat of violence by one member of a family or household against another member of a family or household; 	<p>See <i>TMCEC 2022 Forms Book: Magistrate’s Order for Emergency Protection.</i></p> <p>Art. 17.292(a), C.C.P. Stalking is found in Section 42.072, P.C., and Sec. 71.004, F.C.</p>

- b. Abuse of a child of the family or household by a member of the family or household; or
- c. Dating violence, where victim and defendant have a dating relationship (more than a casual acquaintanceship or ordinary fraternization).
- 4. Based upon the information provided supporting the arrest of the defendant, consider whether a MOEP order is necessary.
 - a. At a defendant's appearance before a magistrate after an arrest for a family violence offense, a magistrate shall issue an order for emergency protection for offenses involving:
 - (1) Serious bodily injury to the victim; or
 - (2) The use or exhibition of a deadly weapon during the commission of an assault.
- 5. Identify the:
 - a. Victim;
 - b. Members of the victim's family or household; and
 - c. Children.
- 6. Identify the:
 - a. Residence;
 - b. Place of employment or business; and
 - c. School or child care facility where a child to be protected by the order is in attendance or is enrolled.

Sec. 71.0021, F.C.

Art. 17.292(b), C.C.P.

If an order for emergency protection prohibits a person from going to or near a child care facility or school, the magistrate shall send a copy of the order to the child care facility or school.
Art. 17.292(i), C.C.P.

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| <p><input type="checkbox"/> 7. Determine the minimum distances the defendant must maintain from each location.</p> | <p>Art. 17.292(e), C.C.P.</p> |
| <p><input type="checkbox"/> 8. Determine whether the children, if any, should be protected by the order.</p> | |
| <p><input type="checkbox"/> 9. Determine if the location is within:</p> <p style="margin-left: 20px;"><input type="checkbox"/> a. A municipality; or</p> <p style="margin-left: 20px;"><input type="checkbox"/> b. The unincorporated part of the county.</p> | |
| <p><input type="checkbox"/> 10. Determine whether a family lawsuit involving the parties is pending.</p> | <p>Art. 17.292(f), (f-1) and (f-2), C.C.P.</p> |
| <p><input type="checkbox"/> 11. The MOEP controls over other court orders with conflicting conditions, including child custody orders, while the MOEP is pending, unless:</p> <p style="margin-left: 20px;"><input type="checkbox"/> a. The order is a protective order issued by a family court after a hearing; or</p> <p style="margin-left: 20px;"><input type="checkbox"/> b. The order is an ex parte order of the family court that was aware of the MOEP and specifically dictates that the new order controls.</p> | <p>Art. 17.292(f), C.C.P.</p> <p>Art. 17.292(f-1), C.C.P.</p> <p>Art. 17.292(f-2), C.C.P.</p> |
| <p><input type="checkbox"/> 12. Determine if possession of firearms should be prohibited. Magistrates should note if the defendant is a peace officer.</p> | <p>Sec. 46.04, P.C.</p> |
| <p><input type="checkbox"/> 13. Determine if the defendant has a handgun license.</p> <p style="margin-left: 20px;"><input type="checkbox"/> a. You are required to suspend the handgun license.</p> <p style="margin-left: 20px;"><input type="checkbox"/> b. Upon suspension of the license, you or the clerk must immediately send a copy of the order to DPS.</p> | <p>Arts. 17.292(l) and 17.293, C.C.P.</p> <p>Attention: Suspension/ Revocation, Texas Department of Public Safety, Handgun Licensing, Section #0235, Austin, Texas 78765-4143 512.424.2000, ext. 3.</p> |
| <p><input type="checkbox"/> 14. Determine if a condition should be imposed as described by Article 17.49(b), C.C.P., including ordering a defendant’s participation in a GPS monitoring system or allowing participation in the system by an alleged victim or other person.</p> | <p>Art. 17.292, C.C.P.</p> |

- 15. Identify the defendant on the order by date of birth.
- 16. Enter these findings in the protection order.
- 17. Consider which prohibitions will be a part of the order. Magistrates may prohibit the arrested party from:
 - a. Committing family violence or an assault on the person protected under the order;
 - b. Committing an act in furtherance of a Trafficking of Persons or Stalking offense;
 - c. Communicating directly with the person protected or with a member of protected person's family or household in a threatening or harassing manner;
 - d. Communicating a threat through any person to a member of the protected person's family or household or to the person protected under the order;
 - e. Communicating, if the magistrate finds good cause, in any manner with a person protected under the order or a member of the family or household of a person protected under the order, except through the party's attorney or a person appointed by the court;
 - f. Going to or near the residence, place of employment, or business of a member of the family or household or of the person protected under the order;
 - g. Going to or near the residence, child care facility, or school where a child protected under the order resides or attends; and/or
 - h. Possessing a firearm, unless the person is a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

Art. 17.292, C.C.P.

