

# Magistrations

Randall L. Sarosdy  
General Counsel  
Texas Justice Court Training Center

## What We Will Cover

- The role of the magistrate
- Arrests Without a Warrant
  - Probable cause
  - Art. 15.17 hearings:
    - Admonishments
    - Setting Bail
    - Bond Conditions
    - Consular notification
    - Emergency protective orders (EPOs)
- Who hears bond motions?

## What We Will Cover

- Arrests With a Warrant
  - Out-of-County Fine-Only Offense
  - Out-of-County Warrants
  - Warrants from the Same County
- Accepting Pleas at the County Jail
- Arrest Under a Capias Pro Fine
  - Commitment Hearing
  - Community Service
  - Waiver of Fine and Costs
  - Discharge from Jail
- Other Arrests: Capias, Probation Revocation, Parole Violation

## Role of a Magistrate

- The role of a magistrate is to ensure that fundamental procedural protections are afforded to persons accused of a crime while also ensuring the safety of the community pending the person's trial
- The role of a judge is to adjudicate cases properly filed in court over which he or she has jurisdiction

## Role of a Magistrate

- **Most common duties of a magistrate:**
  - Conducting Article 15.17 hearings following arrest, including providing admonishments to defendants
  - Setting bail and appropriate bond conditions
  - Issuing EPOs when required or authorized
  - Modifying bail and bond conditions when necessary
  - Revoking bond when necessary
  - Issuing search and arrest warrants
- **Most of these duties occur at the county jail**

Duties of a Magistrate  
Following Arrest  
Without A Warrant

## Probable Cause

- “Persons arrested **without a warrant** must promptly be brought before a neutral magistrate for a judicial determination of probable cause.”
  - *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991)

## Probable Cause

- Therefore, when a person is presented to a magistrate following an arrest without a warrant the first thing the magistrate must do is determine whether probable cause exists to believe the accused committed the offense.

## Probable Cause

- What is probable cause?
- “A reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime.”
- “Probable cause amounts to more than a bare suspicion but less than evidence that would justify a conviction.”
  - Black’s Law Dictionary (8<sup>th</sup> ed.) at 1239.

## Probable Cause

- “Probable cause for a warrantless arrest requires that the officer have a reasonable belief that, based on facts and circumstances within the officer's personal knowledge, or of which the officer has reasonably trustworthy information, an offense has been committed. . . . Probable cause must be based on specific, articulable facts rather than the officer's mere opinion. . . .”
  - *Texas v. Defranco*, 2016 WL 3960589 at \*3 (Tex. App.– Fort Worth July 21, 2016, no pet.) (not for publ.)

## Probable Cause

- “Probable cause exists where the police have reasonably trustworthy information sufficient to warrant a reasonable person to believe a particular person has committed or is committing an offense.”
  - Chapnick v. State*, 25 S.W.3d 875, 878 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2000, pet. ref’d)

## Probable Cause

- If a finding of probable cause is not made following a warrantless arrest within 24 hours for a misdemeanor, or within 48 hours for a felony, then the accused must be released on bond not to exceed \$5,000 for a misdemeanor or \$10,000 for a felony. (May be extended up to 72 hours if motion is filed by prosecutor.)
  - Art. 17.033

## Probable Cause

- Only a magistrate may release a defendant on a personal bond. A sheriff, peace officer, or a jailer may not take a personal bond of the defendant.
  - Art. 17.03, Code of Criminal Procedure
- If the defendant is not presented to a magistrate in a timely manner and cannot post bail, the jail must contact a magistrate so that the defendant may be released on personal bond in accordance with Article 17.033.

## Probable Cause

- If probable cause does not exist the accused must be released.
- If a magistrate determines that probable cause exists, then he or she proceeds to give the accused the admonishments found in Article 15.17 of the Code of Criminal Procedure.

Art. 15.17 Hearing

- The person making the arrest (or who has custody of the person arrested) shall:
  - without unnecessary delay, but not later than 48 hours after the person is arrested,
  - take the person arrested or have him taken
  - before some magistrate of the county where the accused was arrested or
  - before a magistrate in any other county of this state
  - in order to provide the warnings sooner

-- Art. 15.17(a), Code of Criminal Procedure

Article 15.17 Hearing

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



Article 15.17 Hearing

- “Electronic broadcast system” means a two-way electronic communication of image and sound between a person and magistrate and includes secure Internet videoconferencing.

