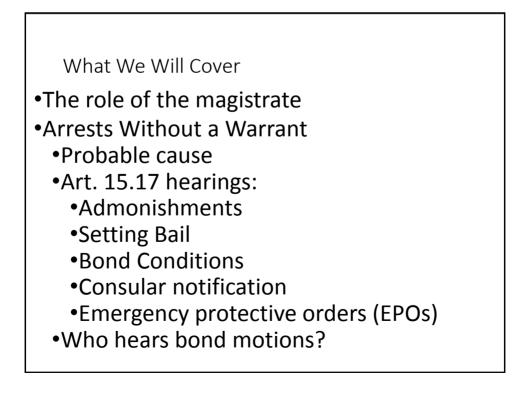
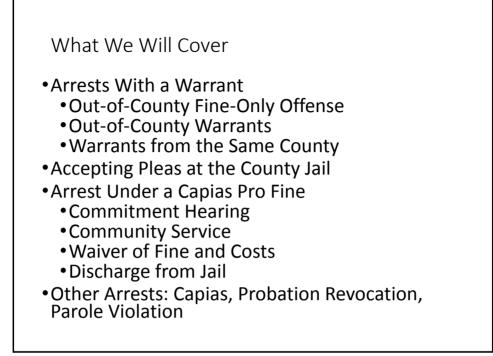
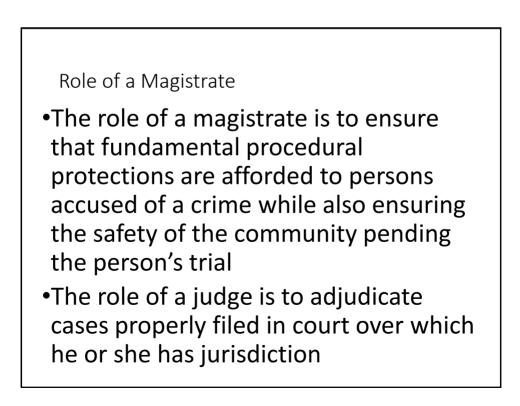
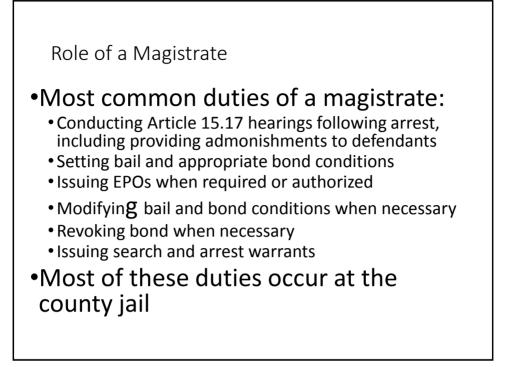
Magistration

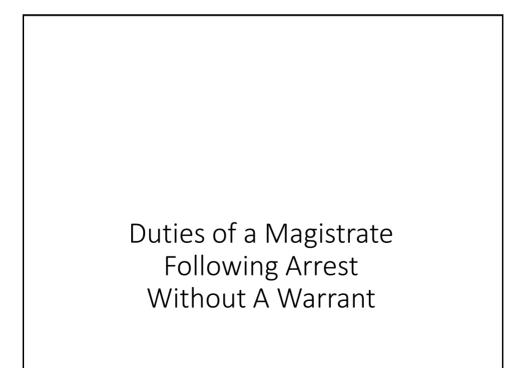
Randall L. Sarosdy General Counsel Texas Justice Court Training Center









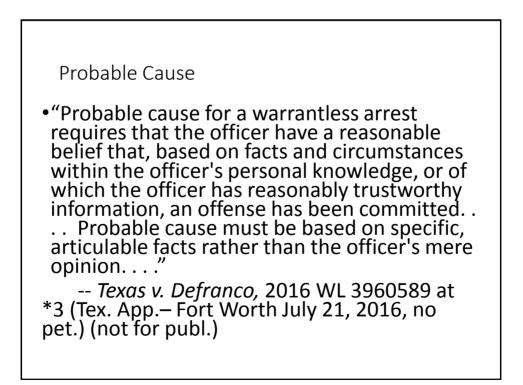


"Persons arrested without a warrant must promptly be brought before a neutral magistrate for a judicial determination of probable cause." *County of Riverside v. McLaughlin,* 500 U.S. 44, 56 (1991)

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.

- •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 (8th ed.) at 1239.



• "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 [14th Dist.] 2000, pet. ref'd)



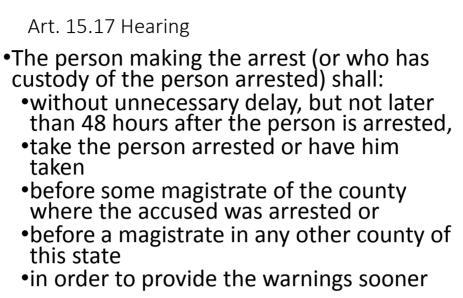
If a finding of probable cause is not made following a warrantless arrest within 24 hours for a misdemeanor, or within 48 hours for a felony, then the accused must be released on bond not to exceed \$5,000 for a misdemeanor or \$10,000 for a felony. (May be extended up to 72 hours if motion is filed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

•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.



