Magistration in Practice

1

Resources

- www.tjctc.org
  - Magistration Deskbook
  - Magistration Bench Cards and Flowcharts
  - Magistration Forms
  - Self-Paced Modules
    - General Magistration
    - Setting Bail Under the Damon Allen Act
  - Webinars
    - Bail 2022: Implementation of the PSRS
    - EPOs and the Cycle of Violence
- Chapters 14, 15, & 17 of the Code of Criminal Procedure (CCP)

2

What We Will Cover

- What is Magistration?
- Informing the Defendant of Their Rights
- Appointment of Attorneys for Indigent Defendants
- Setting Bail and Using the Public Safety Report System
  - Determining Personal Bond or Cash/Surety Bond
  - Bond Conditions
  - Release of the Defendant or Failure to Make Bail
  - Bond Modification/Revocation and Surety Surrender
- Other Arrest Types and Procedures
- Other Magistration Issues

3

What is "Magistration?"

- **Magistration** is the process that occurs after a person is arrested. The two main components are:
  - informing the person who has been arrested of their rights, and
  - setting bail and bond conditions.
- The process is conducted by a **magistrate**.
- Magistrates include **justices of the peace** and many other officials, including district judges, county judges, municipal judges, and mayors.

  -- Arts. 2.09, 15.17, Code of Criminal Procedure.

4

What are the Duties of a Magistrate?

Determining whether probable cause exists to keep a defendant in custody

Telling people accused of crimes what their rights are

Setting bail and bond conditions

Issuing search and arrest warrants

Issuing emergency mental health detention warrants

Issuing peace bonds

Issuing orders for emergency protection

Conducting examining trials

Determining if a mental health assessment is required

5

Where Does Magistration Happen?

- When a person is arrested, generally they must be taken directly before a magistrate to be told what they are charged with and what their rights are.
  - This frequently happens at the jail.
  - Since Covid it is more often done remotely (discussed later in this class).

6

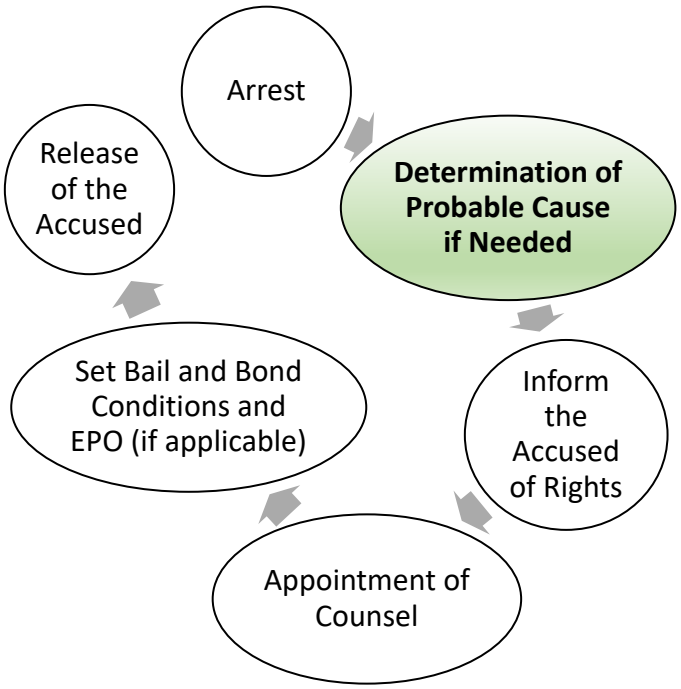
Who is Responsible for Magistration?

- In most counties the justices of the peace (and sometimes municipal judges) conduct most magistrations.
  - But this isn't required by law: every magistrate listed in Art. 2.09 is allowed to magistrate individuals who have been arrested.
- In some counties, there are specifically-designated magistrates who generally perform this function instead of justices of the peace.
  - However, the JPs in those counties are still fully legal magistrates who could be called on at any time to perform these duties.

7

Determination of Probable Cause

8



Where Are We in the Process?

9

Warrantless Arrests & Probable Cause

- The first step if someone is brought to jail on a **warrantless arrest** is for a neutral magistrate to determine if **probable cause** existed for the arrest.
  - Mandated by the U.S. Supreme Court in *County of Riverside v. McLaughlin*.
- A **warrantless arrest** is one where an officer makes an arrest because they witness a crime occurring, rather than because of an arrest warrant.
  - DWI is a very common example.

10

Not Needed if Arrested on a Warrant

- Why doesn't the magistrate have to determine probable cause when someone is arrested based on an **arrest warrant**?
  - Remember from the previous class that a magistrate already determined that probable cause existed when they issued the warrant!
  - You have **no authority** to re-evaluate that decision once the defendant is arrested on the warrant.

11

Determining Probable Cause for Arrest

- As you have discussed, probable cause means: Reasonably trustworthy information that would lead a reasonable person to believe the person has committed the offense.
- Remember that probable cause does **not** necessarily mean that there is enough evidence to convict the person at trial!
  - Different standard of proof at trial.
  - Some evidence you use to determine probable cause might not come in at trial.

12

Determining Probable Cause for Arrest

- After making a warrantless arrest, an officer must file a **probable cause affidavit** describing the circumstances leading to the person's arrest. This affidavit must contain detailed information that leads to the officer's conclusions, not just state the officer's conclusions.

- You consider that affidavit when determining if probable cause exists for the arrest, **even if** the information in that affidavit might not be usable at trial.

13

What if the PC Affidavit is Insufficient?

- If the probable cause affidavit is **insufficient** to support the person's arrest, the person **must be immediately released without bail.**
  - **Bail** secures a person's release from custody. This will be discussed in detail later in this class.
  - After all, you have determined that there is no legal basis to have the person in custody in the first place, so there is no legal basis to require the person to put up bail to get released from custody.

14

Conclusions vs. Facts

The affidavit is insufficient if it gives conclusions instead of facts that support those conclusions:

"Defendant was drunk."	**"Defendant had glassy, bloodshot eyes as well as slurred speech and a strong odor of alcoholic beverage."**
NO GOOD	**MUCH BETTER**

15

Elements of the Offense

- The affidavit is insufficient if it fails to establish any evidence of one or more of the **elements** of the criminal offense:
  - Example:
    - Public Intoxication requires that the person was a danger to themselves or others (in addition to being intoxicated and in public).
    - An affidavit simply showing a person was drunk while in a public place is **not enough** to establish probable cause for that offense.

16

Can I Have the Officer Fix the Affidavit?

- It is critical for the magistrate to remain neutral, which is why the magistrate **should not** coach the officer on what else to say to establish probable cause.
- That said, it **is** reasonable to point out to the officer a technicality, such as failure to fill in a blank or failure to sign the affidavit, which doesn't suggest to the officer changes to the substance of the document.

17

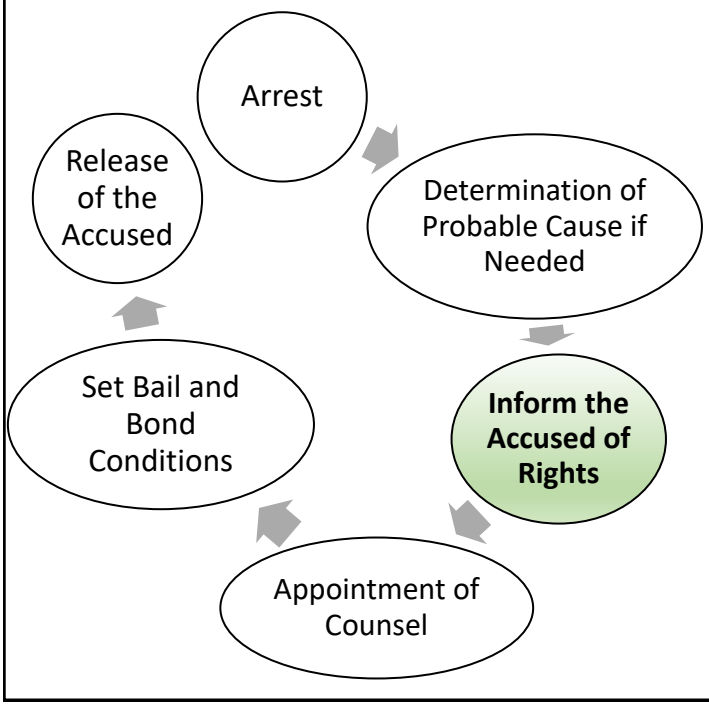
Release Due to Lack of Probable Cause

- If you release an arrested person without bail due to a lack of probable cause, you are **not** "dismissing" the case. The defendant **can** still be prosecuted for the criminal offense.
  - All you have determined is that there was not enough legal reason to arrest the person, so they are currently free to go.
- Remember that your determination of probable cause is based on what you have in front of you at the time, and may be different than the decision of guilt or innocence made by the trial court.