Article 15.17 Hearing

The magistrate shall inform the person arrested in clear language:

- of the accusations against him and of any affidavit filed therewith;
- of his right to retain counsel;
- of his right to remain silent;

## Article 15.17 Hearing

- of his right to have an attorney present during any interview with peace officers or attorneys representing the state;
- of his right to terminate the interview at any time;
- of his right to have an examining trial (applicable only in felony cases);

## Article 15.17 Hearing

- of his right to request the appointment of counsel if the person cannot afford counsel (applicable only in cases where jail is a potential punishment for the offense);
- that he is not required to make a statement and that any statement made by him may be used against him; and
- of the procedures for requesting appointment of counsel.

### Article 15.17 Hearing

- If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person of these rights through the use of a spoken language or sign language interpreter, as appropriate.
- This is provided for in Arts. 38.30 and 38.31, Code of Criminal Procedure

### Article 15.17 Hearing

- The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time the warnings are administered.

### Article 15.17 Hearing

- If the person arrested is indigent and requests appointment of counsel and if the magistrate is authorized to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051.

### Art. 15.17 Hearing

- If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, **but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted** to the court or to the court's designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel.

Art. 15.17 Hearing

- The right to appointment of counsel attaches at the “first adversarial proceeding” which is the Art. 15.17 hearing.

-- *Rothgery v. Gillespie County*, 554 U.S. 191 (2008).

Art. 15.17 Hearing

- So if the defendant requests appointed counsel at the Art. 15.17 hearing, the magistrate must offer to assist the accused in completing the paperwork and transmit it to the appropriate court.

## Art. 15.17 Hearing

- A recording must be made of the warnings and kept until the earlier of:
  - the date on which the pretrial hearing ends; or
  - the 91<sup>st</sup> day after the date on which the recording was made if the person is charged with a misdemeanor or the 120<sup>th</sup> day after the date on which the recording was made if the person is charged with a felony.
- A “recording” does not have to be audio or video; it can be just a written record.

## Art. 15.17 Hearing

- May an accused waive his or her right to receive the oral admonishments required by Art. 15.17?
- Yes.
  - **Atty. Gen. Op. GA-0993**
- But this only applies to the admonishments, not the other aspects of Art. 15.17 (e.g. setting bail or consular notification).
- TJCTC believes the best practice is to conduct the Article 15.17 hearing rather than soliciting a waiver of the hearing.

### Art. 15.17 Hearing

- If a person is promised a speedier release from the county jail in exchange for waiving an Article 15.17 hearing, the waiver may not be voluntary.
- A person is not deemed to have waived a right unless he says so plainly, freely, and intelligently.

-- *Sanchez v. State*, 120 S.W.3d 359, 366 (Tex. Crim. App. 2003).

### Setting Bail

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

## Setting Bail

- Bail is the security given by the accused that he will appear before the proper court and answer the accusation brought against him.

-- Art. 17.01, Code of Criminal Procedure

- The purpose of bail is to obtain the release of the defendant from custody and to secure the defendant's presence in court at the time of trial.

-- *Ex parte Milburn*, 8 S.W. 3d 422, 424 (Tex. App. – Amarillo 1999, no pet)

## Setting Bail

- Bail “includes a bail bond or a personal bond.”

-- Art. 17.01, CCP

- A “bail bond” is a written undertaking entered into by the defendant and the defendant's sureties for the appearance of the principal before a court or magistrate to answer a criminal accusation.

- But the defendant may deposit currency (a cash bond) in lieu of having sureties.

-- Art. 17.02, CCP



## Setting Bail

- The magistrate may release a defendant on his personal bond without sureties or other security except for certain serious offenses listed in Art. 17.03(b) (e.g. capital murder, aggravated kidnapping, aggravated sexual assault, etc.)

## Setting Bail

### Rules for fixing bail:

- Bail shall be sufficiently high to give reasonable assurance that the defendant will appear.
- Bail is not to be used as an instrument of oppression.
- Nature of the offense and the circumstances under which it was committed are to be considered.
- Ability to make bail is to be considered, and proof may be taken on this point.
- The future safety of a victim of the alleged offense and the community shall be considered.

-- Art. 17.15

## May a Peace Officer Set Bail?

- A peace officer has authority “to take of the defendant a bail bond.”
  - Arts. 17.20, 17.21 and 17.22
- But “taking a bail bond” is not the same as “setting bail,” which is a job for the magistrate, not the peace officer
  - Att’y Gen. Op. No. JM-1217 (1990); *Hokr v. State*, 545 S.W.2d 463 (Tex. Crim. App. 1977) (“officer’s authority to set the amount of bail is limited to situations in which no magistrate is available, or in arrests pursuant to a warrant in which the proper magistrate . . . is unavailable.”)