- •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(a), Code of Criminal Procedure

Article 15.17 Hearing

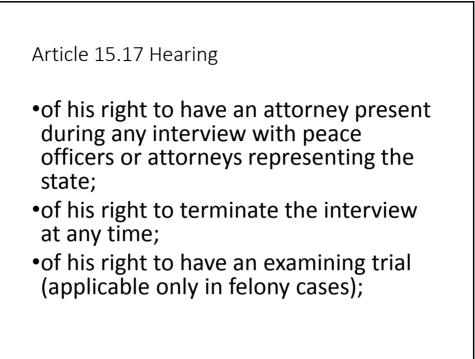
•The arrested person may be taken before the magistrate in person or the image of the arrested person may be presented to the magistrate by means of an electronic broadcast system.

•"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;



- 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.

•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.

•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.

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Art. 15.17 Hearing
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•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.



- •A recording must be made of the warnings and kept until the earlier of:
 - the date on which the pretrial hearing ends; or
 - the 91st day after the date on which the recording was made if the person is charged with a misdemeanor or the 120th 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.



- May an accused waive his or her right to receive the oral admonishments required by Art. 15.17?
- Yes.

-- Atty. Gen. Op. GA-0993

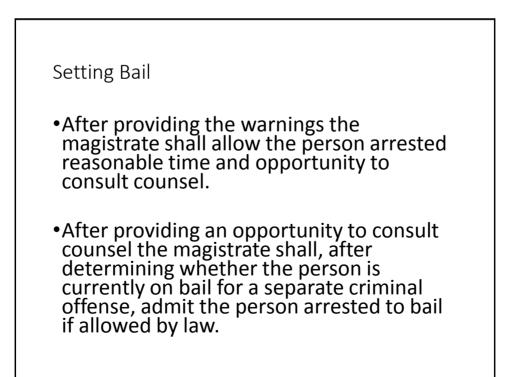
- But this only applies to the admonishments, not the other aspects of Art. 15.17 (e.g. setting bail or consular notification).
- TJCTC believes the best practice is to conduct the Article 15.17 hearing rather than soliciting a waiver of the hearing.

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).



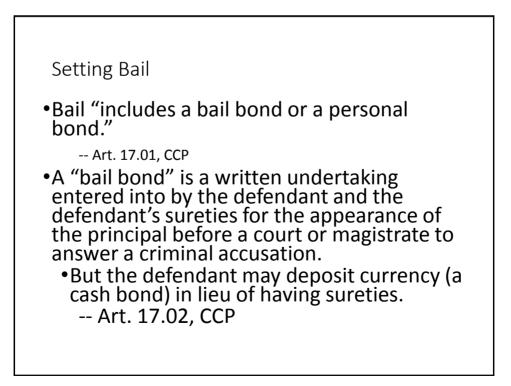
Setting Bail

•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

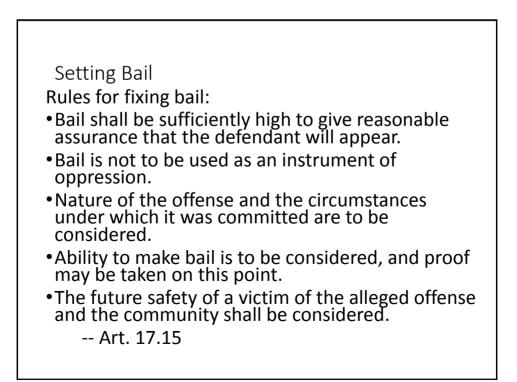
•The purpose of bail is to obtain the release of the defendant from custody and to secure the defendant's presence in court at the time of trial.

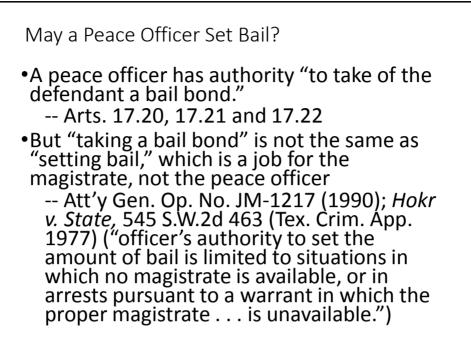
-- *Ex parte Milburn,* 8 S.W. 3d 422, 424 (Tex. App. – Amarillo 1999, no pet)

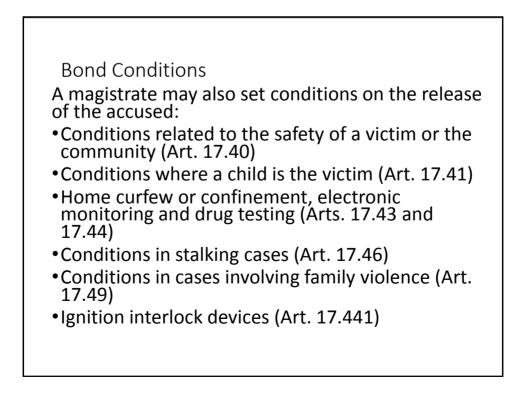


Setting Bail

•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.)