18

Informing the Defendant of Their Rights

19



Where Are We in the Process?

20

The Article 15.17 Hearing

- Probable cause has now been established, either by the magistrate who issued the arrest warrant, or by the magistrate conducting magistration remotely or at the jail after a warrantless arrest.

- The next step is for the magistrate to inform the defendant of the offense they have been charged with and what rights they have.
  - These rights are listed in Art. 15.17 of the CCP, and so this hearing is often called an "**Art. 15.17 hearing**."

21

Who Informs the Defendant of Their Rights?

- Any magistrate in the county where the person was arrested.
- If necessary to provide the information more quickly, **any magistrate** in the state of Texas may inform the accused of their rights.

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

22

When Must the Defendant be Informed of Their Rights?

- **Without unnecessary delay**, but no later than **48 hours** after arrest.

- Many counties have a "no later than **24 hours** after arrest" **policy** due to the requirements triggered in certain cases if no determination of probable cause occurs within 24 hours of arrest (discussed later in this class).

  - Code of Criminal Procedure Art. 15.17(a)

23

How is the Defendant Informed of Their Rights?

- The arrested person may be taken before the magistrate **in person** or the magistrate may hold the hearing by **videoconference**.
- Videoconference, or "**video magistration**" **must** have two-way video **and** two-way audio to be acceptable.
  - Payment for video magistration equipment may be authorized from the justice court technology fund

    -- Art. 102.0173, Code of Criminal Procedure

24

How Do I Switch to Remote Magistration?

- OCA offers technical assistance with remote proceedings by contacting OCA at zoomhelp@txcourts.gov
- Counties can use their "technology enhancement fund" to purchase software to perform video magistration software.
  - See CCP Art. 102.0173, Ch. 2 of the *Fines, Fees, and Costs Deskbook*.

25

Remote Magistration

- Judges who have experience conducting video magistrations and will help answer your questions:
  - Judge Rick Hill, Brazos County: (979) 255-0365
  - Judge Nicholas Chu, Travis County: Direct Office Line: (512) 854-4557 Personal Mobile: (817) 773-6905 Nicholas.Chu@traviscountytx.gov
  - Judge Bob Whitaker, Victoria County: (361) 575-0246 rwhitaker@vctx.org
  - Judge Deidra Voigt (Gonzales County) ddvoigt@co.gonzales.tx.us Phone: 830-672-9001

26

Interpreter Issues

- If the person does not speak and understand the English language or is deaf, the magistrate **must** inform the person of their rights in a manner consistent with Articles 38.30 and 38.31.
  - Article 38.30 deals with the appointment of an interpreter when they do not understand the English language.
  - Article 38.31 deals with appointment of interpreters for the deaf.
  - See Magistration Deskbook, Chapter 2 for more information on interpreters during magistration.

27

Making Sure They Understand

- It is **critical** that the defendant understands the rights that you are reading to them. Ways to ensure this, beyond having interpreters:
  - Have the defendant check off each right as you read them off, signaling that they understand.
  - Explain legal terms in regular everyday language.
  - ***Slow down***. You are explaining rights, not giving a monologue. No bonus points for speeding through it. It may be your 1000th time to say it, but their first time to hear it.

28

Breakout Discussion

- You are called to magistrate a defendant who was arrested for DWI and provided a blood sample with a 0.25 BAC (0.08 is the legal limit, so they are more than 3x the legal limit).
- The defendant is very unsteady, swaying, and appears to be dozing as you read them their rights.

- What would you do in this situation?

29

What Rights is the Defendant Informed of?

- Code of Criminal Procedure Art. 15.17(a) and the U.S. Supreme Court in *Miranda v. Arizona* list several **admonishments**, or explanations of rights, that must be given to an arrested person.
  - See Magistration Bench Card 3

- First, tell the defendant what offense they have been charged with and provide them with a copy of the probable cause affidavit submitted by the officer.

30

Right to Counsel

- Inform the defendant of their **right to obtain counsel (an attorney)**. This is different than the **right to have counsel appointed**, which we will discuss below.
  - Right to obtain counsel = the right to have an attorney.
  - Right to have counsel appointed = the right to have a "free" attorney if you cannot afford to pay one.

31

Additional Rights

- Inform the defendant that they have the right to have an attorney present during any interview with police or prosecutors and that they can terminate that interview at any time.
- Inform the defendant of their right to remain silent, that they do not have to give a statement or interview, and that any statements made may be used against them in court.
- Inform the defendant of their right to file an affidavit under Art. 17.028(f) stating they cannot afford to give bail in the amount required by a bail schedule or standing order if charged with a Class B misdemeanor or higher offense.

32

Examining Trial; Appointment of Counsel

- **Only if the offense is a felony**, inform the defendant of their right to an **examining trial.**
  - An **examining trial** is a hearing where the state must put on evidence that the defendant committed the offense.
    - Magistration Deskbook, Chapter 2.
- **Unless the offense is a fine-only misdemeanor**, inform the defendant of their right to have counsel appointed if they cannot afford counsel.

33

Consular Notification

- If someone is arrested who is a **foreign national**, meaning a citizen of a country other than the United States, they have a **right** to have their country's **consulate** notified.
- Also, some countries are identified as "**mandatory reporting countries**." When a citizen of a mandatory reporting country is arrested, the consulate of their country **must** be notified, regardless of the wishes of the arrested person.

34

What is a Consulate?

- Just as the United States has a presence via **embassies** and **consulates** in other countries, other countries' governments have a presence in the United States.

- **Consulates** are offices which contain officials of a foreign government who are accredited by the U.S. Department of State and are authorized to provide assistance on behalf of that government to that government's citizens in another country.

35

U.S. State Department Guide

- The list of mandatory reporting countries, and lots more information on consular notification, including how to contact the consulate, is in the guide available at the link in the Magistration Deskbook in Chapter 2.

- See Magistration Bench Card 2

36

Consular Notification Process

The correct process:

1. Ask each and every person you magistrate if they are a United States citizen. Do **not** make assumptions based on factors such as name or appearance!
2. If they are **not** a U.S. citizen, determine what country the person is from.
3. Determine if that country is a **mandatory reporting country**.
4. If they **are** from a mandatory reporting country, take the necessary steps to notify the consulate of that country (see the Guide mentioned above).
5. If they **are not** from a mandatory reporting country, ask the arrested person if they would like their country's consulate notified of their arrest, and notify the consulate if requested.

37

Making a Record of the Magistration

- A **record** (which may be written forms, electronic recordings, etc.) of the communication between the arrested person and the magistrate must be created and kept until whichever is earlier:
  - the date that the pretrial hearing (if any) ends, or
  - the 91st day after the record is made for a **misdemeanor** or
  - the 120th day after the record is made for a **felony**.

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

38

Making a Record - Appointment of Counsel

- A record shall be made and kept of:
  - the magistrate informing the person of the person's right to request appointment of counsel;
  - the magistrate asking the person whether the person wants to request appointment of counsel; and
  - whether the person requested appointment of counsel.