## Bond Conditions

A magistrate may also set conditions on the release of the accused:

- Conditions related to the safety of a victim or the community (Art. 17.40)
- Conditions where a child is the victim (Art. 17.41)
- Home curfew or confinement, electronic monitoring and drug testing (Arts. 17.43 and 17.44)
- Conditions in stalking cases (Art. 17.46)
- Conditions in cases involving family violence (Art. 17.49)
- Ignition interlock devices (Art. 17.441)

## Safety of Victim or Community

- A magistrate “may impose **any reasonable condition** of bond related to the safety of a victim . . . or to the safety of the community.”  
-- Art. 17.40(a)

## Child is a Victim

- If the defendant is charged with an offense under Penal Code Chapters 21 (sexual offenses) or 22 (assaultive offenses), Section 25.02 (prohibited sexual conduct) or Section 43.25 (sexual performance by a child) involving a child younger than 14 years of age, then the magistrate **shall** impose as a bond condition that the defendant:
  - Not directly communicate with the victim; or
  - Go near a residence, school or other location stated in the bond frequented by the victim.
- Magistrate may allow supervised access to the victim.  
-- Art. 17.41

## Stalking

- A magistrate may require as a condition of release on bond that a defendant charged with an offense under Penal Code § 42.072 may not:
  - Communicate directly or indirectly with the victim; or
  - Go to or near the residence, place of employment, or business of the victim or to or near a school, day-care facility or similar facility where a dependent child of the victim is in attendance.
- Magistrate must specifically describe the prohibited locations and minimum distance
  - Art. 17.46

## Family Violence

A magistrate may require as a condition of release on bond for a defendant charged with family violence under Family Code § 71.004 that the defendant:

- Refrain from going to or near a residence, school, place of employment, or other location frequented by the victim;
- Carry or wear a global positioning monitoring system device and pay the costs of the device (except as provided for indigent defendants); or
- Pay the costs associated with providing the victim with an electronic receptor device (except as provided for indigent defendants)

-- Art. 17.49

## Family Violence

- Magistrate must afford the victim an opportunity to list the areas from which the victim would like the defendant excluded
  - Locations must be specifically described
- Victim must be informed of victim's right to participate in a global positioning monitoring system and information concerning the locations the defendant may not visit and consequences of a violation

-- Art. 17.49

## Family Violence

- A person charged with family violence who violates a bond condition commits an offense under Penal Code § 25.07.
- In 2013 the legislature amended Section 411.042, Government Code, to require DPS to collect information regarding bond conditions in family violence cases and enter it into the state's law enforcement information system.

## DWI: Mandatory Interlock

- If the defendant is charged with any of the following offenses:
  - A **subsequent** offense of:
    - Driving While Intoxicated (Penal Code § 49.04)
    - Driving While Intoxicated with Child Passenger (Penal Code § 49.045)
    - Flying While Intoxicated (Penal Code § 49.05)
    - Boating While Intoxicated (Penal Code § 49.06)
  - Or an offense of:
    - Intoxication Assault (Penal Code § 49.07)
    - Intoxication Manslaughter (Penal Code § 49.08)

## DWI: Mandatory Interlock

- The magistrate **SHALL** order the defendant to have an interlock installed **AND** not to operate any motor vehicle unless the vehicle is equipped with an ignition interlock device.
- **Unless** the magistrate finds that it would **not** be in the best interest of justice to require the device.
  - Art. 17.441, CCP

## DWI: Permissive Interlock

- If the defendant is charged with any of the following offenses:
  - An offense of:
    - Driving While Intoxicated (Penal Code § 49.04)
    - Driving While Intoxicated with Child Passenger (Penal Code § 49.045)
    - Flying While Intoxicated (Penal Code § 49.05)
    - Boating While Intoxicated (Penal Code § 49.06)

## DWI: Permissive Interlock

- And the magistrate finds that requiring the defendant to install an ignition interlock device is a reasonable bond condition related to the safety of the community; then
- The magistrate MAY order the defendant to have an interlock installed AND not to operate any motor vehicle unless the vehicle is equipped with an ignition interlock device.
  - Art. 17.441, CCP

## Interlock

- If the defendant is required to have the device installed, the magistrate shall require that the defendant have the device installed on the appropriate motor vehicle, at the defendant's expense, before the 30<sup>th</sup> day after the date the defendant is released on bond.