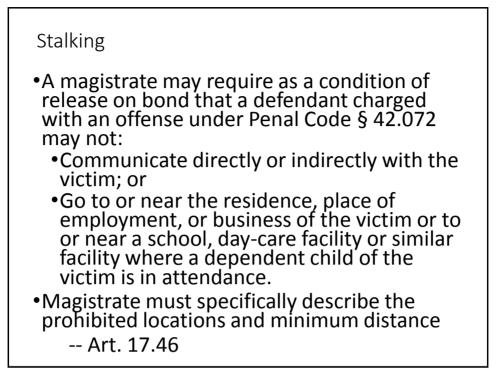


Safety of Victim or Community

•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



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

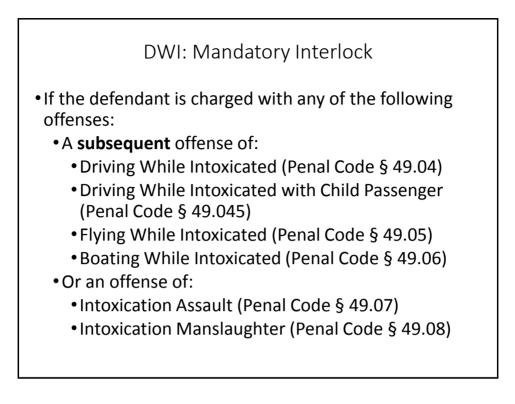
Family Violence
Magistrate must afford the victim an opportunity to list the areas from which the victim would like the defendant excluded
Locations must be specifically described
Victim must be informed of victim's right to participate in a global positioning monitoring system and information concerning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

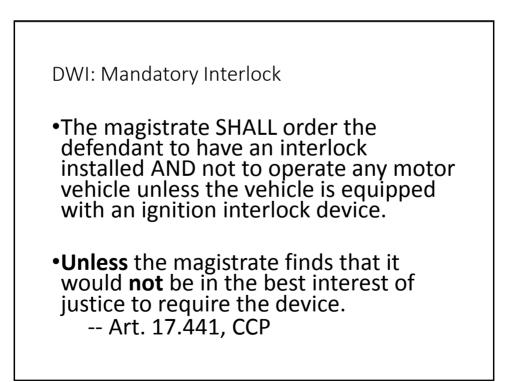
Art. 17.49

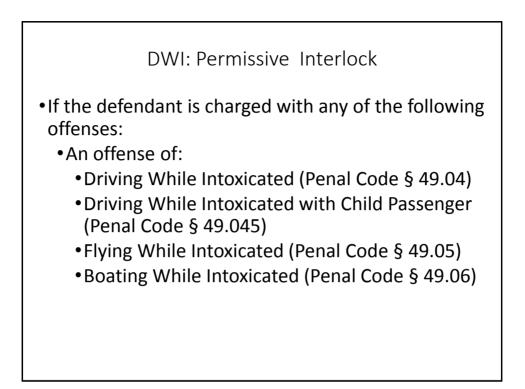
Family Violence

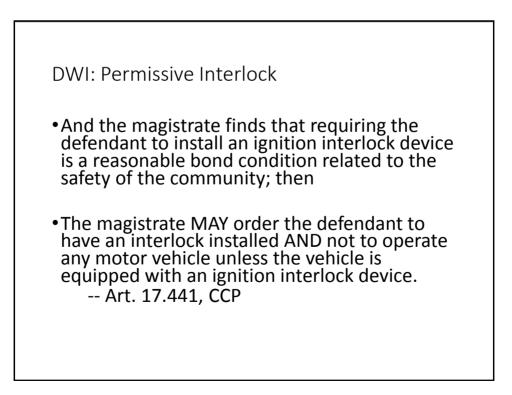
•A person charged with family violence who violates a bond condition commits an offense under Penal Code § 25.07.

•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.





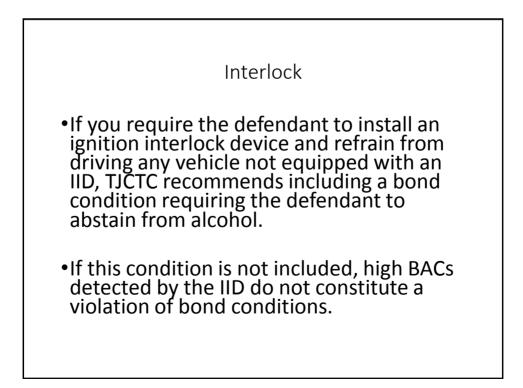


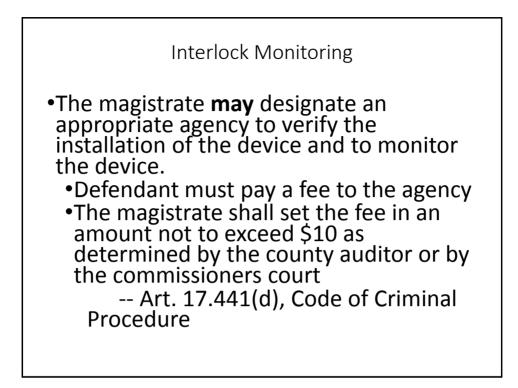


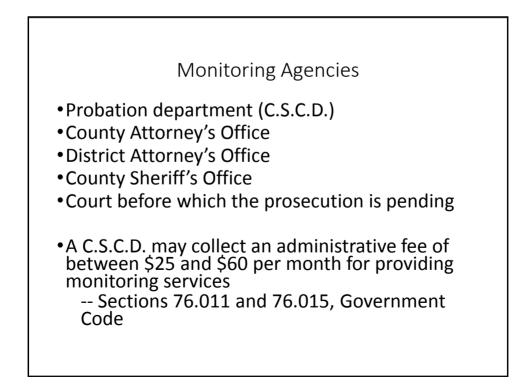
Interlock

•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 30th day after the date the defendant is released on bond.

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







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.



- 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.