-- Code of Criminal Procedure Art. 15.17(e).

39

Appointment of Attorneys for Indigent Defendants

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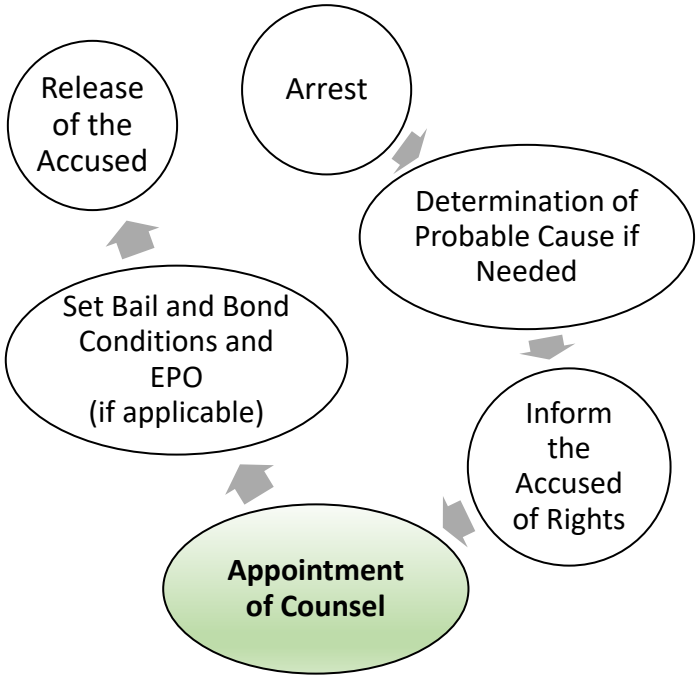


Where Are We in the Process?

41

Right to the Appointment of Counsel

- The United States Supreme Court in the famous case of *Gideon v. Wainwright* found that people who cannot afford an attorney are entitled to have one appointed for them if they face the risk of being punished for the offense by jail or prison.
- Remember the importance of providing **due process** for all parties, including **indigent** criminal defendants.

42

Right to the Appointment of Counsel

- Every county **must** have specific procedures in place for appointment of counsel, and the accused **must** be informed "of the procedures for requesting appointment of counsel" in the county where they were arrested.
- See Magistration Bench Card 3 and Magistrate Warning Forms on the TJCTC website under Magistration and Setting Bail forms

43

Magistration Warning Form

STATE OF TEXAS § IN THE JUSTICE COURT
§
v. § PRECINCT ___
§
_____ §
DEFENDANT § _____ COUNTY, TEXAS

MAGISTRATION WARNING CERTIFICATION – WARRANTLESS ARREST

On _____, 20___, Defendant appeared before me on the charge of _____, which is a _____.
Upon Defendant's appearance, I determined that probable cause for the arrest did exist. I subsequently provided the warnings checked below, in accordance with Code of Criminal Procedure Art. 15.17, and ensured that Defendant fully understood each warning provided:

- ☐ Of the accusation against Defendant, and of any affidavit filed in the case.
- ☐ Of Defendant's right to retain counsel.
- ☐ Of Defendant's right to remain silent.
- ☐ Of Defendant's right to have counsel present during any interview with peace officers or attorneys representing the state.
- ☐ Of Defendant's right to terminate such an interview at any time.
- ☐ Of Defendant's right to have reasonable time and opportunity to consult with their attorney.
- ☐ Of Defendant's right to an examining trial *(felony cases only)*.
- ☐ Of Defendant's right to request counsel to be appointed if Defendant cannot afford counsel.
  - ☐ Defendant requested the appointment of counsel. I provided assistance in filling out the necessary forms to request the appointment and forwarded them to the proper official, or appointed counsel if I am the proper official.
  - ☐ Defendant declined to request the appointment of counsel.

44

Application and Process

- A defendant may fill out a form to determine if they meet the standards of indigency to have an attorney appointed.
  - See Magistration Bench Card 4 and Affidavit of Indigence Form on the TJCTC website under Magistration and Setting Bail Forms.
- Discuss with other judges in your county, your sheriff, and your county attorney what the process is to determine if someone is eligible for a court-appointed attorney and who in your county is authorized to make the appointment.

45

"Reasonable Assistance in Completing Forms"

- A magistrate **must** "ensure that **reasonable assistance** in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time [as the Article 15.17 hearing]."
- This may mean you need to explain what something on the form means or answer other questions about the forms or process. However, you should **not** advise someone whether or not to request an attorney.

46

"I'll let the jailers handle that."

- In many counties, magistrates delegate this assistance to jail staff.
- Be aware that in the event that this assistance does not occur as required, **you** are the one who was required by law to provide this assistance.

47

When Must an Attorney be Appointed?

- If a defendant who is unable to afford an attorney requests appointment of counsel, the process must begin **immediately.**
- Many counties used to wait until the person's first appearance in the trial court, but the U.S. Supreme Court determined that procedure violated the rights of the accused.
  - *Rothgery v. Gillespie County*

48

Who Appoints the Attorney?

- Every county **must** identify which court or other agency is responsible to make the appointment.
- In some counties, the magistrate is authorized to make the appointment. If you are authorized to appoint, you **must** do so **as soon as possible**, but no later than:
  - The end of the **3rd working day** after the request, or
  - The end of the **1st working day** after the request in a county with 250,000 people or more.

- Code of Criminal Procedure Arts. 1.051, 15.17, 26.04

49

Transmission of Application

- If you are **not** authorized to make the appointment, you **must transmit** the forms to the party who is responsible to make the appointment **as soon as possible, but no later than 24 hours** after the request.

- This transmission can be done electronically, by fax, or by delivery. Check with the party who appoints attorneys in your county to see how they wish this to be done.

50

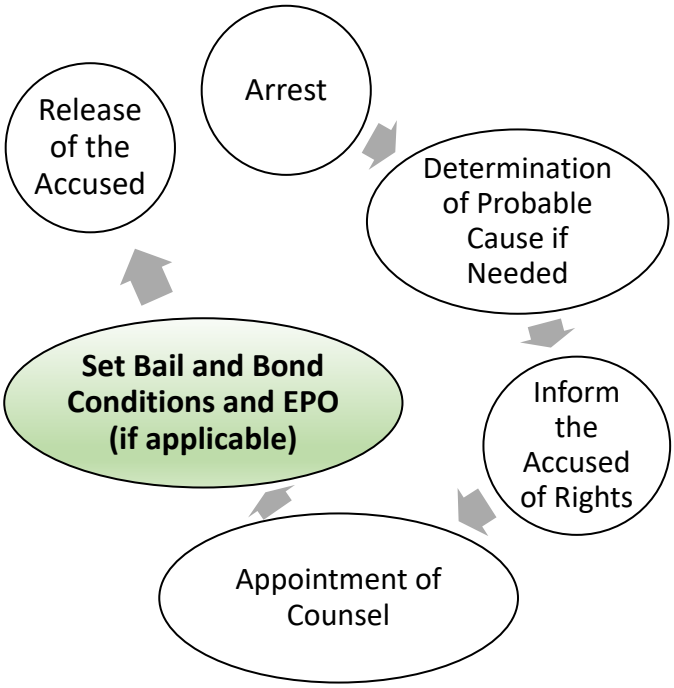
Late Night & Weekend Arrests

- This means that if a defendant is arrested, say, for DWI, on a Friday night and you conduct the Article 15.17 hearing Saturday morning at 8:00 AM and the defendant requests appointed counsel, all appropriate paperwork **must** be transmitted to the judge or agency who appoints counsel within 24 hours, so by 8:00 AM Sunday morning, even though they are unlikely to actually review the paperwork until Monday morning.

51

Setting Bail and Using the Public Safety Report System (PSRS)

52



Where Are We in the Process?

53

What is Bail?

- Bail is the security that a defendant puts up to make sure they show up for future court hearings and their trial.
- If they fail to show up, they may forfeit the bail in a bail forfeiture proceeding.