18. Sign the order.

- a. The order must contain the following statements printed in bold-faced type or in capital letters:

A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH. AN ACT THAT RESULTS IN OR A SEPARATE OFFENSE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE, AS APPLICABLE, IN ADDITION TO A VIOLATION OF THIS ORDER. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS. THE POSSESSION OF A FIREARM BY A PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO THIS ORDER MAY BE PROSECUTED AS A SEPARATE OFFENSE PUNISHABLE BY CONFINEMENT OR IMPRISONMENT.

NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER.

19. Ensure that a copy of the order is served on the defendant in person or electronically and that he or she signs the acknowledgment.
20. File the original order and acknowledgment with the court clerk.

Art. 17.292, C.C.P.
See Checklist 1-6.

- ❑ 21. As soon as possible but not later than the next business day, transmit copies of the order to the Chief of Police where the member of the family or household or individual protected by the order resides, as well as a copy to the victim.

- ❑ 22. If the victim is not present at the time the order is issued, order an appropriate peace officer to make a good faith effort to notify the victim within 24 hours by calling the victim’s residence and place of employment.

- ❑ 23. The MOEP lasts no less than 31 days or more than 61 days unless the alleged offense involves the exhibition of a deadly weapon. Then the period shall last no less than 61 days or more than 91 days.

- ❑ 24. A MOEP may be transferred to the court with jurisdiction of the underlying criminal case:
 - ❑ a. On motion, notice, and hearing (serve all parties, including the State); or
 - ❑ b. On agreement of all parties.

- ❑ 25. The magistrate or the court to which a MOEP was transferred under Step 23 may modify all or part of the MOEP if:
 - ❑ a. Notice is made to each affected party of a hearing; and
 - ❑ b. The magistrate finds that:
 - ❑ (1) The order as originally issued is unworkable;
 - ❑ (2) The modification will not place the victim at greater risk than the original order; and
 - ❑ (3) The modification will not in any way endanger a person protected under the order.

The copies of the order and any other information may be sent electronically or in another manner accessible by the recipient.
 Art. 17.292(h), C.C.P. See *TMCEC 2022 Forms Book: Clerk’s Letter: Copy of Magistrate’s Order of Emergency Protection.*

Art. 17.292(n), C.C.P.

Art. 17.292(j) and (n), C.C.P. See *TMCEC 2022 Forms Book: Motion to Modify Magistrate’s Order of Emergency Protection.*

Art. 17.292(j), C.C.P.

See *TMCEC 2022 Forms Book: Order Modifying Magistrate’s Order of Emergency Protection.*

- 26. On request by a person protected by an order for emergency protection issued under Article 17.292, or if determined necessary by the magistrate, the court issuing the order may protect the person's mailing address by rendering an order:
 - a. requiring the person protected under the order to:
 - (1) disclose the person's mailing address to the court;
 - (2) designate another person to receive on behalf of the person any notice or documents filed with the court related to the order; and
 - (3) disclose the designated person's mailing address to the court;
 - b. requiring the court clerk to:
 - (1) strike the mailing address of the person protected by the order from the public records of the court, if applicable; and
 - (2) maintain a confidential record of the mailing address for use only by the court or a law enforcement agency for purposes of entering the information required into the statewide law enforcement information system maintained by the Department of Public Safety; and
 - c. prohibiting the release of the information to the defendant.

