



Magistrations Benchcards

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**Special Note: Any signed orders by magistrates must include the magistrate's signature, name in legible handwriting, legible printed form, or legible stamp print.*

Magistration Benchcard 1: Determining Probable Cause

You **must determine probable cause** if the person was arrested **without a warrant**.

- For example, the officer saw the person commit an offense.
 - Probable Cause means: reasonably trustworthy information that would lead a reasonable person to believe the accused person has committed the offense.
-

If the person was arrested **on a warrant, you do not determine probable cause**.

- Because a finding of probable cause was made when the warrant was issued.
-

To determine whether there is probable cause: read the Probable Cause Affidavit prepared by the arresting officer.

If you find there is probable cause to support the person's arrest, then you say: "I find probable cause exists for the arrest."

If the Probable Cause Affidavit is insufficient: the person must be released from custody immediately and without having to post bail.

Magistration Benchcard 2: Consular Notification

Ask each person you magistrate if they are a United States citizen.

- Do **not** make assumptions based on factors such as name or appearance!
-

If they are **not** a U.S. citizen, determine what country the person is from.

Determine if that country is a mandatory reporting country.

- The list of mandatory reporting countries is available here:
<https://travel.state.gov/content/travel/en/consularnotification/QuarantinedForeignNationals/countries-and-jurisdictions-with-mandatory-notifications.html>
 - A small pocket guide is available at this link:
https://travel.state.gov/content/dam/travel/CNAtrainingresources/CNA%20Pocket%20Card_BW.pdf
-

If the arrested person **is** from a mandatory reporting country, take the necessary steps to notify the consulate of that country. How to contact the consulate of that country is explained in the Guide.

If the arrested person **is not** from a mandatory reporting country, ask if they would like their country's consulate notified of their arrest, and notify the consulate if they say yes.

Magistration Benchcard 3: Informing the Defendant of Their Rights

This must occur without unnecessary delay but no later than 48 hours after arrest.

- May be done in person or by video conference.
 - If the person does not speak English or is deaf there must be an interpreter.
 - The OCA Texas Court Remote Interpreter Service may be contacted at this link to obtain assistance in obtaining an interpreter:
<https://www.txcourts.gov/tcris/>
-

You tell the defendant:

- “I am Judge _____. I am here as a magistrate to inform you of the charges against you, to inform you of your rights, and to set bail and bond conditions for your release.”
- “If you do not understand me at any time, please stop me and let me know, and I will try to clarify.”
- “You have been charged with the offense of _____.”
- “You have the right to hire an attorney to represent you.”
- “You have the right to have that attorney present prior to and during any interview or questioning by police officers or attorneys representing the State, and you have the right to terminate the questioning at any time.”
- “You may have reasonable time and opportunity to consult with your attorney.”
- “You have the right to remain silent. You are not required to make a statement. Any statement you make may be used against you in a court of law.”

If the defendant is charged with a jailable offense (a felony or a Class A or B misdemeanor):

- “If you cannot afford an attorney, you have the right to request the appointment of an attorney.”
- “Do you wish to request the appointment of an attorney?” If the defendant answers yes, please **see Magistration Bench Card 4**.

If the defendant is charged with a jailable offense (a felony or a Class A or B misdemeanor) and is unable to give bail in the amount required by a bail schedule or standing order:

- “You have the right to file an affidavit stating that you are without the means to post the set bail amount and requesting that an appropriate bail be set.” **(See Magistrate Warning Forms)**

If the defendant is charged with a felony:

- “You have the right to an examining trial. This is a hearing where the state must show that they have enough evidence to charge you with this offense.” **(See Magistrate Warning Forms)**

Have a checklist of these rights and as you inform the defendant of them, check them off. **(See Magistrate Warning Forms)**

Then **ask the defendant to sign the checklist** confirming that they have been informed of these rights and understand them.

Magistration Benchcard 4: Appointment of Counsel

Each county must have procedures in place for the appointment of counsel for indigent defendants. Review the plan for your county to determine what the procedure are for appointment of counsel.

- If your county has a public defender's office, then that office must be given priority in the appointment of counsel (unless an exception applies under CCP Art. 26.04(f)).
-

You must inform the defendant of the procedures for requesting the appointment of counsel.

If the defendant requests the appointment of counsel, you or the jail staff must provide them with a form to fill out to determine if they are eligible to have an attorney appointed.

- A form for this purpose is attached. **(See Affidavit of Indigence Forms)**
-

You must ensure that reasonable assistance is provided to the defendant in completing the form requesting appointment of counsel.