-- Art. 17.01; Magistration Deskbook, Chapter 2.

54

The Purpose of Bail

- Setting bail has three general objectives:
  - Ensuring that the defendant appears in court as directed;
  - Protecting the safety of the victim of the offense, if any, and the general safety of law enforcement and the community;
  - Releasing the defendant from custody.
- The purpose of bail is **not** to impose an additional punishment for an alleged offense and is not to keep a defendant locked up before trial!

55

Who May Set Bail?

- Generally, any magistrate may set a defendant's bail.
- Certain rules apply in certain situations, which will be discussed shortly.
  - See also Ch. 2 of the Magistration Deskbook for when a jailer, sheriff, or other peace officer may set bail.
- A magistrate must meet the training requirements of Arts. 17.023 and 17.024 to be eligible to set bail (all JPs must follow this, even if you don't set bail).
  - 8 hours of judicial education on magistration within 90 days of taking office (you're doing this now!), plus 2 hours every 2-year period afterward.

56

Defendant Charged with Committing a New Felony While on Bail for Felony

- If a defendant is charged with committing a felony while released on bail for another felony, special rules apply.

57

Defendant Charged with Committing a New Felony While on Bail for Felony – Same County

- If the new offense was committed **in the same county** as the previous offense, then the defendant may only be released on bail by:
  - The court before whom the previous offense is pending; or
  - Another court designated in writing by the court where the offense is pending.
    - TJCTC has a form for this designation.

58

Defendant Charged with Committing a New Felony While on Bail for Felony – Different County

- If the new offense was committed **in a different county** as the previous offense, then:
  - electronic notice of the charge must be promptly given to the court before whom the previous offense is pending or another court designated by that court
  - for purposes of re-evaluating the original bail decision, determining whether any bail conditions were violated, or taking any other applicable action.

    -- Art. 17.027, CCP

59

Senate Bill 6 – The Damon Allen Act

- During the 2021 Legislative Session, a major bill was passed that significantly impacted how bail decisions are made in Texas.
- The largest impact was that the Office of Court Administration (OCA) was ordered to create the **Public Safety Report System (PSRS)** to help magistrates make and report bail decisions.

60

Resources for Help With the PSRS

- TJCTC is unable to assist with PSRS login or technical issues.
- OCA info page:
  - www.txcourts.gov/programs-services/public-safety-report-system/
- bail@txcourts.gov (OCA email for system/setup questions)
- Automon (company that creates PSRS)
  - 480-368-8555 option 2, support@automon.com
  - https://help.automon.com/psrs/Content/using-help-center.htm
- www.tjctc.org/bail has answers to many FAQ related to the PSRS, including how to get signed up.

61

61

PSRS - Creation

- OCA contracted with a vendor, Automon, to create the system, which went live on April 1, 2022 (www.bail.txcourts.gov).
- The two main goals of the system are:
  - Provide a summary of criminal history information to magistrates so they can set bail and bond conditions more effectively. This summary is the **Public Safety Report (PSR).**
  - Provide a mechanism of reporting bail decisions to OCA (**bail forms**).
- The system is **not** designed to be a "one stop shop" for all magistrate duties or to keep records of all magistration information.

62

Public Safety Report (PSR) – Preparation

- The first step is that criminal history databases must be searched ("queried") to find the defendant's criminal history information.
- **How** – if person has been booked, should have SID# (State ID#) that ties to only that defendant. If no SID, can use name, DOB, etc.
- **Who** – up to local jurisdictions. Most frequently is jail/sheriff or pretrial services. Whoever does this task must get the full 8-hour TLETS mobile certification.

63

Who Prepares the Report?

- A magistrate may personally prepare the report before or while making a bail decision using the Public Safety Report System.
- Otherwise, the magistrate must order the report to be prepared and provided to the magistrate no more than 48 hours after the defendant's arrest.
  - The magistrate may not order the sheriff's office to prepare the report without their consent.

    -- Art. 17.022, CCP

64

PSR - Generation

- Once the defendant's name is entered, and the system is "queried" the PSRS will pull the criminal history into the system and create a "**public safety report (PSR).**"

- This must be done any time that a defendant has been arrested for any offense **other than a fine-only misdemeanor *and*** a bail decision needs to be made for their release.

65

65

Criminal History Information Record Training

- All system users must obtain Criminal History Record Training
  - In addition to judicial education requirements
  - Two different levels applicable to judges/staff:
    - 8 hour TLETS Mobile Certification
    - Criminal Justice Practitioner Certification

  - Which do you need?

66

Criminal History Info Training – TLETS Mobile Certification

- Any person who is searching ("querying") a criminal history database to pull up criminal history information must receive the **8-hour TLETS mobile certification course.**

- The training is provided by DPS in-person.
- New users have a 6-month grace period to complete the 8-hour training from the date they received TLETS access.
- Recertification is required after two years.

67

Criminal History Info Training – CJP Cert

- If a person is not searching (or "querying") criminal history databases, but is instead simply reviewing criminal history information, then they will only have to obtain and maintain a **Criminal Justice Practitioner (CJP) certification**.
  - The CJP certification can be obtained after a one-two hour self-paced online course. Recertification is required after two years.
  - A six-month grace period to receive this training is also provided, but TJCTC recommends receiving it as quickly as possible.

68

Criminal History Info Training - Signup

- A User Request Form must be completed by your jurisdiction's TAC or Administrator to request access to either certification training. This form is password protected as personal information is needed to create an account.
- For access to the User Request Form, questions about the TLETS access trainings and certifications, or to verify if certifications are still valid, contact DPS via email at: TCIC.Training@DPS.Texas.gov

69

CJIS Security Awareness

- In addition to one of those two certifications, ***anyone*** accessing the system will also need to take the CJIS Security Awareness Training.
- Training shall be taken within six months and biennially thereafter.
- The training through CJIS Online is web-based and self-paced and provides those who are authorized to access CJI with basic tools to protect the data.
- For information on how to access the CJIS Security Awareness Training please have the Administrator or TAC email DPS at security.committee@dps.texas.gov or cjis.audit@dps.texas.gov.

70

What if the System is Down? - Misdemeanors

- Art. 17.022(f) of the Code of Criminal Procedure provides that if the PSRS is down for more than 12 hours, a defendant charged with only misdemeanor offenses may be magistrated without considering a PSR.
  - Best practice would be to consider criminal history from an alternate source if possible.

71

71

What if the System is Down? - Felonies

- The statute is silent as to what happens if the defendant is charged with a felony.
- TJCTC recommends:
  - performing the magistration and making the bail decision within the statutorily-mandated 48-hour time period,
  - considering criminal history from an alternate source if possible, and
  - considering a PSR when available, and scheduling a bond modification, if necessary.

72

72

PSR - Contents

- The PSR must provide:
  - the required factors for setting bail provided by Article 17.15(a)
  - case & offense info and defendant's identifying information,
  - information on the eligibility of the defendant for a personal bond;
  - information regarding the applicability of any required or discretionary bond conditions; and
  - in summary form, the criminal history of the defendant.

73

73

How Do I Make the Bail Decision?

74

Rules for Setting Bail

- Bail and bond conditions are to be set in accordance with the following rules:
  - The nature of the offense must be considered, including whether it involved violence under Art. 17.03 or violence against a peace officer.
  - The ability to make bail must be considered and proof may be taken on this point.
  - The future safety of the community, law enforcement and a victim are to be considered.

75

Rules for Setting Bail - Continued

- The criminal history record information for the defendant must be considered, including:
  - Information maintained in the Public Safety Report System
  - Any acts of family violence.
  - Other pending criminal charges.
  - Any instances in which the defendant failed to appear in court after release on bail.
- The citizenship status of the defendant.

  -- Art. 17.15(a), CCP

76

The Bail Decision

- After individualized consideration of all the factors listed above, the magistrate must order that the defendant be:
  - Granted a **personal bond** with or without conditions;
  - Granted a **bail bond** with or without conditions; or
  - **Denied bail** under the Texas Constitution and other law.
- This order must be made without unnecessary delay but no later than 48 hours after the defendant is arrested.