- •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:
- •<u>http://travel.state.gov/pdf/cna/CNA</u> <u>Manual 3d Edition.pdf</u>

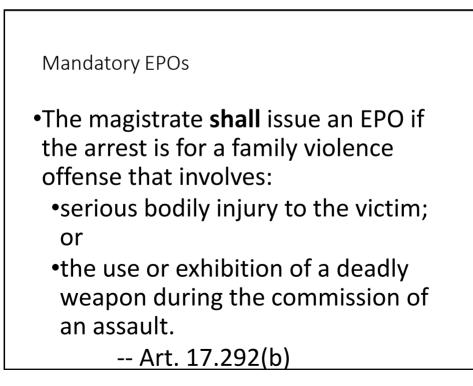


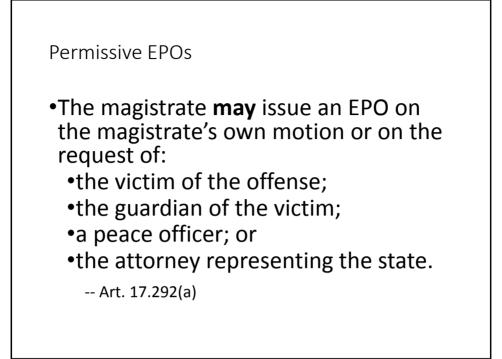
- •What is it?
- •A separate order that may and sometimes **must** -- be issued at a defendant's appearance before a magistrate after an arrest for an offense involving family violence, human trafficking, sexual assault, aggravated sexual assault or stalking.

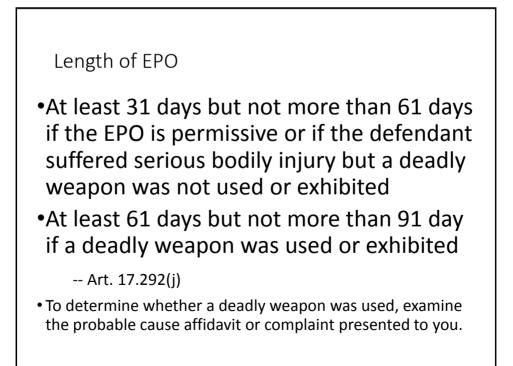
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-- Art. 17.292(a)
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Emergency Protective Order

- •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.

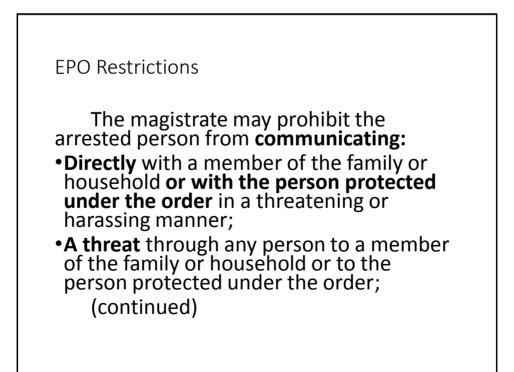






EPO Restrictions

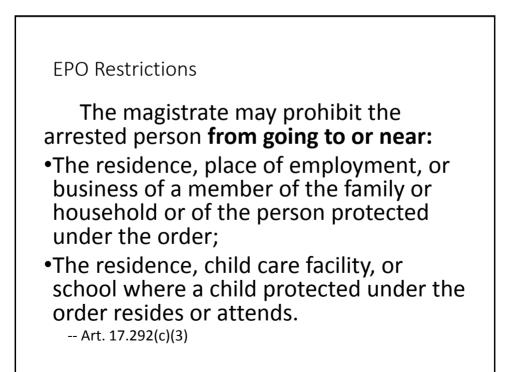
The magistrate may prohibit the arrested person from **committing:** •Family violence or an assault on the person protected under the order; or •An act in furtherance of an offense involving human trafficking or stalking. -- Art. 17.292(c)(1)



EPO Restrictions

•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)



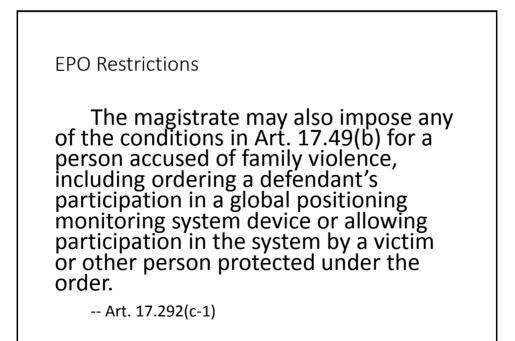
EPO Restrictions

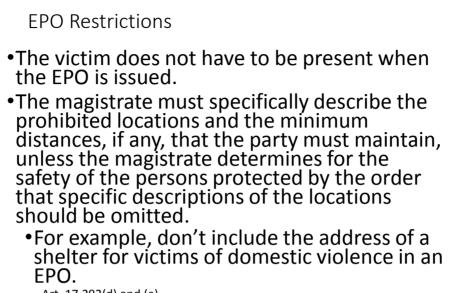
•The magistrate may prohibit the arrested person from possessing a firearm, unless the person is a peace officer actively engaged in employment as a sworn, fulltime paid employee of a state agency or political subdivision.