-- Art. 17.441(c), Code of Criminal Procedure

## Interlock

- If you require the defendant to install an ignition interlock device and refrain from driving any vehicle not equipped with an IID, TJCTC recommends including a bond condition requiring the defendant to abstain from alcohol.
- If this condition is not included, high BACs detected by the IID do not constitute a violation of bond conditions.



## Interlock Monitoring

- The magistrate **may** designate an appropriate agency to verify the installation of the device and to monitor the device.
  - Defendant must pay a fee to the agency
  - The magistrate shall set the fee in an amount not to exceed \$10 as determined by the county auditor or by the commissioners court
    - Art. 17.441(d), Code of Criminal Procedure

## Monitoring Agencies

- Probation department (C.S.C.D.)
- County Attorney's Office
- District Attorney's Office
- County Sheriff's Office
- Court before which the prosecution is pending
  
- A C.S.C.D. may collect an administrative fee of between \$25 and \$60 per month for providing monitoring services
  - Sections 76.011 and 76.015, Government Code

### Release Without Bond

- If a person is charged with a fine-only misdemeanor, then the magistrate may release him without the necessity of a bond and instruct him to appear for arraignment in the appropriate municipal or justice court.
  - Art. 15.17(b)
- This does not apply to a defendant who has been previously convicted of a felony or a jailable misdemeanor.
  - But you may not know the defendant's complete criminal history at the time of the Art. 15.17 hearing.

### Consular Notification

- When foreign nationals from most countries are arrested or detained, they may, upon request, have their consular officers notified without delay of their arrest or detention, and may have their communications to their consular officers forwarded without delay. In addition, foreign nationals must be advised of this information without delay.
- For foreign nationals of some countries, consular officers must be notified of the arrest or detention of a foreign national even if the foreign national does not request or want notification.

## Consular Notification

- Full list of mandatory reporting countries is in the guide: “Consular Notification and Access,” produced by the U.S. State Department, at the following web address:
- [http://travel.state.gov/pdf/cna/CNA\\_Manual\\_3d\\_Edition.pdf](http://travel.state.gov/pdf/cna/CNA_Manual_3d_Edition.pdf)

## Emergency Protective Order

- What is it?
- A separate order that may – and sometimes **must** -- be issued at a defendant's appearance before a magistrate after an arrest for an offense involving family violence, human trafficking, sexual assault, aggravated sexual assault or stalking.

-- Art. 17.292(a)

## Emergency Protective Order

- Not a bond condition and has different consequences
- Issued at the Article 15.17
  - Cannot be issued before or after
- Objective is to protect victims and the community.

## Mandatory EPOs

- The magistrate **shall** issue an EPO if the arrest is for a family violence offense that involves:
  - serious bodily injury to the victim;  
or
  - the use or exhibition of a deadly weapon during the commission of an assault.

-- Art. 17.292(b)

## Permissive EPOs

- The magistrate **may** issue an EPO on the magistrate's own motion or on the request of:
  - the victim of the offense;
  - the guardian of the victim;
  - a peace officer; or
  - the attorney representing the state.

-- Art. 17.292(a)

## Length of EPO

- At least 31 days but not more than 61 days if the EPO is permissive or if the defendant suffered serious bodily injury but a deadly weapon was not used or exhibited
- At least 61 days but not more than 91 day if a deadly weapon was used or exhibited

-- Art. 17.292(j)

- To determine whether a deadly weapon was used, examine the probable cause affidavit or complaint presented to you.

## EPO Restrictions

The magistrate may prohibit the arrested person from **committing**:

- Family violence or an assault on the person protected under the order; or
- An act in furtherance of an offense involving human trafficking or stalking.

-- Art. 17.292(c)(1)

## EPO Restrictions

The magistrate may prohibit the arrested person from **communicating**:

- **Directly** with a member of the family or household **or with the person protected under the order** in a threatening or harassing manner;
  - **A threat** through any person to a member of the family or household or to the person protected under the order;
- (continued)

## EPO Restrictions

- **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, provided the magistrate finds good cause.

-- Art. 17.292(c)(2)

## EPO Restrictions

The magistrate may prohibit the arrested person **from 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;
- The residence, child care facility, or school where a child protected under the order resides or attends.