77

Denial of Bail

- In most cases, a defendant may be denied bail **only by a district judge**, and only in specified situations.
- Bail may also be denied by a judge or magistrate where a defendant charged with family violence violates a bond condition relating to the safety of the victim or the community.
- And bail may be denied by a judge or magistrate where a defendant charged with certain felony offenses against a child younger than 14 violates a bond condition relating to the safety of the victim or the community.

78

Denial of Bail

- Defendants who are already on probation or parole and are being arrested for violations of those **may be denied bail** on request from the **trial judge** until they are brought before that judge.

- Defendants who are wanted for parole violations from another state are subject to the **Interstate Compact on Adult Offender Supervision** and may be denied bail as well.
  - See Magistration Deskbook, Chapter 2; Module on Extradition and Fugitives from Justice at TJCTC website.

79

Bail Form

- The Damon Allen Act also requires that the PSRS generate "bail forms" which are simply tools to report the bail decisions made to OCA.
  - OCA maintains a searchable webpage (https://topics.txcourts.gov/) where bail forms are stored.

- A separate written order imposing the bail and conditions **must** be entered and given to the defendant (TJCTC has forms for this).

80

80

PSRS Process Overview

81

81

OVERVIEW

Person is arrested → Person is processed → Defendant information entered in PSRS → PSR is produced →

PSR presented to magistrate → Art. 15.17 Hearing → Bail decisions entered in PSRS → Certification of information →

Bail form is produced → Bail form is published by OCA

82

Determining Type and Amount of Bail

83

Who Decides What Kind of Bond is Required?

- The magistrate or judge who sets bail also decides whether the bond must be a bail bond, a personal bond or a “PR Bond.”

84

What is a Personal Bond?

- A personal bond means that 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.
  - So if bail is set at $5,000 and the defendant is allowed to sign a personal bond rather than a bail bond, and the defendant does not show up for court, the defendant is **liable** (on the hook) for the $5,000 in a bail forfeiture proceeding.

85

What is a PR Bond?

- The term "PR Bond" or "Personal Recognizance Bond" is never used in Article 17 or any other statute!
  - But it generally refers to a personal bond with no monetary bail amount attached.
  - People often incorrectly call all personal bonds "PR bonds."

86

Consequences of a PR Bond Violation

- The defendant promises to show up as a condition of being released but they are not liable in a bail forfeiture proceeding under Chapter 22.
  - But failing to appear on any bond, including a PR bond, is a criminal offense under Penal Code Sec. 38.10 ("Failure to Appear; Bail Jumping").
  - So a defendant who fails to appear after signing a "PR Bond" could be charged with a new criminal offense for that failure.

87

PR Bonds vs. Personal Bonds

- "PR Bonds" are generally used only in fine-only and other minor misdemeanor cases while personal bonds may be appropriate in other cases as well.

88

Bail Bonds

- If a defendant is not allowed by the magistrate or by law to post a personal bond (or a PR bond), they will have to post a **bail bond**. There are two types of bail bonds:
  - **Cash bonds** – The defendant puts up cash in the amount of the bond. If they show up, they get it back. If they do not, bond forfeiture proceedings result.
  - **Surety bond** – Another person or entity, called a **surety**, promises to pay the bond amount if the defendant doesn't show up. Usually the surety is a bail bond company or the defendant's attorney.

89

Bail Bond Companies

- Usually the defendant will have to pay 10% to the bail bond company up front (often a higher percentage if the bond amount is low). So if you set a $2000 bond, and don't allow a personal bond, the defendant will have to pay $200 to the bail bond company.
  - If the defendant then **doesn't show up for court**, the bail bond company must pay the $2000.
  - If the defendant **does show up for court**, the bail bond company **still** keeps the defendant's $200, even though they did what they were asked to do.

90

What is a Bail Bond? – Cash Bond

- A defendant who is ordered to post a bail bond to be released from custody may deposit **cash** in the amount of the bail and in that case is not required to have a surety co-sign the bond.

- A magistrate **may not** require a defendant to post a cash bond unless the defendant has been re-arrested after already failing to appear on the original bond or in a surety surrender situation (discussed later).

91

Why Use Personal Bonds?

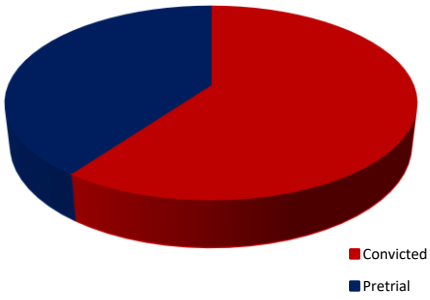
- Impact on Defendants
- Short- and Long-Term Costs
- No Reduction in Efficiency vs. Bail Bonds in Studies
  - Especially when notifications of trial settings are sent to defendants

92

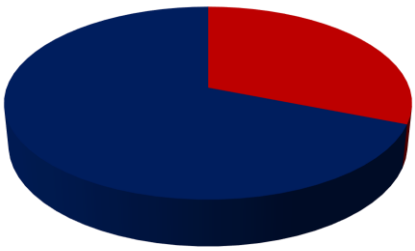
Are we Detaining the Right People?

- National Jail Population Breakdown

1983 Jail Population



2018 Jail Population



In Texas, the change has been even more pronounced.

93

93

In Texas:

- As of July 1, 2018, there were 42,943 individuals who have not been convicted being held in Texas Jails, at a cost per day to local governments of $2,581,733 or nearly **$1 billion annually**.

94

94

When Personal Bonds Must be Used

- In addition to the following situation, a personal bond **must** be given under certain circumstances for the defendant to receive mental health treatment as described by Art. 17.032, CCP.
  - Discussed coming up!

95

Personal Bond Required – No Determination of Probable Cause

- If a defendant was **arrested without a warrant** and no determination has been made of whether or not probable cause exists (usually because no magistrate was available in the required timeframe), then the defendant **must** be released on a personal bond:
  - No later than **24 hours** after arrest and in an amount of no more than **$5000** if the offense is a **misdemeanor.**
  - No later than **48 hours** after arrest and in an amount of no more than **$10,000** if the offense is a **felony.**

- Art. 17.033, Code of Criminal Procedure;

96

No Determination of Probable Cause

- Many counties have a policy that all defendants arrested without a warrant must be seen by a magistrate within 24 hours to avoid triggering this requirement.

- Remember that if you determine there is **no probable cause**, the defendant is released **without** requiring a bond (not even a PR bond).
  - No legal reason to have them in custody, so cannot make them put up anything, even a promise, to get out of that custody.

97

No PC vs. No Determination of PC

- Ask yourself: ***Is there probable cause for the warrantless arrest?***
  - If your answer is **yes**, **set bail** as normal.
  - If your answer is **no,** the defendant must be **immediately released without bail.**
  - If your answer is "**that hasn't been determined yet,**" the defendant must be **released on a personal bond as described above.**
    - This could occur when a magistrate was unavailable, or possibly where the officer needs to fix a technicality on a PC affidavit, but was unable to do so quickly.

98

No Release of Defendant on a Personal Bond

- Only the court before whom the case is pending (this won't be you) 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).

99

No Personal Bond – Violent Offenses

- A defendant **may not** be released on a personal bond if the defendant:
  - Is charged with an offense involving violence (see list in Ch. 2 of Magistration Deskbook); or
  - Is currently released on bail or community supervision for an offense involving violence and is charged with committing a new felony or offense alleging assault, deadly conduct, terroristic threat or disorderly conduct involving a firearm.

    -- Art. 17.03, CCP

100

Do I Have to Use the Bail Amount on the Warrant?

- For a **standard arrest warrant**, the amount listed on the warrant is a **recommended bond amount**. The magistrate has a duty to consider all of the factors listed above, which may result in the bond amount being increased or decreased from what the warrant says.