Art. 17.294, C.C.P.
See *TMCEC 2022 Forms Book: Magistrate's Order of Confidentiality of Certain Information in Order for Emergency Protection.*

CHAPTER 1 MAGISTRATE DUTIES

General Provisions Applicable to Adults

9. Appointment of Counsel – When the Right Attaches

Checklist 1-9	Script/Notes
<ul style="list-style-type: none"> <li data-bbox="212 449 862 483">❑ 1. The right to counsel “attaches” at magistration. <li data-bbox="212 552 889 758">❑ 2. Article 26.04, C.C.P., controls appointment of counsel and requires the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county to adopt and publish written countywide procedures for appointment of counsel. <li data-bbox="212 863 922 1001">❑ 3. Those judges acting as a body may designate someone to make the actual appointment under the guidelines and procedures they adopt. That could be a municipal judge. <li data-bbox="212 1039 919 1178">❑ 4. The procedures adopted by the body of judges must include procedures, financial standards, and forms to determine indigence and whether counsel should be appointed. <ul style="list-style-type: none"> <li data-bbox="310 1318 919 1415">❑ a. Standards can include all of the defendant’s financial information including spousal income available to the defendant. <li data-bbox="310 1457 919 1524">❑ b. The designee appointing counsel cannot consider whether the defendant posted bail. <li data-bbox="212 1562 894 1768">❑ 5. If a municipal judge is made the designee of the district or county judges to appoint counsel, the municipal judge should review the local plan concerning the responsibility to notify counsel of assignment and the information that is required to be provided to the accused. 	<p data-bbox="1000 449 1398 516"><i>Rothgery v. Gillespie County</i>, 554 U.S. 191 (2008).</p> <p data-bbox="1000 552 1373 827">See Checklist 1-1. It is rare that the municipal judge acting as a magistrate will be required to appoint counsel. This duty is normally the prerogative of the local administrative statutory county court judge and local administrative court judge.</p> <p data-bbox="1000 1039 1365 1276">Consult your county’s indigent defense plan. A copy of your jurisdiction’s local indigent defense plan and guidelines is available online at: http://tidc.tamu.edu/public.net/Reports/IDPlanNarrative.aspx.</p>

CHAPTER 1 MAGISTRATE DUTIES

General Provisions Applicable to Adults

10. Examining Trial

Checklist 1-10	Script/Notes
<p><input type="checkbox"/> 1. The defendant in any felony case is entitled to an examining trial prior to indictment to determine the truth of the accusation against the defendant or to review bail.</p>	Art. 16.01, C.C.P.
<p><input type="checkbox"/> a. An examining trial may also be held upon the filing of an affidavit or sworn motion alleging that:</p> <p style="padding-left: 40px;"><input type="checkbox"/> (1) The amount of bail is insufficient;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (2) The sureties are not worth twice the amount of the bail; or</p> <p style="padding-left: 40px;"><input type="checkbox"/> (3) The bail bond is defective.</p>	Art. 16.16, C.C.P.
<p><input type="checkbox"/> 2. The right to an examining trial in a felony terminates upon the return of an indictment.</p>	
<p><input type="checkbox"/> 3. There is no right to an examining trial in a misdemeanor.</p>	
<p><input type="checkbox"/> 4. The defendant may be either in custody or free on bail.</p>	
<p><input type="checkbox"/> 5. The defendant must be allowed sufficient time prior to any hearing to obtain counsel.</p>	Art. 16.01, C.C.P.
<p><input type="checkbox"/> 6. Appointment of counsel must be made pursuant to the procedures adopted by the local criminal courts. The magistrate should provide appropriate assistance to the defendant to obtain counsel through that system.</p>	Arts. 1.051 and 16.01, C.C.P. See Checklist 1-9.
<p><input type="checkbox"/> 7. The Texas Rules of Evidence apply to the examining trial.</p>	Art. 16.07, C.C.P.
<p><input type="checkbox"/> 8. The defendant must be present at the examining trial. The State must be represented by the district attorney.</p>	Art. 16.08, C.C.P.

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| <p><input type="checkbox"/> 9. The court may issue a subpoena, or an attachment without having first issued a subpoena, for any witness within the county.</p> | Art. 16.10, C.C.P. |
| <p><input type="checkbox"/> 10. An attachment for an out-of-county witness may be issued when:</p> <ul style="list-style-type: none"><input type="checkbox"/> a. The party applying for the attachment swears in an affidavit that the testimony is material; and<input type="checkbox"/> b. The affidavit sets forth the facts expected to be proven by the witness.<input type="checkbox"/> c. If the court finds the facts set forth to be immaterial or the facts are admitted to be true by the adverse party, the attachment shall not issue. | Art. 16.11, C.C.P. |
| <p><input type="checkbox"/> 11. The proceeding must be transcribed by a court reporter. Alternatively a statement of facts, agreed to by the State and defense and approved by the presiding magistrate, may be used to preserve the testimony of the witnesses. The State or a defendant may preserve testimony for use in an examining trial by the taking of a deposition.</p> | Arts. 16.09 and 39.01, C.C.P. |
| <p><input type="checkbox"/> 12. Before beginning the hearing, inform the defendant:</p> <ul style="list-style-type: none"><input type="checkbox"/> a. Of the right to make a statement relative to the accusation in the complaint;<input type="checkbox"/> b. That he or she may not be compelled to make any statement; and<input type="checkbox"/> c. That if he or she does make a statement, it may be used in evidence against him or her. | Art. 16.03, C.C.P. |
| <p><input type="checkbox"/> 13. If the defendant desires to make a statement he or she may only do so prior to the examination of any witnesses.</p> <ul style="list-style-type: none"><input type="checkbox"/> a. The statement must be reduced to writing, and<input type="checkbox"/> b. Signed, but not sworn to, by the defendant. | |