-- 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(I)

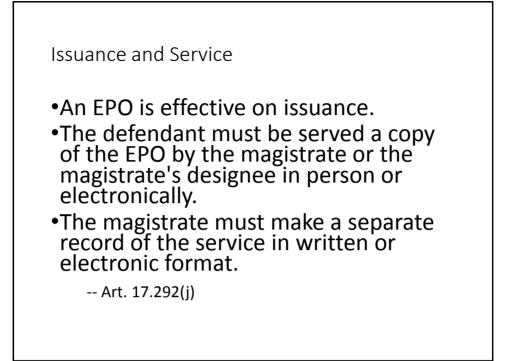


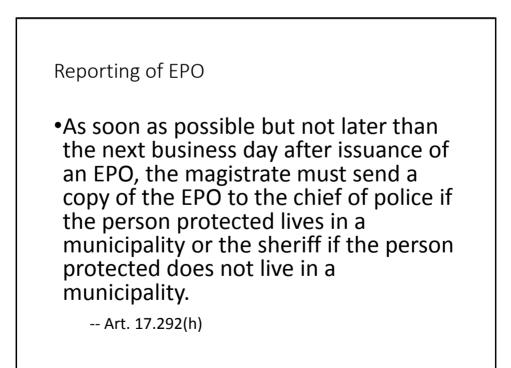


-- Art. 17.292(d) and (e)



- •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

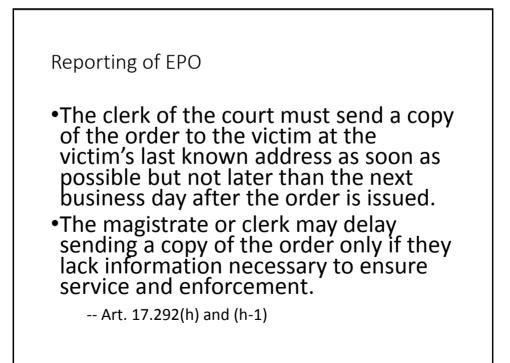




EPOs: Required Reporting

•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.

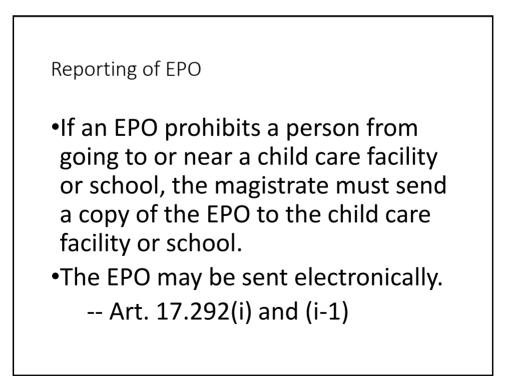
-- Art. 17.292(h)

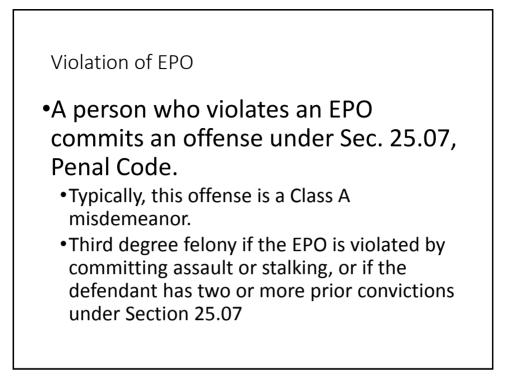


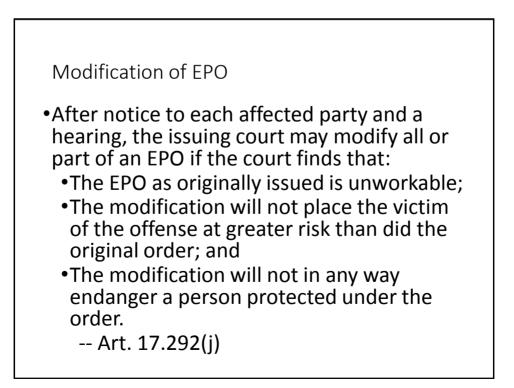
Reporting of EPO

•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





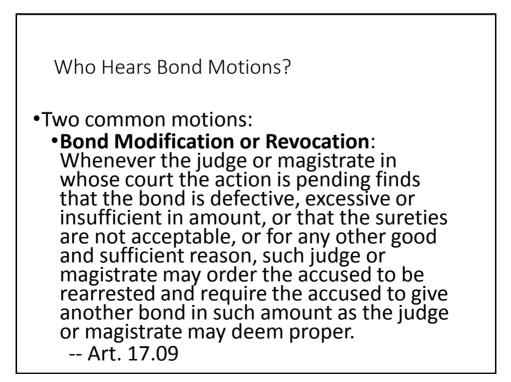


Transfer of EPO

•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.

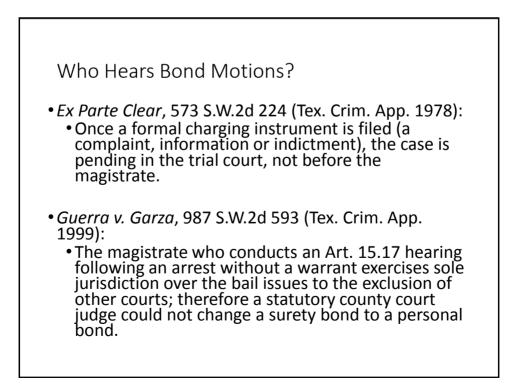
-- Art. 17.292(n)



Who Hears Bond Motions?

•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.