- By "standard arrest warrant" we mean one:
  - **where there is not a criminal case pending in a court;** or
  - **where a magistrate has issued a warrant to arrest the defendant** based on probable cause that an offense has occurred.

101

Do I Have to Use the Bail Amount on the Warrant?

- In situations where another court has **jurisdiction** (authority) over the defendant, **you should follow the amount on the warrant**.

- These situations include:
  - Cases where the **trial court already has the case** filed, such as where the defendant has been indicted, and the trial court issued the warrant.
  - Cases where the **defendant is on probation, parole, or deferred adjudication**.

102

If the Warrant Says "No Bail"

Sometimes you will see a person who was arrested on a warrant that says "**no bail**."

This may mean that the issuing magistrate didn't determine bail.

In this case, set the bail as you normally would.

103

"No Bail" Warrant

- Or it may mean they wish the defendant to be **denied bail**.
  - In a case where a district court may deny bail as described above, contact county officials immediately to determine the proper course of action.
  - In a case where the issuing court has authority to deny bail, such as probation/parole/ICAOS warrants, inform the defendant that the court which issued the warrant has denied them bail.
  - Otherwise, set the bail as you normally would. Contact the issuing magistrate if necessary to determine what their intention was.

104

Preset Bail Schedules

- Many counties in Texas have traditionally used a bail schedule that magistrates are instructed to follow.
- These schedules are based on a single factor: the nature of the crime committed.
- They require bail bonds in all cases rather than personal bonds.
- Magistrates do not typically take the defendant's ability to pay into account in setting bail.

105

105

This Has Led to Lawsuits

- Federal Court lawsuits:
  - O'Donnell v. Harris County
  - Daves v. Dallas County
  - Booth v. Galveston County (Aug. 7, 2019)
- Harris and Dallas County cases held the secured money bail system unconstitutional
- Galveston County case upheld the practices there because they had changed in light of the Harris County case

106

106

Bail Schedules and Standing Orders

- A judge may not adopt a bail schedule or a standing order that authorizes a magistrate to make a bail decision without considering each factor listed in Art. 17.15(a).
- Each case considered on its own merits.

107

Inability to Afford Payment of the Bail Amount

- A defendant charged with a Class B or higher offense who is unable to give bail in the amount required by a bail schedule or standing order must be:
- Told of their right to file an **affidavit** (sworn statement) stating that they do not have the means to pay $___ and requesting that an appropriate bail be set; and
- Given the opportunity to file the affidavit

108

Financial Information Form

A defendant who files an affidavit must complete a financial information form.

- Same form for appointment of counsel or a form created by OCA.

109

Review of Affidavit

A defendant may file an affidavit at any time during the bail proceeding.

The defendant is entitled to a prompt review by the magistrate on the bail amount.

The review may be conducted by the magistrate making the bail decision or may occur as a separate pretrial proceeding.

110

New Bail Decision/Finding of Facts

The magistrate must consider the facts presented and the factors in Art. 17.15(a) and must set the bail.

If the magistrate does not set the defendant's bail below the amount required by a bail schedule or standing order the magistrate must issue written findings of fact supporting the bail decision.

111

Failure to Conduct Review within 48 Hours

If a magistrate or criminal trial judge does not conduct a review within 48 hours after the defendant's arrest, they must report that to OCA.

If a delay occurs that will cause the review to be held more than 48 hours after the defendant's arrest, notice of the delay must be given to the defendant's counsel or to the defendant if he does not have counsel.

112

Bond Conditions

113

Bond Conditions

- In addition to (or instead of) setting a dollar amount on the defendant's bond, the magistrate can order the defendant to follow certain **conditions** in order to remain out of custody while awaiting trial.

-- Art. 17.40, Code of Criminal Procedure; see Magistration Bench Card No. 8

114

Mandatory and Discretionary Bond Conditions

- Magistration Bench Card 8 gives a list of bond conditions that **may**, and in some cases **must**, be imposed in specific circumstances or on specific offenses.
  - This information is also provided in **Public Safety Reports** in the PSRS.
- TJCTC has bond condition forms online, including forms that provide for the conditions listed in the chart. Make sure that all of the bond conditions are given to the defendant **in writing**.
  - Art. 17.51, CCP

115

Common Bond Conditions

- Common bond conditions include:
  - Commit no additional offenses while on bond.
  - Report to the **probation department** for monitoring.
    - Probation department is often called **CSCD** for Community Supervision and Corrections Department.
    - CSCD may impose a fee of **$25-60 per month** for monitoring.

116

Bond Conditions

- The magistrate has **broad** discretion to impose conditions, not limited just to those listed in the bench card.
  - Discretion is **not** unlimited! Don't violate the rights of the defendant by ordering things like "You must donate blood" or "You must attend church" or "You must enlist in the Marines."

117

Ignition Interlock Device

- One of the most frequently imposed bond conditions is requiring a defendant to install an **ignition interlock device** (IID) on their car and not drive any car that doesn't have an IID installed.

-- See Magistration Bench Card 9

118

Ignition Interlock Device - Mandatory

- This bond condition is **mandatory** if the defendant was arrested for:
  - Intoxication Assault,
  - Intoxication Manslaughter,
  - DWI with Child Passenger, or
  - 2nd or greater offense of Driving While Intoxicated, Flying While Intoxicated, or Boating While Intoxicated.
- The magistrate can waive the imposition of this condition if it is "in the interest of justice."

119

Ignition Interlock Device

- An example of when you might waive IID is if you are imposing a condition that the defendant not consume alcohol and must wear a device that constantly monitors the defendant for alcohol in their system (called a **SCRAM device**).
  - Since any alcohol consumption is already a violation of their bond conditions, the IID is less necessary.

120

Ignition Interlock Device

- **What if the defendant says they do not have a car to install an IID on?**
- **In this situation, you should still order the defendant not to drive any car that doesn't have an IID installed.**

121

Ignition Interlock Device

- A magistrate **may** also impose an IID in situations where it is not mandatory, as long as it is reasonably related to the safety of the victim or the community.
  - For example, some counties have a policy of requiring an IID on a first offense DWI if the defendant's BAC is over 0.15.

122

Breakout Discussion

- Defendant is arrested for DWI with Child Passenger. She does not have any prior DWIs or a criminal record. When you tell her you are going to require her to get an ignition interlock she says she has lost her job due to the pandemic and cannot afford an IID.
  - What bond conditions would you require?
  - What if she says the car she was driving was a friend's and she does not own a car?
  - How do you make sure she will comply with the bond conditions you impose?
  - What should you do if you are notified that she is not complying with the bond conditions?

123

Bond Conditions – Family Violence

- In family violence cases, bond conditions are often very appropriate and effective. For example:
  - You could order the accused not to have contact with the alleged victim of the offense.
  - You could order the accused to take an anger management course.
  - If the defendant was alleged to be intoxicated at the time of the assault, you could order them not to consume alcohol or other intoxicants.

124

Emergency Protective Orders

- An additional order, an **Emergency Protective Order (EPO) also called a Magistrate's Order of Emergency Protection (MOEP)**, is also often useful and is required in certain cases.
  - Violating an EPO is a new criminal offense.
  - EPOs must be reported to an OCA database.
  - More information on EPOs in recorded webinar on the TJCTC website, and Chapter 2 of the Magistration Deskbook!

-- See Magistration Bench Cards 10 and 11; Code of Criminal Procedure Art. 17.292

125

Notice of Bond Conditions (Clerk)

- The clerk of the court must send a copy of an order imposing a bond condition, or modifying or removing a bond condition, to the prosecutor and the sheriff of the county where the defendant resides.
  - The clerk must do this as soon as practicable but no later than the next business day after a magistrate issues the order
  - The clerk may delay sending a copy of the order only if they lack information necessary to ensure service and enforcement.