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| <p><input type="checkbox"/> 14. The magistrate shall then attest by his or her own certificate and signature to the execution and signing of the statement.</p> | <p>Art. 16.04, C.C.P.</p> |
| <p><input type="checkbox"/> 15. Allow the prosecutor to question the State’s witnesses and the defense counsel to cross-examine them.</p> | <p>Art. 16.06, C.C.P.</p> |
| <p><input type="checkbox"/> 16. The court may question the witnesses if no prosecutor appears.</p> | <p>Art. 16.06, C.C.P.</p> |
| <p><input type="checkbox"/> 17. The proceeding may not be continued unless:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. Either the defendant or the prosecutor signs a sworn statement setting forth the following: <ul style="list-style-type: none"> <input type="checkbox"/> (1) The name, address, and facts that either expect to prove with the testimony of the witness; or <input type="checkbox"/> (2) The nature of the evidence. <input type="checkbox"/> b. The court is satisfied that the testimony or evidence is material, and the adverse party denies the truth. | <p>Art. 16.14, C.C.P.</p> |
| <p><input type="checkbox"/> 18. At the conclusion of the proceeding, enter an order:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. Committing the defendant to jail; <input type="checkbox"/> b. Discharging the defendant; or <input type="checkbox"/> c. Admitting the defendant to bail. | <p>Art. 16.17, C.C.P.</p> |
| <p><input type="checkbox"/> 19. Failure to enter an order within 48 hours after the proceeding has been completed operates as a finding of no probable cause and the defendant is discharged.</p> | <p>Art. 16.17, C.C.P.</p> |

CHAPTER 1 MAGISTRATE DUTIES

General Provisions Applicable to Adults

11. Examination of Defendant in Custody Suspected of Having Mental Illness or Intellectual Disability

Checklist 1-11	Script/Notes
Definitions:	
<p>“Mental illness” means an illness, disease, or condition, other than epilepsy, senility, alcoholism, or mental deficiency that: (a) substantially impairs a person’s thoughts, perceptions of reality, emotional process, or judgment; or (b) grossly impairs behavior as demonstrated by recent disturbed behavior.</p>	<p>Sec. 571.003(14), H.S.C.</p>
<p>“Intellectual disability” means significantly subaverage general intellectual functioning that is concurrent with deficit in adaptive behavior and originates during the developmental period.</p>	<p>Sec. 591.003(7-a), H.S.C.</p>
<p>“Subaverage general intellectual functioning” refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age-group mean for the tests used.</p>	<p>Sec. 591.003(20), H.S.C.</p>
<p>“Department” means the Texas Department of Aging and Disability Services.</p>	<p>Sec. 591.003(7), H.S.C.</p>
<p>“Person with intellectual disability” means a person determined by a physician or psychologist licensed in this state or certified by the department to have subaverage general intellectual functioning with deficits in adaptive behavior.</p>	<p>Sec. 591.003(15-a), H.S.C.</p>
<p>“Adaptive behavior” means how effectively individuals cope with common life demands and how well they meet the standards of personal independence expected of someone in their particular age group, sociocultural background, and community setting.</p>	<p>Sec. 591.003(1), H.S.C.</p>

- 1. The sheriff or municipal jailer has a duty to notify the judge that there may be reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with an intellectual disability.

See *TMCEC 2022 Forms Book: Sheriff's Notification – Sheriff's or Municipal Jailer's Notification – Person in Custody with Possible Mental Illness/Intellectual Disability*. Sheriff or municipal jailer shall notify a magistrate within 12 hours after receiving evidence or a statement that may establish reasonable cause. Art. 16.22(a), C.C.P.

