

Which Do I Order: Personal Bond or Bail Bond?

Hon. Rick Hill
Justice of the Peace, Pct. 3
Brazos County

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What We Will Cover

- What is a Bail Bond and What is a Personal Bond?
- When May a Defendant NOT be Released on a Personal Bond?
- When MUST a Defendant be Released on a Personal Bond?
- What About All the Other Situations?
- Open Discussion

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Refresher:
What is a
Bail Bond?

- A bail bond is a written undertaking entered into by the defendant **and the defendant's surety** for the appearance of the defendant before a court or magistrate to answer a criminal accusation.
- The surety is typically a bail bondsman.
- If the defendant fails to appear for a hearing or trial, **both** the defendant and the surety are liable for the amount of the bond.

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Refresher:
What is a
Personal
Bond?

- A personal bond means the defendant is **promising** to pay the amount of the bail if they don't show up.
- But they are not required to have a surety co-sign the bond.
- The defendant is still liable for that amount if they fail to appear for a court hearing.
- This is not the same thing as a PR Bond.
 - In a PR Bond there is **no** bail amount.

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When May a
Defendant
NOT be
Released on
a Personal
Bond?

- A defendant may **not** be released on a personal bond if the defendant:
 - Is charged with an offense involving violence (see Handout 4); or

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When May a
Defendant
NOT be
Released on
a Personal
Bond?

- While released on bail or community supervision for an offense involving violence is charged with committing:
 - a felony; or

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When May a Defendant NOT be Released on a Personal Bond?

- an offense alleging:
 - assault under PC 22.01(a)(1);
 - deadly conduct under PC 22.05;
 - terroristic threat under PC 22.07; or
 - disorderly conduct involving a firearm under PC 42.01(a)(7) or (8).

-- Art. 17.03, CCP

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Release of Defendant on a Personal Bond

- Only the court before whom the case is pending may release a defendant on a personal bond if charged with:
 - Burglary (Section 30.02, Penal Code);
 - Engaging in organized criminal activity (Section 71.02, Penal Code); or
 - Certain felonies under the Controlled Substances Act or under Section 485.033, Health and Safety Act (inhalant paraphernalia).

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Poll

- A defendant is charged with indecency with a child under Section 21.11, Penal Code. May this person be released on a personal bond?
 - A. No. This is an “offense involving violence” under Art. 17.03.
 - B. Yes, as long as appropriate bond conditions and an EPO are placed on the defendant.

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Poll

- While released on bail for aggravated robbery defendant is arrested on a charge of burglary. Both offenses are felonies.
- May the defendant be released on a personal bond?
 - Yes.
 - No.
- Who makes the bail decision in this case?
 - Any magistrate in the county where the defendant was arrested.
 - It depends on where the second felony was committed.

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When MUST a Defendant be Released on a Personal Bond?

- Three situations:
 - Magistrate is Unable to Determine Probable Cause
 - Out of County Warrant
 - Defendant Has a Mental Illness or Intellectual Disability

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Magistrate
Unable to
Determine
Probable
Cause

- If a defendant is arrested without a warrant, and a magistrate is unable to determine whether or not probable cause exists, then:
 - in a misdemeanor case the defendant must be released 24 hours after arrest on a bond not to exceed \$5,000, and

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Magistrate
Unable to
Determine
Probable
Cause

- in a felony case, the defendant must be released 48 hours after arrest on a bond not to exceed \$10,000.
- If the defendant is unable to post a bail bond in the required amount, they must be released on a personal bond.

-- Art. 17.033, CCP

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Out of
County
Warrant

- **A defendant must be released on a personal bond if:**
 - they are arrested on an out-of-county warrant and do not give bail; and
 - the county that issued the warrant does not take charge of them before the 11th day after they were committed to jail in the county where they were arrested.

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Out of County Warrant

- The personal bond must then be forwarded to the sheriff of the county where the offense is alleged to have been committed or to the court that issued the arrest warrant.

-- Code of Criminal
Procedure Article 15.21.

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Defendant Has a Mental Illness or Intellectual Disability

- A magistrate must release a defendant on a personal bond unless good cause is otherwise shown if each of the following conditions applies:
 - The magistrate has reasonable cause to believe the defendant is suffering from a mental illness or intellectual disability and proceeds under Art. 16.22;
 - The defendant is not charged and has not been previously convicted of a violent offense (see Handout 5 for definition);

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Defendant
Has a
Mental
Illness or
Intellectual
Disability

- The defendant is examined by an LMHA or other qualified expert;
- The expert submits a report to the magistrate finding that the defendant has a mental illness or intellectual disability and recommends treatment or services;

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Defendant
Has a
Mental
Illness or
Intellectual
Disability

- The magistrate determines in consultation with the LMHA or expert that appropriate treatment or services are available for the defendant; and
- The magistrate finds that release of the defendant on a personal bond would reasonably ensure the defendant's appearance in court.

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Defendant
Has a
Mental
Illness or
Intellectual
Disability

- The magistrate must impose as a bond condition that the defendant undergo treatment as recommended by the expert, unless good cause exists for not requiring treatment.

-- Art. 17.032, CCP

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What About All the Other Situations?

- How do you decide whether to require a personal bond or a bail bond if you could go either way?
- Key Considerations:
 - Prior Criminal History
 - Employment
 - Ties to Community
 - US Citizen

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Open Discussion

- Talk with the judges at your table about two situations where you have or have not ordered a personal bond and why you made that decision.
- Select a spokesperson to present these to the class.
- Does the Damon Allen Act help you in making these decisions?
- If so, how?

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QUESTIONS?

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