-- Art. 17.292(c)(3)

## EPO Restrictions

- The magistrate may prohibit the arrested person from possessing a firearm, unless the person is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.  
-- Art. 17.292(c)(4)
- The magistrate must suspend a license to carry a handgun issued to the defendant under Chapter 411 of the Government Code.  
-- Art. 17.292(l)

## EPO Restrictions

The magistrate may also impose any of the conditions in Art. 17.49(b) for a person accused of family violence, including ordering a defendant's participation in a global positioning monitoring system device or allowing participation in the system by a victim or other person protected under the order.

-- Art. 17.292(c-1)



## EPO Restrictions

- The victim does not have to be present when the EPO is issued.
- The magistrate must specifically describe the prohibited locations and the minimum distances, if any, that the party must maintain, unless the magistrate determines for the safety of the persons protected by the order that specific descriptions of the locations should be omitted.
  - For example, don't include the address of a shelter for victims of domestic violence in an EPO.

-- Art. 17.292(d) and (e)

## EPO Warning

- The EPO must contain a warning in all caps or bold face type
- The warning is stated in Art. 17.292(g)
- Violation of the EPO may result in a \$4,000 fine and/or one year in jail.
- Act that results in a family violence or trafficking or stalking offense may be prosecuted as a separate felony offense.
- No one can give permission to ignore or violate any provision of the EPO

## Issuance and Service

- An EPO is effective on issuance.
- The defendant must be served a copy of the EPO by the magistrate or the magistrate's designee in person or electronically.
- The magistrate must make a separate record of the service in written or electronic format.

-- Art. 17.292(j)

## Reporting of EPO

- As soon as possible but not later than the next business day after issuance of an EPO, the magistrate must send a copy of the EPO to the chief of police if the person protected lives in a municipality or the sheriff if the person protected does not live in a municipality.

-- Art. 17.292(h)

## EPOs: Required Reporting

- If the victim is not present when the EPO is issued, the magistrate must order a peace officer to make a good faith effort to notify the victim that the EPO has been issued by calling the victim's residence and place of employment within 24 hours.  
-- Art. 17.292(h)

## Reporting of EPO

- The clerk of the court must send a copy of the order to the victim at the victim's last known address as soon as possible but not later than the next business day after the order is issued.
- The magistrate or clerk may delay sending a copy of the order only if they lack information necessary to ensure service and enforcement.  
-- Art. 17.292(h) and (h-1)

### Reporting of EPO

- If an EPO suspends a license to carry a handgun, then the magistrate or clerk must immediately send a copy of the EPO to DPS, which must report the suspension to local law enforcement and demand surrender of the license.  
-- Art. 17.293

### Reporting of EPO

- If an EPO prohibits a person from going to or near a child care facility or school, the magistrate must send a copy of the EPO to the child care facility or school.
- The EPO may be sent electronically.  
-- Art. 17.292(i) and (i-1)

### Violation of EPO

- A person who violates an EPO commits an offense under Sec. 25.07, Penal Code.
- Typically, this offense is a Class A misdemeanor.
- Third degree felony if the EPO is violated by committing assault or stalking, or if the defendant has two or more prior convictions under Section 25.07

### Modification of EPO

- After notice to each affected party and a hearing, the issuing court may modify all or part of an EPO if the court finds that:
    - The EPO as originally issued is unworkable;
    - The modification will not place the victim of the offense at greater risk than did the original order; and
    - The modification will not in any way endanger a person protected under the order.
- Art. 17.292(j)

## Transfer of EPO

- On motion, notice, and hearing, or on agreement of the parties, an EPO may be transferred to the court assuming jurisdiction over the criminal act giving rise to EPO.
- On transfer, the criminal court may modify all or part of the EPO.
  - Art. 17.292(n)

## Who Hears Bond Motions?

- Two common motions:
  - **Bond Modification or Revocation:**  
Whenever the judge or magistrate in whose court the action is pending finds that the bond is defective, excessive or insufficient in amount, or that the sureties are not acceptable, or for any other good and sufficient reason, such judge or magistrate may order the accused to be rearrested and require the accused to give another bond in such amount as the judge or magistrate may deem proper.
    - Art. 17.09

## Who Hears Bond Motions?

- **Surety Surrender:** If a defendant is incarcerated in federal custody, in the custody of another state or in another county, or for any other sufficient cause, the surety may file an affidavit stating its intention to surrender the defendant and be discharged from liability on the bail bond. The affidavit is filed with the court or magistrate before whom the prosecution is pending.
  - Arts. 17.16, 17.19

## Who Hears Bond Motions?

- *Ex Parte Clear*, 573 S.W.2d 224 (Tex. Crim. App. 1978):
  - Once a formal charging instrument is filed (a complaint, information or indictment), the case is pending in the trial court, not before the magistrate.
- *Guerra v. Garza*, 987 S.W.2d 593 (Tex. Crim. App. 1999):
  - The magistrate who conducts an Art. 15.17 hearing following an arrest without a warrant exercises sole jurisdiction over the bail issues to the exclusion of other courts; therefore a statutory county court judge could not change a surety bond to a personal bond.