The notice must include any information related to the sheriff's or municipal jailer's determination, such as information regarding the defendant's behavior immediately before, during, and after the defendant's arrest and, if applicable, the results of any previous assessment of the defendant. Sec. 16.22(a)(1), C.C.P.

- 2. Determine if there is reasonable cause to believe (1) defendant has a mental illness, or (2) is a person with an intellectual disability, by considering:
 - a. The defendant's behavior; and
 - b. The result of a prior evaluation indicating a need for referral for further mental health or intellectual disability assessment.
- 3. Is there reasonable cause?
 - a. If the judge determines that there is no reasonable cause, no further action is required.

See Checklist 1-11.

- b. If reasonable cause is determined, issue a written order that the defendant be interviewed.

- c. A magistrate is not required to order an interview or other collection of information if the defendant is no longer in custody or if the defendant in the year preceding the defendant's applicable date of arrest has been determined to have a mental illness or to be a person with an intellectual disability by the service provider that contracts with the jail to provide mental health or intellectual and disability services, local mental health authority, the local mental health authority, local intellectual and developmental disability authority, or another mental health or intellectual disability expert.

- d. An interview may be conducted in person in the jail, by telephone, or through a telemedicine medical service or telehealth service.

- 4. From the time of the order, the expert designated by the judge must return a written report within 96 hours for a defendant held in custody or 30 days for a defendant released from custody.

See *TMCEC 2022 Forms Book*: Magistrate's Order for Mental Illness/Intellectual Disability Exam. The interview must be conducted by the service provider that contracts with the jail to provide mental health or intellectual and disability services, local mental health authority, local intellectual and developmental disability authority, or another qualified mental health or intellectual disability expert. Art. 16.22(a), C.C.P.

Sec. 16.22(a)(2), C.C.P.

Art. 16.22(a-4), C.C.P.

Art. 16.22(b), C.C.P.

- a. The judge is required to give copies of the report to the prosecutor; the defense attorney; the trial court; the sheriff or other person responsible for the defendant’s medical records while the defendant is confined in county jail; and as applicable: any personal bond office established under Article 17.42 for the county in which the defendant is being confined; or the director of the office or department that is responsible for supervising the defendant while the defendant is released on bail and receiving mental health or intellectual and developmental disability services as a condition of bail.

- 5. What if the defendant fails or refuses to submit to an examination?
 - a. The judge may order the defendant to custody for examination for a period not to exceed 72 hours; but

 - b. The judge may not order a defendant to a facility operated by the State Health Services or the Department of Aging and Disability Services without the consent of the head of that facility.

See *TMCEC 2022 Forms Book: Order into Custody for Mental Illness/Intellectual Disability Exam; Warrant for Mental Health/Intellectual Disability Exam – Person Failing to Submit Voluntarily*. It is advisable to work within your community to establish procedures for in-detention examinations. If the defendant has been released from custody, the judge will need to know to which facility to commit the individual.

- 3. Petition for Hearing Filed: If a criminal action involving the property in question is not pending, then any of the courts having jurisdiction may hold a hearing to determine the right to possession of the property, upon the petition of any interested party, including a county, a city, or the state.

Art. 47.01a(a), C.C.P. Note: A peace officer is an “interested party” since the evidence may establish that the State has a superior right to possession. A hearing may be held on the petition of a seizing officer. See *TMCEC 2022 Forms Book: Notice of Stolen Property Hearing*. The C.C.P. is silent as to the obligation of the Court to provide notice to interested parties. Nevertheless, due to the property interest at stake, due process interests, and a judge’s ethical adjudicative responsibilities (Canon 3B(8) *Code of Judicial Conduct*), interested parties should be given notice of the date and time of the hearing.

- 4. Notice Provided.

- 5. Conduct the Hearing.

See Checklist 1-14.

- 6. Post-Hearing Orders: After a hearing and appropriate findings, the court may enter the following orders:

- a. Order the property delivered to whoever has the superior right of possession:

Art. 47.01a(e). Note: The person with the superior right of possession is responsible for any transportation necessary for delivery.

- (1) Without conditions;

See *TMCEC 2022 Forms Book: Magistrate Duties: Order Restoring Stolen Property When No Trial is Pending*. Art. 47.01a(a)(1), C.C.P. Presumably, this is construed to mean that claimants are exempt from paying charges pursuant to Art. 47.07, C.C.P.