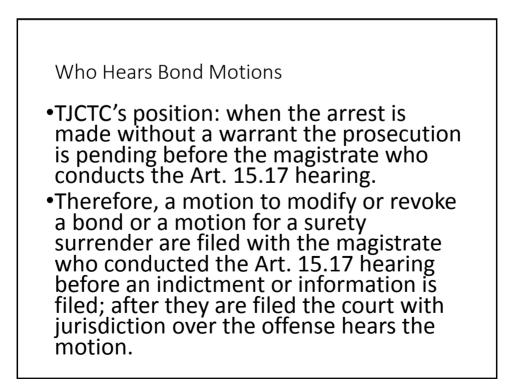
-- Arts. 17.16, 17.19





•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).

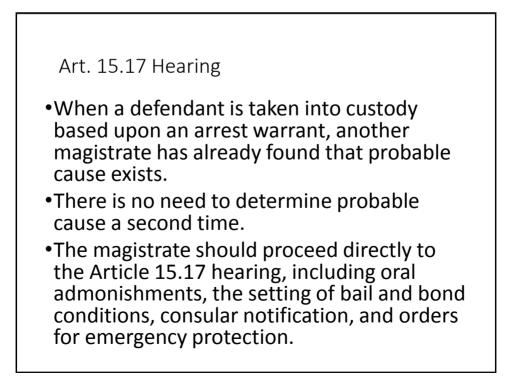


Who Hears Bond Motions

•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.



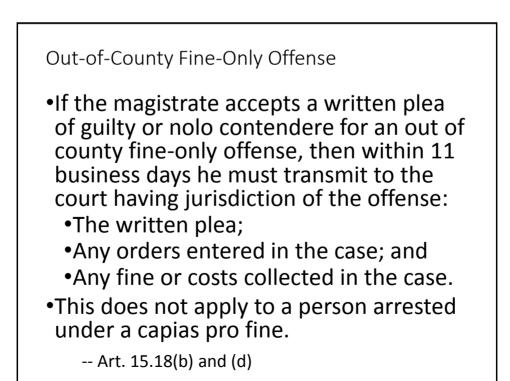
•Example: a magistrate does not require the defendant to install an ignition interlock device as a condition of bond following an arrest for felony DWI. After an indictment is returned in district court, the district judge may add this bond condition. Duties of a Magistrate Following Arrest With A Warrant



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.

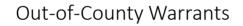
--Art. 15.18(a)(2)





•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



 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:

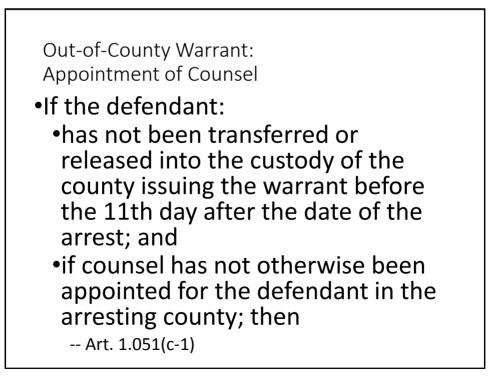
- •The end of the third working day after the court receives the defendant's request for appointment of counsel if the defendant is arrested in a county with a population of less than 250,000; or
- •The end of the first working day if the defendant is arrested in a county with a population of 250,000 or more.

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

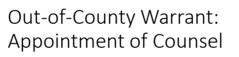
-- Art. 1.051(c) and (c-1)



Out-of-County Warrant: Appointment of Counsel

•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.

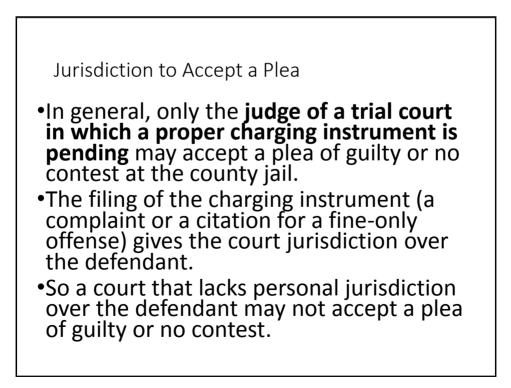
-- Art. 1.051(c-1)

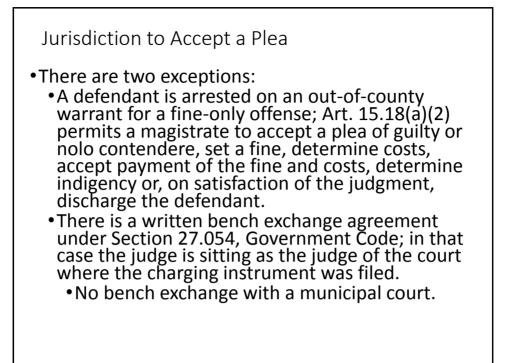


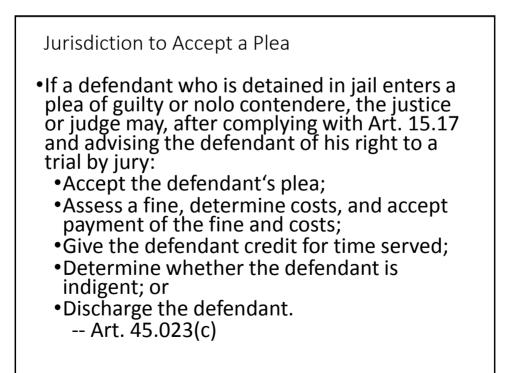
•If counsel is appointed for the defendant in the arresting county for purposes of habeas corpus and bail, the arresting county may seek from the county that issued the warrant reimbursement for the actual costs paid by the arresting county for the appointed counsel.