## Who Hears Bond Motions?

- Atty. Gen. Op. GA-1021 (2013):
  - Until a formal charging instrument (a complaint, information or indictment) is filed, the prosecution is pending before the magistrate who conducted the Art. 15.17 hearing and it is that magistrate to whom a surety must apply for a warrant under Art. 17.19(a) and (b).

## Who Hears Bond Motions

- TJCTC's position: when the arrest is made without a warrant the prosecution is pending before the magistrate who conducts the Art. 15.17 hearing.
- Therefore, a motion to modify or revoke a bond or a motion for a surety surrender are filed with the magistrate who conducted the Art. 15.17 hearing before an indictment or information is filed; after they are filed the court with jurisdiction over the offense hears the motion.



## Who Hears Bond Motions

- Example: a justice of the peace requires the defendant to install an ignition interlock device within 30 days. Formal charges are filed in a county court 20 days later. It is the county court's responsibility to monitor and enforce this bond condition.

## Who Hears Bond Motions?

- Example: a magistrate does not require the defendant to install an ignition interlock device as a condition of bond following an arrest for felony DWI. After an indictment is returned in district court, the district judge may add this bond condition.

## Duties of a Magistrate Following Arrest With A Warrant

### Art. 15.17 Hearing

- When a defendant is taken into custody based upon an arrest warrant, another magistrate has already found that probable cause exists.
- There is no need to determine probable cause a second time.
- The magistrate should proceed directly to the Article 15.17 hearing, including oral admonishments, the setting of bail and bond conditions, consular notification, and orders for emergency protection.

### Out-of-County Fine-Only Offense

- If the arrest warrant issued from **another county, and the offense is punishable by fine only**, the magistrate, after conducting the Art. 15.17 hearing, shall accept a written plea of guilty or nolo contendere, set a fine, determine costs, accept payment of the fine, give credit for time served, determine indigency or on satisfaction of the judgment, discharge the defendant, as the case may indicate.

--Art. 15.18(a)(2)

### Out-of-County Fine-Only Offense

- If the magistrate accepts a written plea of guilty or nolo contendere for an out of county fine-only offense, then within 11 business days he must transmit to the court having jurisdiction of the offense:
  - The written plea;
  - Any orders entered in the case; and
  - Any fine or costs collected in the case.
- This does not apply to a person arrested under a *capias pro fine*.

-- Art. 15.18(b) and (d)

### Out-of-County Warrants

- On all other **out-of-county** arrest warrants, the magistrate **shall** take bail if allowed and immediately transmit the bond to the court which issued the arrest warrant.

-- Art. 15.18(a)(1), CCP

### Out-of-County Warrants

- If the defendant fails or refuses to make bail, the magistrate must immediately notify the sheriff of the county where the offense occurred. That county has 11 days to pick up the defendant; otherwise the defendant must be released.

-- Art. 15.21, CCP

Out-of-County Warrant:  
Appointment of Counsel

- A magistrate shall inform a defendant arrested on an out-of-county warrant of the procedures for requesting appointed counsel and offer reasonable assistance in completing forms for requesting counsel.

-- Art. 15.18(a-1)

Out-of-County Warrant:  
Appointment of Counsel

- If an indigent defendant is arrested on an out-of-county warrant, the county that issued the warrant shall appoint counsel as soon as possible but no later than:
  - The end of the third working day after the court receives the defendant's request for appointment of counsel if the defendant is arrested in a county with a population of less than 250,000; or
  - The end of the first working day if the defendant is arrested in a county with a population of 250,000 or more.