- | | |
|---|---|
| <ul style="list-style-type: none"> <input type="checkbox"/> (2) Subject to the condition that the property be made available to the State if needed in future prosecutions. | <p>Art. 47.01a(a)(2), C.C.P. This requires a written motion by an attorney representing the State. Furthermore, it contemplates that a trial is pending and that the motion is made before the trial is to begin.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> b. Order the property be awarded to the custody of a peace officer, pending resolution of the investigation involving the property. | <p>Art. 47.01a(a)(3), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> c. If it is shown in a hearing that probable cause exists to believe that the property was acquired by theft or by another manner that makes its acquisition an offense and that the identity of the actual owner of the property cannot be determined, the magistrate shall order the peace officer to: <ul style="list-style-type: none"> <input type="checkbox"/> (1) Deliver the property to a government agency for official purposes; <input type="checkbox"/> (2) Deliver the property to a person authorized by Article 18.17, C.C.P., to receive and dispose of the property; or <input type="checkbox"/> (3) Destroy the property. | <p>Art. 47.01a(b), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> (1) Deliver the property to a government agency for official purposes; | <p>Art. 47.01a(b)(1), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> (2) Deliver the property to a person authorized by Article 18.17, C.C.P., to receive and dispose of the property; or | <p>Art. 47.01a(b)(2), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> (3) Destroy the property. | <p>Art. 47.01a(b)(3), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 7. Appeals: Appeal from a hearing held in a municipal court or justice court under Article 47.01(a), C.C.P., shall be heard by a county court or a statutory county court. Such appeals are governed by the rules of procedure for appeals for civil cases from justice court to county court. | <p>Art. 47.12(b), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> a. The requirement that the notice of appeal be given at the conclusion of the hearing does not require that the notice be given in open court. The hearing does not conclude until the court’s ruling is both announced and received. | <p><i>Phillips v. State</i>, 77 S.W.3d 465 (Tex. App.—Houston [1st Dist.] 2002); <i>White v. State</i>, 930 S.W.2d 673 (Tex. App.—Waco 1996).</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> b. Only an “interested person” who appears at a hearing may appeal and must post an appeal bond by the end of the next business day. | <p>Art. 47.12(c), C.C.P.</p> |

- c. The court may require an appeal bond in the amount the court deems appropriate, but not more than twice the value of the property, made payable to the party awarded possession at the hearing, with sufficient sureties.

Art. 47.12(d), C.C.P.

CHAPTER 1 MAGISTRATE DUTIES

Property Hearings: Disposition of Stolen Property

13. Restoration upon Trial or Trial Pending

Checklist 1-13	Notes
<p><input type="checkbox"/> 1. Jurisdiction: Article 47.02, C.C.P., contemplates jurisdiction being:</p> <p style="padding-left: 40px;"><input type="checkbox"/> a. In a trial court, post-adjudication of a theft or illegal acquisition of property case;</p> <p style="padding-left: 40px;"><input type="checkbox"/> b. In a trial court in which a theft or other illegal acquisition of property case is pending; or</p> <p style="padding-left: 40px;"><input type="checkbox"/> c. With any magistrate having jurisdiction in the county in which the property was alleged to have been stolen or, if the criminal action is pending in another county, the county in which the action is pending subject to Chapter 501, T.C. (The Texas Certificate of Title Act) and the consent of the prosecuting attorney.</p> <p><input type="checkbox"/> 2. Conduct the Hearing.</p> <p><input type="checkbox"/> 3. Post Hearing Orders.</p> <p style="padding-left: 40px;"><input type="checkbox"/> a. Upon Trial: The court trying the case shall order the property to be restored to a person appearing on presentation of proof to be the owner. The owner of the property is responsible for any transportation necessary to restore the property to the owner.</p> <p style="padding-left: 80px;">If the property is not claimed within 30 days of conviction of the person who illegally acquired it, the property shall be disposed of pursuant to Article 18.17, C.C.P.</p> <p style="padding-left: 80px;">The real owner of the property sold pursuant to Article 47.06, C.C.P. may recover such property under the terms prescribed in Article 18.17(e), C.C.P.</p>	<p>See Checklist 1-14.</p> <p>See <i>TMCEC 2022 Forms Book: Order Restoring Stolen Property on Trial</i>.</p> <p>Art. 47.02, C.C.P.</p> <p>Art. 47.06, C.C.P.</p> <p>Art. 47.07, C.C.P.</p>

- b. Trial Pending: If it is proved to the satisfaction of the judge that the person is a true owner of the property alleged to be stolen and the property is in the possession of the peace officer, the peace officer by written order shall restore it to the owner. Art. 47.02, C.C.P.