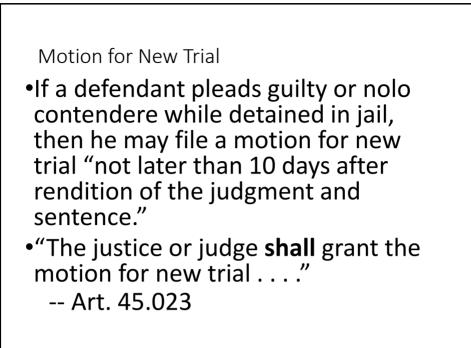
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-- Art. 1.051(c-1)
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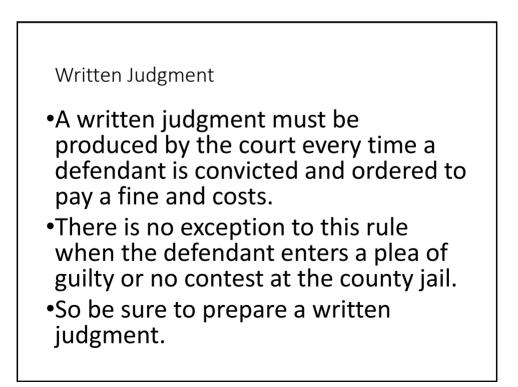
ACCEPTING PLEAS AT THE COUNTY JAIL

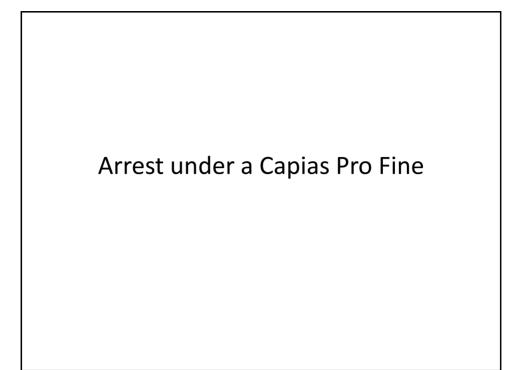


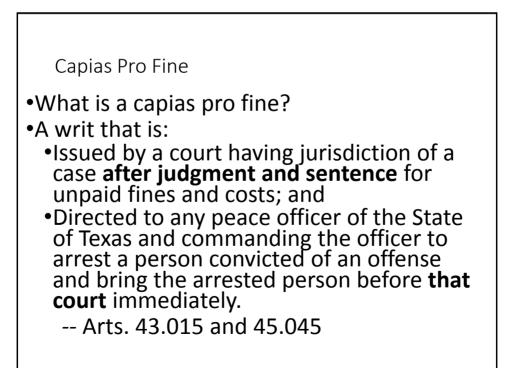








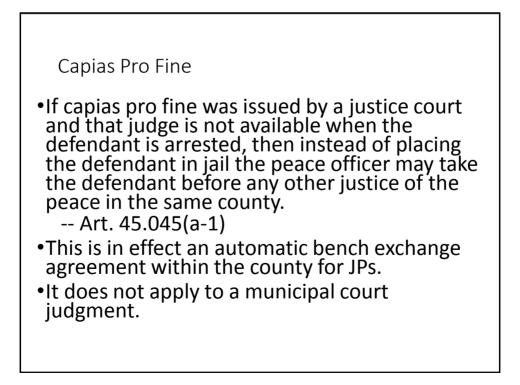


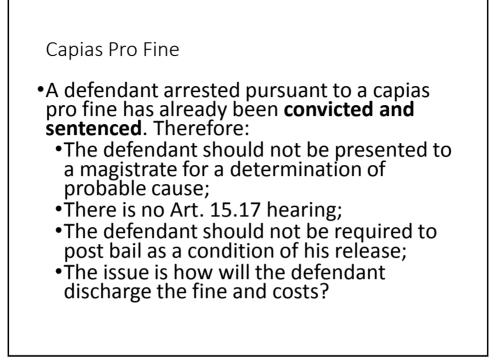


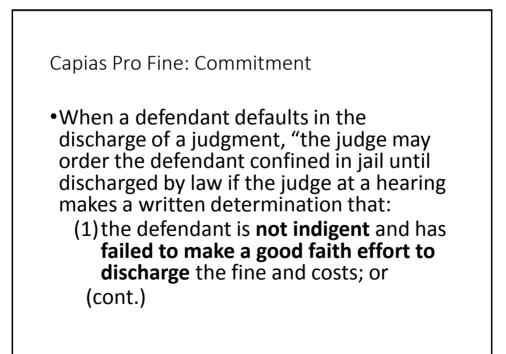
Capias Pro Fine

•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)





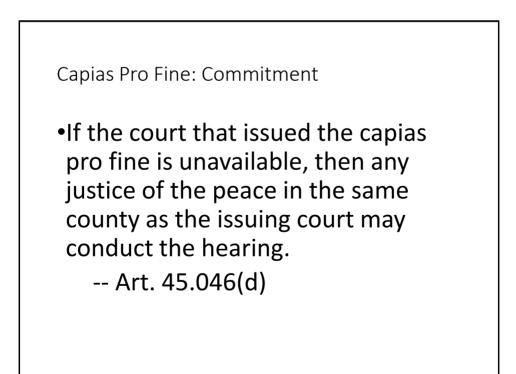


Capias Pro Fine: Commitment

(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

•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.