The form must go to the person responsible for appointing counsel in your county.

- If you are authorized to appoint counsel in your county, then 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.
- If you are not authorized to make the request, you must transmit the form to the person who is responsible for appointing counsel as soon as possible but **no later than 24 hours** after the request.

Magistration Benchcard 5: Setting Bail

Determine whether you set the bail or whether the bail is set by another judge either (1) on a warrant or (2) because the defendant is charged with committing a felony while released on bail for another felony in the same county:

You set bail if:

The defendant is **not** charged with a felony while released on bail for another felony in the same county; and:

- It was a warrantless arrest; or
 - The defendant was arrested under a warrant where there is not a criminal case pending against the defendant (a magistrate has issued a warrant to arrest a defendant based on probable cause that an offense has occurred).
 - If a bail amount is listed on a warrant in this situation, it is only a recommended amount and you are not required to set that amount as bail.
-

You do **not** set bail if the defendant is charged with a felony while released on bail for another felony in the same county. In that case the defendant may be released on bail only by:

- The court before whom the previous offense is pending; or
 - Another court designated in writing by the court where the offense is pending.
-

You go by the bail set on the warrant if:

- The case has already been filed in a trial court and the trial court issued the warrant.
 - For example, where an indictment or information has been filed and the court in which they were filed issues the warrant.

- The warrant was issued by a court in which the defendant is on probation, parole, or deferred adjudication.
 - For example, where the defendant was arrested on a motion to revoke probation or parole or on a motion to proceed with adjudication of guilt.
 - In these cases, the trial court may require a “cash bond” or may order “no bond.” **(See Magistration Bench Cards 16 – 18)**
-

Factors you are required to consider under Art. 17.15(a) in setting bail:

- The nature of the offense and circumstances under which it was committed, including whether it involved violence as defined in Art. 17.03 or violence against a peace officer.
- The ability to make bail, and evidence may be taken on this issue.
- The future safety of a victim, law enforcement and the community.
- The criminal history record information for the defendant, including:
 - Information maintained by DPS in CJIS/CCH and in the Public Safety Report System (not required until 4/1/22);
 - This information must be used to prepare a Public Safety Report for a defendant charged with a Class B misdemeanor or higher-level offense.
 - You may personally prepare the Public Safety Report before or while making a bail decision, or you may order a personal bond office or suitably trained personnel (including judicial personnel or sheriff’s office personnel) to prepare the report and provide it to you no more than 48 hours after the defendant’s arrest. But you may not order the sheriff’s office to prepare the report without their consent.
 - You must consider the Public Safety Report before setting bail.
 - You may, but are not required to, prepare or consider a Public Safety Report for a defendant charged with a fine only offense or who receives a citation under Art. 14.06(c).
 - Any acts of family violence;
 - Other pending criminal charges; and
 - Any instances in which the defendant failed to appear in court following release on bail.
- The citizenship status of the defendant.

Bail may be denied only if:

- A defendant charged with family violence or certain felony offenses against a child younger than 14 violates a bond condition relating to the safety of a victim or the community.
- Defendant is arrested for violation of probation or parole, and denial of bail is requested by the trial judge until the defendant is brought before that judge.
- Defendant is arrested on a parole violation from another state and is subject to the Interstate Compact on Adult Offender Supervision. **(See Magstration Bench Card)**

Magistration Benchcard 5A: If Bail is Set Under a Bail Schedule or Standing Order

If a defendant is unable to give bail in the amount set by a bail schedule or standing order, they have the right to file an affidavit stating that they do not have the means to post the set bail amount and requesting that an appropriate bail be set.

- The defendant must submit a financial information form (the same form for appointment of counsel) with the affidavit.
 - The defendant is entitled to a prompt review of the bail amount.
 - Note: This does not mean an evidentiary hearing is required.
-

You must consider the facts presented and the factors in Art. 17.15(a) (**see above**) and must set the bail.

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

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 they do not have counsel; and reported to OCA.

Magistrations Benchcard 6: Personal Bond v. Bail Bond

Decide whether the defendant must post a **personal bond** or a **bail bond**.

- A personal bond means the defendant is promising that they will pay the amount of the bail if they don't show up for a hearing or trial.
 - Note: The terms "PR Bond" and "personal bond" are often used interchangeably or incorrectly. A "PR bond" is a personal bond with no monetary amount specified.
 - If you do not specifically allow the defendant to be released on a personal bond, then they must post a bail bond (either a cash bond or a surety bond).
 - A bail bond means the defendant may either post cash in the amount of the bail or they must have a surety (often a bail bondsman) who promises to pay the bail amount if the defendant fails to show up for a hearing or trial.
-

A defendant **must** be released on a bond of no more than \$5,000 for a misdemeanor or \$10,000 for a felony if they were arrested without a warrant and a determination of whether or not probable cause exists has not been made within 24 hours for a misdemeanor or 48 hours for a felony.