126

Notice to School or Child Care Facility of Bond Conditions (Clerk)

- If the bond condition order prohibits a defendant from going near a child-care facility or school, the clerk must also send a copy of the order to the facility or school.
- The copy of the order may be sent electronically.
  - Art. 17.51, CCP

127

Notice of Bond Conditions – All Offenses (Magistrate)

The magistrate or their designee must provide a written notice to the defendant of the bond conditions and the penalties for violating a bond condition.

The magistrate must make a separate record of the notice provided to the defendant.

OCA must create a form for the magistrate to provide notice to the defendant.

- Art. 17.51, CCP

128

Notice of Bond Conditions for Violent Offenses (Magistrate)

A magistrate who imposes a bond condition on a defendant for a violent offense (listed in Art. 17.50(a)(3)) must notify the sheriff of the condition **no later than the next day**.

The magistrate must also notify the sheriff of any bond modification or revocation for a violent offense or disposition of the underlying charges (if aware).

-- Art. 17.50, CCP (HB 766)

129

Your Turn!
Mock Magistration

130

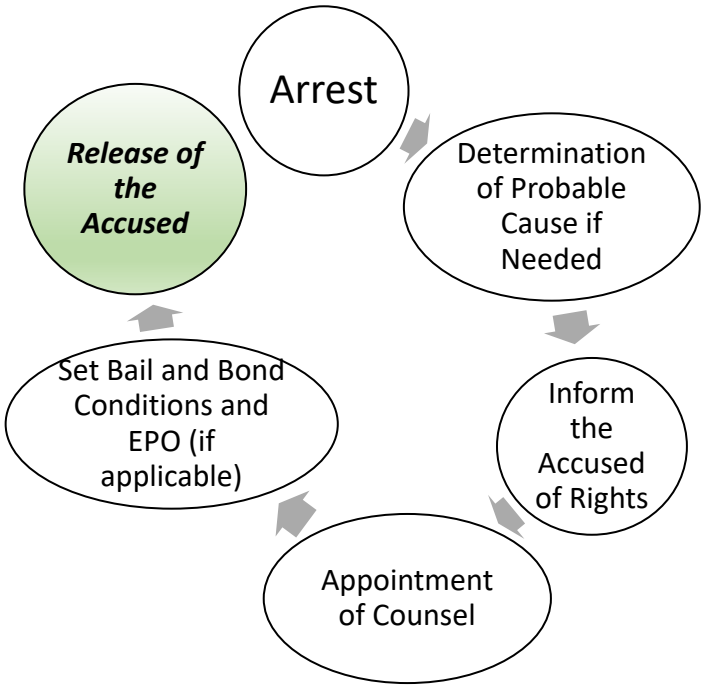
Your Turn: Mock Magistration

- Partner up with a neighbor, and magistrate them, using the magistrate warning sheet provided.
  - Use your partner's actual name.
  - They were arrested on a warrant for Criminal Trespass, a Class B misdemeanor (punishable by fine up to $2,000, jail for up to 180 days, or both).
  - Previous criminal history – one Class B theft charge.
  - After reading the rights, set their bail amount and decide if they are eligible for a personal bond, and determine what conditions of bail, if any, should be imposed.

131

Release of the Defendant or Failure to Make Bail

132



Where Are We in the Process?

133

Release of the Defendant

- When the defendant posts bail, they should be immediately released.
  - Art. 17.29(a), Code of Criminal Procedure
- The release of the defendant may be delayed on certain family violence offenses if there is probable cause that the violence will continue if the person is immediately released.

134

Delayed Release – Family Violence

- The **sheriff** can delay the release for up to **4 hours.**
- The **magistrate** can extend this delay for up to **24 hours** by issuing a **written** order stating that the violence would continue if the defendant is released.
- The magistrate can extend the delay up to **48 hours** with the above written order if, in the last **10 years**, the person has been arrested:
  - More than once for offenses involving family violence.
  - For any offense with a deadly weapon used or exhibited.

    - Art. 17.291(b), Code of Criminal Procedure

135

What if the Defendant Doesn't Make Bail?

- If the defendant cannot post the bail set by the magistrate, they will remain in custody at the jail.
  - Remember the process if the defendant files an affidavit that they cannot afford bail set under a standing order or bail schedule
- However, the defendant **must** be released on a personal or reduced bond if the state is not ready for trial within:
  - 5 days for fine-only misdemeanors.
  - 15 days for misdemeanor with 180 days or less jail time.
  - 30 days for other misdemeanors.
  - 90 days for felonies.

    - Art. 17.151, Code of Criminal Procedure

136

Release Because of Delay

- These timeframes mean that a strategy of setting a high bail hoping to keep the defendant locked up often won't be effective since the state generally is not ready to go to trial within these periods.
- This is another reason that bonds with effective conditions work better than just setting high dollar bonds.

137

Release Because of Delay – Violation of Bond Conditions

- ***These release timeframes do NOT apply to someone re-arrested for violation of a bond condition related to safety of the victim or community.***
- This gives your bond conditions extra teeth, since the defendant violating those conditions means they can now be detained until trial.

138

138

Whose Job is Release Because of Delay?

- Ultimately, it is the sheriff's responsibility to ensure that defendants are not held in the jail illegally.
- Discuss with prosecutors, other judges, and the sheriff in your county how to ensure that defendants who fail to make bail are not held longer than is legally allowed.

139

Other Bond Issues: Bond Modification/Revocation Surety Surrender

140

Bond Modification Hearing

- If it becomes necessary to modify a defendant's bond, **the court with jurisdiction of the case** may issue a **summons or warrant** to bring the defendant in. The hearing may be held on the court's own motion, or the state or defendant may make a motion to modify.
- There must be a hearing with the state given notice to reduce a bond on certain serious offenses, found in the Magistration Deskbook.
    - See Magistration Bench Card 5

141

Why Might a Bond be Modified?

- Perhaps new facts have come to light showing a higher bond is appropriate, such as previous convictions.
- Perhaps a new bond condition might be appropriate.
- Perhaps an existing bond condition is unworkable.

142

Bond Revocation Hearing

- If the defendant fails to comply with a condition of their release, **the court with jurisdiction of the case** may issue a **summons or warrant** to bring the defendant in for a hearing.
- If the defendant is shown to have violated the condition, the bond can be **revoked** (meaning the defendant stays in custody), or a new bond can be required (possibly with an increased amount or new conditions.)

143

Surety Surrender Motions

- After posting a **surety bond**, a surety (the person who has promised to pay if the defendant doesn't appear) may make a motion to **surrender** the defendant back into custody and be released from their obligation under the bond.
  - This is sometimes called a "**go off bond**" motion.
  - After a surety surrenders a defendant, the defendant will have to give a new bond to be released from custody.

144

Surety Surrender Motions - How

- Most common ways surety surrender may occur:
  - The surety files an affidavit stating the defendant is currently in custody.
  - The surety files an affidavit stating their intention to surrender the defendant in order to have an arrest warrant issued for the defendant.

145

Surety Surrender Motions – In Custody

- If the surety files an affidavit that the defendant is currently in custody:
  - The affidavit must be delivered to the sheriff who verifies the defendant is in custody and provides a verification to the magistrate or court where the prosecution is pending.
  - The sheriff then places a detainer against the defendant.
  - The bond is discharged upon the verification.

146

Surety Surrender Motions – Warrant

- If the surety files an affidavit stating their intention to surrender the defendant in order to have an arrest warrant issued for the defendant:
  - The surety must file the affidavit with the magistrate or court with jurisdiction of the case stating the cause for the surrender.
  - If that magistrate or court is unavailable, they may file the affidavit with any magistrate in the county.
  - If the magistrate finds that there is cause for the surety to surrender the defendant, the magistrate must issue an arrest warrant for the defendant. (A court issues a capias.)

147

Surety Surrender Motions - Summons

- The magistrate or court may also issue a summons; then a warrant or capias if the defendant does not appear.
- Once the defendant is in custody they will have to post a new bond to be released again.