- c. When Doubt Remains: If the court has doubt as to the ownership of the property, the court may require:
 - (1) A bond of the claimant for redelivery of the property should it be thereafter shown not to belong to the claimant; or
 - (2) That the sheriff retains the property until further orders are made regarding possession.Art. 47.05, C.C.P.

- d. Claimant to Pay Charges: The claimant of the property must pay all reasonable charges for safekeeping prior to delivery of the property. The officer claiming that such charges are owed must verify such charges. If the charges are not paid, the property shall be sold as under execution and the proceeds of the sale, less the charges and cost of the sale, paid to the owner of the property. The owner is responsible for any transportation necessary to return the property to the owner.
Art. 47.02(c), C.C.P.

- 4. Appeals: No appeals from hearings under Article 47.02, C.C.P., are authorized. Presumably, efforts to appeal would be dependent on the outcome of the appeal of the theft or property acquisition matter.

CHAPTER 1 MAGISTRATE DUTIES

Property Hearings: Disposition of Stolen Property

14. Hearing

Checklist 1-14	Script/Notes
<ul style="list-style-type: none"> <input type="checkbox"/> 1. The court shall: <ul style="list-style-type: none"> <input type="checkbox"/> a. Order the property delivered to whomever has the superior right to possession; and <input type="checkbox"/> b. Make such orders as the facts require. <input type="checkbox"/> 2. If none of the interested parties appear at the hearing after having been properly notified, the court may presume that: <ul style="list-style-type: none"> <input type="checkbox"/> a. The parties do not have a valid claim to possession; <input type="checkbox"/> b. The parties have abandoned their claim to possession; or <input type="checkbox"/> c. They do not wish to assert a claim. <input type="checkbox"/> 3. The court may award possession of the property to the law enforcement agency if no interested party has proved a right to possess the property. <input type="checkbox"/> 4. If none of the interested parties appear at the hearing, except for the officer who has discovered another interested party since the scheduling of the hearing, the court should: <ul style="list-style-type: none"> <input type="checkbox"/> a. Instruct the officer to file an amended inventory of property seized, and to include the name and mailing address of the newly-discovered interested party on the amended form; <input type="checkbox"/> b. Reset the case; and <input type="checkbox"/> c. Notify the interested parties of the hearing. <input type="checkbox"/> 5. When the true owner of a stolen motor vehicle is unknown and there are no lien holders to be found: 	<p>Art 47.01a(a)(1), C.C.P.</p>

- ❑ a. The officer should proceed to file a seizure case; and
 - ❑ b. The court should notify the respondent (the person from whom the vehicle was seized, if any), of the right to appear at the hearing and assert a claim of possession.
- ❑ 6. Order of Proceedings: The hearing should be conducted in an orderly manner to ensure that parties are given an opportunity to be heard. This may be accomplished through a question and answer format facilitated by the judge.
- ❑ 7. Burden of Proof: In contrast to criminal cases in which the State’s case must be proven “beyond a reasonable doubt,” a respondent or petitioner must establish a claim to the property by a “preponderance of the evidence.”
 - ❑ a. If there are no other interested parties present who might rebut the respondent’s or petitioner’s evidence, the right to possession is established.
- ❑ 8. Rules of Evidence: In hearings conducted when no trial is pending, hearsay evidence is admissible.
- ❑ 9. Proceed to enter Post-Hearing Orders.

Though the C.C.P. is silent as to this issue, Canon 3B8, *Code of Judicial Conduct*, would nonetheless apply.

“Preponderance of the evidence” means the greater weight and degree of credible evidence. *Upjohn Co. v. Freeman*, 847 S.W.2d 589 (Tex. App.—Dallas 1992, no writ).

At the hearing, any interested person may present evidence that the property was not acquired by theft or another offense or that the person is entitled to possess the property.

Art. 47.01a(c), C.C.P. Article 47.02, C.C.P., does not address the admissibility of hearsay statements upon trial or when trial is pending.

See Checklists 1-12 and 1-13 for more information on Post-Hearing Orders.