- Normally this will occur only if a magistrate was not available within the required times; the defendant may be released by the sheriff in very limited circumstances.
 - If they are not able to obtain a surety for the bond or pay a cash bond, then they must be released on a personal bond.
-

A defendant **must** be released on a personal bond under certain circumstances where they are receiving mental health treatment. ([See Magistrations Bench Card 12](#))

A magistrate **may not** release a defendant on personal bond who is civilly committed as a sexually violent predator under Chapter 841 of the Health and Safety Code at the time of the alleged offense. Also, only the trial court, **which will not be a justice of the peace**, may release a defendant on a personal bond if the defendant:

- Is charged with an offense under:
 - Section 30.02, Penal Code (Burglary);
 - Section 71.02, Penal Code (Engaging in Organized Criminal Activity);
 - or**
 - Section 481, Health and Safety Code (Controlled Substances Act), if punishable by imprisonment for a minimum term or maximum fine that is more than a minimum term or maximum fine for a first-degree felony; **or**
- Does not submit to testing for the presence of a controlled substance in the defendant's body as requested by the court or magistrate as a condition of personal bond; **or**
- Submits to testing and the test shows evidence of the presence of a controlled substance in the defendant's body. (**Note:** this bond condition is mandatory depending on the circumstances; See [Benchcard 8](#) for more information.)

Additionally, a defendant **may not** be released on a personal bond, except as provided by Articles 15.21 (because of delayed remand to another county), 17.032 (to seek mental health treatment), 17.033 (because of delayed determination of probable cause), or 17.151 (because of delayed trial), if they:

- are charged with an offense involving violence (see below); **or**
- while released on bail or community supervision for an offense involving violence, are charged with committing **any felony or** any offense under the following sections of the Penal Code:
 - Section 22.01(a)(1) (Assault);
 - Section 22.05 (Deadly Conduct);
 - Section 22.07 (Terroristic Threat); or
 - Section 42.01(a)(7) or (8) (Disorderly Conduct Involving a Firearm).

Code of Criminal Procedure Art. 17.03.

An “**offense involving violence**” means an offense under the following provisions of the Penal Code:

- Section 19.02 (murder);
- Section 19.03 (capital murder);
- Section 20.03 (kidnapping);
- Section 20.04 (aggravated kidnapping);
- Section 20A.02(trafficking of persons);
- Section 20A.03(continuous trafficking of persons);
- Section 21.02 (continuous sexual abuse of young child or disabled individual);
- Section 21.11 (indecent with a child);
- Section 22.01(a)(1) (assault), if punishable as a second-degree felony under (b)(1) or as a felony and involved family violence;
- Section 22.011 (sexual assault);
- Section 22.02 (aggravated sexual assault);
- Section 22.021 (aggravated sexual assault);
- Section 22.04 (injury to a child, elderly individual, or disabled individual);
- Section 25.072 (repeated violation of certain court orders or bond conditions in family violence, child abuse or neglect, sexual assault or abuse, indecent assault, stalking or trafficking cases);
- Section 25.11 (continuous violence against the family);
- Section 29.03 (aggravated robbery);
- Section 38.14 (taking or attempting to take weapon from peace officer);
- Section 43.04 (aggravated promotion of prostitution); if the defendant is not alleged to have engaged in conduct constituting an offense under Sec. 43.02(a)(Prostitution)
- Section 43.05 (compelling prostitution); or
- Section 43.25 (sexual performance by a child).

You should consider releasing the defendant on a personal bond with appropriate bond conditions if the defendant is not charged with any of the offenses listed above and does not present a risk of re-offending or a flight risk.

Magistration Benchcard 6A: The Bail Decision and Bail Form

The Bail Decision:

After individualized consideration of each of the factors listed in Art. 17.15(a), you must order that the defendant is:

- 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 laws.
-

In setting bail, you must impose the least restrictive conditions, if any, and the personal bond or bail bond necessary to reasonably ensure the defendant's appearance in court and the safety of a victim, law enforcement and the community.

You may make a bail decision for a defendant charged with a fine only offense without considering the criminal history record information of the defendant.