-- Art. 1.051(c) and (c-1)

Out-of-County Warrant:  
Appointment of Counsel

- Counsel shall be appointed regardless of whether formal proceedings have begun in the county that issued the warrant.  
-- Art. 1.051(c) and (c-1)

Out-of-County Warrant:  
Appointment of Counsel

- If the defendant:
  - has not been transferred or released into the custody of the county issuing the warrant before the 11th day after the date of the arrest; and
  - if counsel has not otherwise been appointed for the defendant in the arresting county; then  
-- Art. 1.051(c-1)

Out-of-County Warrant:  
Appointment of Counsel

- A court or the court's designee authorized to appoint counsel for indigent defendants in the arresting county shall immediately appoint counsel to represent the defendant for purposes of habeas corpus and bail, regardless of whether adversarial judicial proceedings have been initiated against the defendant in the arresting county.

-- Art. 1.051(c-1)

Out-of-County Warrant:  
Appointment of Counsel

- If counsel is appointed for the defendant in the arresting county for purposes of habeas corpus and bail, the arresting county may seek from the county that issued the warrant reimbursement for the actual costs paid by the arresting county for the appointed counsel.

-- Art. 1.051(c-1)

## ACCEPTING PLEAS AT THE COUNTY JAIL

### Jurisdiction to Accept a Plea

- In general, only the **judge of a trial court in which a proper charging instrument is pending** may accept a plea of guilty or no contest at the county jail.
- The filing of the charging instrument (a complaint or a citation for a fine-only offense) gives the court jurisdiction over the defendant.
- So a court that lacks personal jurisdiction over the defendant may not accept a plea of guilty or no contest.



## Jurisdiction to Accept a Plea

- There are two exceptions:
  - A defendant is arrested on an out-of-county warrant for a fine-only offense; Art. 15.18(a)(2) permits a magistrate to accept a plea of guilty or nolo contendere, set a fine, determine costs, accept payment of the fine and costs, determine indigency or, on satisfaction of the judgment, discharge the defendant.
  - There is a written bench exchange agreement under Section 27.054, Government Code; in that case the judge is sitting as the judge of the court where the charging instrument was filed.
    - No bench exchange with a municipal court.

## Jurisdiction to Accept a Plea

- If a defendant who is detained in jail enters a plea of guilty or nolo contendere, the justice or judge may, after complying with Art. 15.17 and advising the defendant of his right to a trial by jury:
  - Accept the defendant's plea;
  - Assess a fine, determine costs, and accept payment of the fine and costs;
  - Give the defendant credit for time served;
  - Determine whether the defendant is indigent; or
  - Discharge the defendant.
    - Art. 45.023(c)

### Motion for New Trial

- If a defendant pleads guilty or nolo contendere while detained in jail, then he may file a motion for new trial “not later than 10 days after rendition of the judgment and sentence.”
- “The justice or judge **shall** grant the motion for new trial . . . .”  
-- Art. 45.023

### Written Judgment

- A written judgment must be produced by the court every time a defendant is convicted and ordered to pay a fine and costs.
- There is no exception to this rule when the defendant enters a plea of guilty or no contest at the county jail.
- So be sure to prepare a written judgment.

## Arrest under a Capias Pro Fine

### Capias Pro Fine

- What is a capias pro fine?
- A writ that is:
  - Issued by a court having jurisdiction of a case **after judgment and sentence** for unpaid fines and costs; and
  - Directed to any peace officer of the State of Texas and commanding the officer to arrest a person convicted of an offense and bring the arrested person before **that court** immediately.
    - Arts. 43.015 and 45.045

### Capias Pro Fine

- The peace officer must “bring the defendant before that court immediately or place the defendant in jail until the business day following the date of the defendant’s arrest if the defendant cannot be brought before the court immediately.”  
-- Art. 45.045(a)

### Capias Pro Fine

- If capias pro fine was issued by a justice court and that judge is not available when the defendant is arrested, then instead of placing the defendant in jail the peace officer may take the defendant before any other justice of the peace in the same county.  
-- Art. 45.045(a-1)
- This is in effect an automatic bench exchange agreement within the county for JPs.
- It does not apply to a municipal court judgment.

## Capias Pro Fine

- A defendant arrested pursuant to a capias pro fine has already been **convicted and sentenced**. Therefore:
  - The defendant should not be presented to a magistrate for a determination of probable cause;
  - There is no Art. 15.17 hearing;
  - The defendant should not be required to post bail as a condition of his release;
  - The issue is how will the defendant discharge the fine and costs?

## Capias Pro Fine: Commitment

- When a defendant defaults in the discharge of a judgment, “the judge may order the defendant confined in jail until discharged by law if the judge at a hearing makes a written determination that:
  - (1) the defendant is **not indigent** and has **failed to make a good faith effort to discharge** the fine and costs; or(cont.)