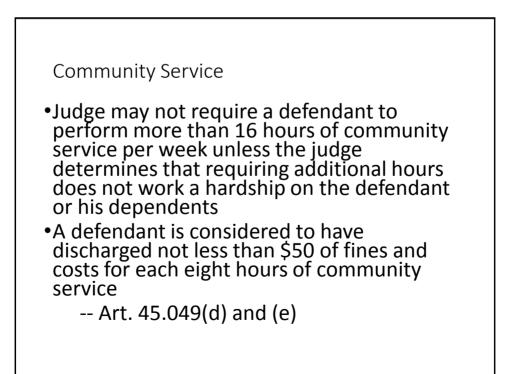
Capias Pro Fine: Commitment

•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.

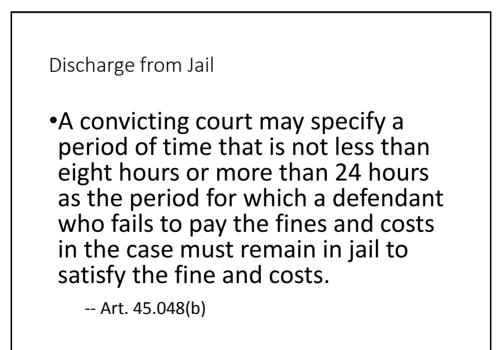
•The judge must specify the number of hours the defendant must work.

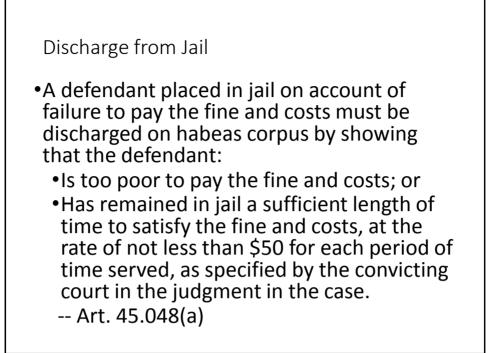
-- Art. 45.049(a)

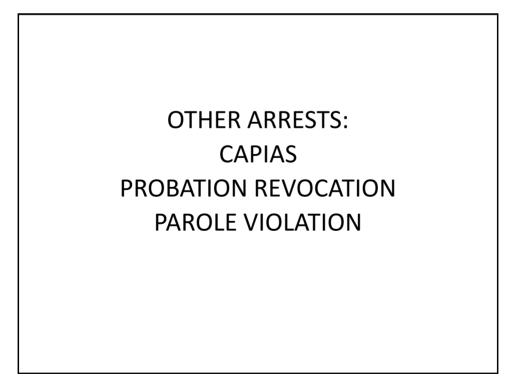


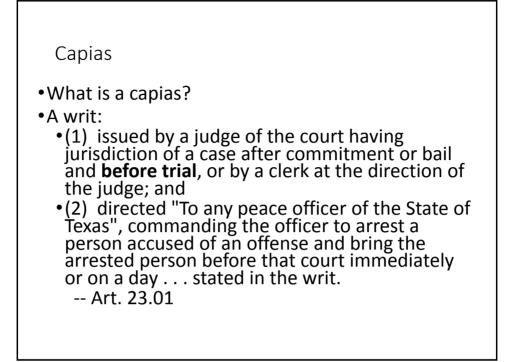
Waiver of Fine and Costs

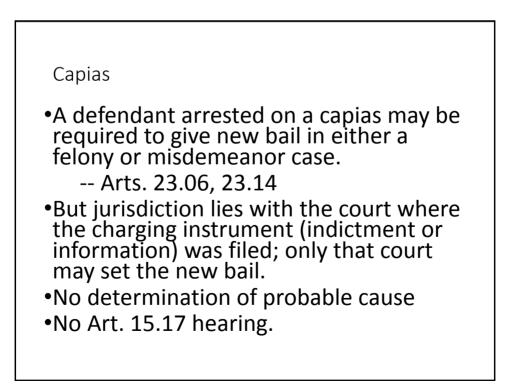
•If discharging the fine by performing community service or as otherwise authorized in Chapter 45 would impose an undue hardship on the person, the court may waive the payment of the fine and costs. -- Art. 45.0491

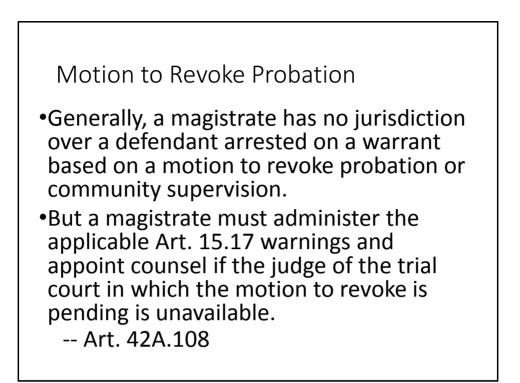






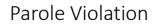








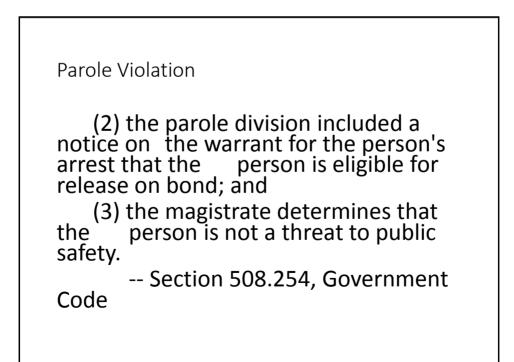
•The magistrate may not **set** a bond amount but may **accept** a bond in the amount set by the judge of the trial court in which the motion to revoke community supervision is pending.



•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

•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