148

Jurisdiction for Surrender/Modification/Revocation

- So which court/judge has jurisdiction to hold these hearings? It depends!
- **Has the case been filed with the trial court?** This means **an indictment** for a felony, or an **information or complaint** for a misdemeanor has been filed with the court who will hear the trial.
- **If yes**, then the **trial court** should hear any issues related to bond or bond conditions.

149

Jurisdiction for Surrender/Modification/Revocation

- **If the case has not been filed with the trial court**, then it depends on if the defendant was originally arrested with or without a warrant.
- **If the defendant was arrested on a warrant**, the magistrate who issued the warrant should hear any issues on bond until the case is filed with the trial court.
- **If the defendant was arrested without a warrant**, the magistrate who held the Art. 15.17 hearing would hear these issues until the case is filed with the trial court.
  - See Magistration Bench Cards 14 and 15

150

What About Bond Modifications?

- When a person's bond is modified, a PSR is not required to be considered.
- However, the magistrate or court modifying the bond must consider all of the factors in Art. 17.15(a), including the defendant's criminal history information, so the magistrate may wish to do so by viewing a PSR.

151

151

What About Bond Modifications?

- Also, a bail form must be submitted through the PSRS when the modification occurs, if either the bond type or amount is modified.
- If only the bond conditions are changed, a new bail form is not required, though there are separate bond condition reporting requirements.
- This requirement would apply to new bonds applied after a modification hearing or after a surety surrender or other bond modification process.

152

152

Other Arrest Types and Procedures

153

Arrest on a Capias Pro Fine

- A **capias pro fine** is an order to bring a defendant who has not satisfied a criminal judgment before the court who issued that judgment to see if they should be committed to jail to lay out the fine and costs in the judgment.
- Magistration Bench Card 20

154

Arrest on a Motion to Revoke Probation

- Trial courts may put a defendant on **probation**. Probation (also called **community supervision**) is an order where the defendant must follow certain conditions in order to avoid a jail sentence.
- If the defendant violates those conditions, the trial court may order them arrested for a hearing to determine whether to revoke their probation.
- Magistration Bench Card 16

155

Motion to Proceed or Adjudicate

- A very similar process occurs where a trial court has a defendant on **deferred adjudication**. This is where a defendant can comply with certain conditions **before judgment** to get a case dismissed.
  - If a defendant violates those conditions, the trial court may have them arrested. This motion is called either a **motion to proceed** or a **motion to adjudicate**.
  - Magistration Bench Card 17

156

Arrest on a Parole Violation Warrant

- **Parole** is a temporary release of a prisoner who agrees to certain conditions before the completion of their sentence.
- If the person violates those conditions, the court which convicted them may order them to be re-arrested and brought before the court.
- A parole violation warrant is often called a "**blue warrant**."
- Magistration Bench Card 18

157

Out of State Warrants and Fugitives from Justice

- **Extradition** is the process where a person arrested in one jurisdiction is sent back to the jurisdiction where they are wanted on criminal charges. A "**waiver of extradition**" means that the person waives the hearing and agrees to be transferred immediately.
- Magistration Bench Card 22
- Self-paced module: https://www.tjctc.org/onlinelearning/selfpacedmodules.html

158

Out-of-County Warrants

- If the defendant is arrested on an out-of-county warrant for a fine-only misdemeanor, see Magistration Bench Card 21.
  - Discussed further below.
- For all other out-of-county warrants, hold the Art. 15.17 hearing as usual.

159

Out-of-County Warrants

- If the defendant **makes bail**, transmit the bond immediately to the magistrate who issued the warrant.
- If the defendant **fails to make bail**, immediately notify the sheriff of the county where the offense occurred.
  - That county has **11 days** to pick them up, if they fail to do so, the defendant **must** be released on a **personal bond**. That personal bond must then be forwarded to the sheriff of that county or to the magistrate who issued the warrant.
- Magistration Bench Card 9 and 21

160

Other Magistration Issues: Mental Health Assessment Interviews

161

What is a Mental Health Assessment?

- Sometimes a person who has been arrested shows signs of mental illness or an intellectual disability.
- Because that person might need treatment, the law requires certain procedures to be followed when the person appears before a magistrate.

162

How Does This Work?

- The jail staff believes someone who has been arrested has a mental illness or intellectual disability.
  - They notify you – the magistrate!
- You decide based on the information they give you and your own observations of the defendant whether or not to order a mental health professional to **interview** and evaluate the defendant.
  - Is there **reasonable cause** to believe the defendant has a mental illness or intellectual disability?

163

Reasonable Cause in Practice

- Often it is obvious that someone is suffering from a mental illness:
  - They say they are hearing voices.
  - They are displaying erratic behavior (for example, shouting or screaming for no reason).
  - The are completely nonresponsive or are incoherent.
  - They say they are going to kill themselves.

164

Reasonable Cause in Practice

- But sometimes it is not so clear:
  - The only "indication" of mental illness is they say they are depressed.
  - They claim to be suffering from PTSD.
  - They say they are confused and seem to have trouble understanding what is happening.
  - They were diagnosed five years ago with bipolar disorder and say the stress of being arrested and in jail is seriously affecting them.

165

Determination in the Past Year

- It is not required (but is allowed) to order an interview and collection of information if, **within the year prior to arrest**, defendant has been determined to have mental illness or intellectual disability.

166

It's Your Decision

- If you do not find reasonable cause to believe the defendant is suffering from a mental illness or intellectual disability, then you do **not** order an interview.
- All you can do is make your decision based on the information provided to you by the jail and your own observations of the defendant.

167

If There Is Reasonable Cause

- If you find reasonable cause to believe the defendant is suffering from a mental illness or intellectual disability, then you order an interview of the defendant to be conducted by:
  - A Local Mental Health Authority (LMHA);
  - A Local Intellectual Developmental Disability Authority (LIDDA); or
  - Another qualified expert.

168

The Mental Health Interview

- The LMHA or mental health expert prepares a report which they send back to you.
- You then send the report to:
  - The trial court where the defendant will be tried.
  - The prosecutor.
  - The defense lawyer.
  - The sheriff or other person responsible for the defendant's medical records.
  - Personal bond office or department supervising defendant

169

The LMHA's Responsibilities

- The LMHA or expert must provide the mental health assessment report to the magistrate within 96 hours after the examination order is issued, if the defendant is in custody (30 days otherwise).
- The assessment report must explain the methods of the assessment and the expert's findings as to:
  - Whether the person has a mental illness or intellectual disability
  - Whether the person may be incompetent to stand trial
  - Any recommended treatment.

170

Release of Defendant with Mental Illness on Personal Bond

- A magistrate must release a defendant with a mental illness on a **personal bond** if certain conditions are met.
- But you are not required to release them on a personal bond if "good cause" is shown for not doing so.
  - For example, the defendant was previously released on a personal bond and did not appear for a hearing.
- Also, no personal bond if defendant is charged with violent offense listed in statute.

-- Art. 17.032(b), Code of Criminal Procedure

171

Forms and More Information

- See the Magistration Deskbook for more information on mental health determinations and release of a defendant with mental illness on a personal bond, including a flowchart of the process.
- Also see the Mental Health and Intellectual and Developmental Disabilities Law Bench Book for forms and more information:
  - http://benchbook.texasjcmh.gov/
  - Hard copy provided at Stage 2!

172

Other Magistration Issues: Pleas at the Jail

173

Accepting Pleas at the Jail

- Generally, only the **trial court** can accept a plea in a criminal case.
- Exceptions include:
  - A magistrate who has a person in front of them who is arrested on a warrant from a **different county** for a **fine-only misdemeanor**
  - Another judge that has a **bench exchange agreement** with the trial court
- Magistration Bench Card 21

174

Accepting Pleas at the Jail - Protections

- Accepting pleas at the jail raises concerns about voluntariness, which is required for any guilty or no contest plea.
- If a plea is made at the jail, the defendant has 10 days to file a motion for new trial, which would set aside the plea.
  - This motion **must** be granted.

175