Capias Pro Fine: Commitment

(2) the defendant is indigent and:  
(A) has **failed to make a good faith effort to discharge** the fine and costs under Art. 45.049 [community service]; and  
(B) could have discharged the fines and costs under Art. 45.049 **without experiencing any undue hardship.**

-- Art. 45.046

Capias Pro Fine: Commitment

- If the court that issued the capias pro fine is unavailable, then any justice of the peace in the same county as the issuing court may conduct the hearing.

-- Art. 45.046(d)

Capias Pro Fine: Commitment

- So before ordering a person to lay out a fine in jail, a judge **must** conduct a hearing and make a written determination that either the person is not indigent and failed to make a good faith effort to discharge the fine and costs, or is indigent and failed to make a good faith effort to discharge the fine and costs by performing community service and could have done so without experiencing any undue hardship.

Capias Pro Fine: Commitment

- This means that before a person who is indigent is committed to jail for not paying a fine the person must be given an opportunity to perform community service – unless the court finds that performing community service would impose an undue burden.

### Community Service

- A judge may require a defendant who has failed to pay a previously assessed fine or costs, or who is determined by the court to have insufficient resources or income to pay a fine or costs, to discharge all or part of the fine or costs by performing community service.
- The judge must specify the number of hours the defendant must work.

-- Art. 45.049(a)

### Community Service

- Judge may not require a defendant to perform more than 16 hours of community service per week unless the judge determines that requiring additional hours does not work a hardship on the defendant or his dependents
- A defendant is considered to have discharged not less than \$50 of fines and costs for each eight hours of community service

-- Art. 45.049(d) and (e)



### Waiver of Fine and Costs

- If discharging the fine by performing community service or as otherwise authorized in Chapter 45 would impose an undue hardship on the person, the court may waive the payment of the fine and costs.

-- Art. 45.0491

### Discharge from Jail

- A convicting court may specify a period of time that is not less than eight hours or more than 24 hours as the period for which a defendant who fails to pay the fines and costs in the case must remain in jail to satisfy the fine and costs.

-- Art. 45.048(b)

## Discharge from Jail

- A defendant placed in jail on account of failure to pay the fine and costs must be discharged on habeas corpus by showing that the defendant:
    - Is too poor to pay the fine and costs; or
    - Has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of not less than \$50 for each period of time served, as specified by the convicting court in the judgment in the case.
- Art. 45.048(a)

OTHER ARRESTS:  
CAPIAS  
PROBATION REVOCATION  
PAROLE VIOLATION

## Capias

- What is a capias?
- A writ:
  - (1) issued by a judge of the court having jurisdiction of a case after commitment or bail and **before trial**, or by a clerk at the direction of the judge; and
  - (2) directed "To any peace officer of the State of Texas", commanding the officer to arrest a person accused of an offense and bring the arrested person before that court immediately or on a day . . . stated in the writ.  
-- Art. 23.01

## Capias

- A defendant arrested on a capias may be required to give new bail in either a felony or misdemeanor case.  
-- Arts. 23.06, 23.14
- But jurisdiction lies with the court where the charging instrument (indictment or information) was filed; only that court may set the new bail.
- No determination of probable cause
- No Art. 15.17 hearing.

## Motion to Revoke Probation

- Generally, a magistrate has no jurisdiction over a defendant arrested on a warrant based on a motion to revoke probation or community supervision.
- But a magistrate must administer the applicable Art. 15.17 warnings and appoint counsel if the judge of the trial court in which the motion to revoke is pending is unavailable.  
-- Art. 42A.108

## Motion to Revoke Probation

- The magistrate may not **set** a bond amount but may **accept** a bond in the amount set by the judge of the trial court in which the motion to revoke community supervision is pending .

## Parole Violation

- If a person is arrested for a parole violation, a magistrate may release the person on bond pending the parole hearing if:
  - (1) the person is arrested or held in custody only on a charge that the person committed an administrative violation of release;  
-- Section 508.254, Government Code

## Parole Violation

- (2) the parole division included a notice on the warrant for the person's arrest that the person is eligible for release on bond; and
- (3) the magistrate determines that the person is not a threat to public safety.  
-- Section 508.254, Government Code

## Parole Violation

- The parole division may authorize the person's release on bond only if the division determines that the person:
    - (1) has not been previously convicted of certain offenses;
    - (2) is not on intensive supervision or super-intensive supervision;
    - (3) is not an absconder; and
    - (4) is not a threat to public safety.
- Section 508.254, Government Code