The Bail Form:

For each magistration for a defendant charged with a Class B misdemeanor or higher offense you must complete a form that states: (1) the cause number, if any; (2) the defendant's name and dob; (3) the offense for which the defendant was arrested; (4) your name and office; and (5) the bail type, the amount of bail and any conditions of bail.

The form must certify that you considered each factor listed in Art. 17.15 and the information provided by the Public Safety Report System.

You must sign it electronically and submit it to OCA no later than 72 hours after an order setting bail. **See OCA Bail Form.**

Magistration Benchcard 7: Cash Bond

In most cases you may **not** require a cash bond, even if the warrant says, “cash bond only.”

- If the defendant is not released on a personal bond, then it is their choice whether to post a cash bond or a surety bond.
-

You **may not** impose different amounts depending upon whether the defendant posts a cash bond or a surety bond.

- For example, you may not say “bond is set at \$2,000 cash and \$5,000 surety.”
-

A cash bond **may be required**:

- When a defendant has been re-arrested after failing to appear on the original bond in a **bail forfeiture proceeding**; or
- When the surety is seeking to be released from the bond in a **surety surrender proceeding**.
- When a defendant has been arrested on a motion to revoke probation or a motion to proceed or adjudicate.
- When a defendant has been arrested on a child support warrant.

(See Magistration Bench Cards [13](#), [14](#), [16](#), and [17](#))

Magistration Benchcard 8: Bond Conditions

You may impose **any reasonable bond condition** related to the safety of a victim or the community.

- A bond condition is in addition to (or instead of) the bail amount.
 - The defendant's release from custody is conditioned on complying with the conditions; if he does not comply with the bond conditions, he may be re-arrested on a bond revocation warrant.
-

Common bond conditions:

- Do not commit any other offenses.
 - Report to CSCD (adult probation) for monitoring and follow their instructions.
 - Appear for all court hearings and trial.
 - Submit to drug testing.
 - Undergo counseling.
-

The following Bond Condition Chart contains a list of bond conditions you may impose, and for some offenses or circumstances, you **must** impose.

Offense	Bond Condition
Any	<p>May require that the defendant submit to:</p> <ol style="list-style-type: none"> 1) Home confinement and electronic monitoring by a designated agency; or 2) Testing on a weekly basis for the presence of a controlled substance in the defendant's body <p>- <i>Code of Criminal Procedure Art. 17.44</i></p>
Offenses under Penal Code Chpts. 20A, 21, 22 or 43, or Sect. 25.02 where the victim was <18 years old	<p>Shall require the defendant not to:</p> <ol style="list-style-type: none"> 1) directly communicate with the victim; or 2) go near a residence, school, or other location specifically described in the bond, frequented by the victim. <p>May allow the defendant supervised access to the victim.</p> <p>- <i>Code of Criminal Procedure Art. 17.41</i></p>
Offenses under Penal Code 20A.02, 20A.03, 43.03, 43.031, 43.04, 43.041 or 43.05 against a person 18 years of age or older	<p>Shall require the defendant not to:</p> <ol style="list-style-type: none"> 1) directly or indirectly communicate with the victim; or 2) go to or near the residence, place of employment or business of the victim, or if applicable a school, day-care facility, or similar facility where a dependent child of the victim is in attendance. The magistrate shall specifically describe the prohibited locations and the minimum distance the defendant must maintain. <p><i>Code of Criminal Procedure Art. 17.465</i></p>
DWI and Other Intoxication Offenses	See Magistration Bench Card 9 and DWI Bond Condition Form.
Offenses under Penal Code Sec. 43.02 and 43.021	<p>May require the defendant to receive counseling, education, or both, relating to AIDS or HIV.</p> <p>- <i>Code of Criminal Procedure Art. 17.45</i></p>
Stalking under Penal Code Sec. 42.072	<p>May require the defendant not to:</p> <ol style="list-style-type: none"> 1) Communicate directly or indirectly with the victim; or 2) Go to or near the residence, place of employment or business of the victim or to or near a school, day-care or similar facility where a dependent child of the victim attends. <p>Must specifically describe the prohibited locations, and minimum distances that must be maintained.</p> <p>- <i>Code of Criminal Procedure Art. 17.46</i></p>

Felony Offenses	<p>Shall require that the defendant provide to a local law enforcement agency one or more specimens for the purpose of creating a DNA record. May require this condition on any other offense.</p> <p>- <i>Code of Criminal Procedure Art. 17.47</i></p>
Offenses Involving Family Violence	<p>See Magistration Bench Card 10 and Family Violence and GPS Monitoring Bond Condition Forms.</p>
<p>Any offense where a personal bond is set and: 1) law enforcement or the magistrate have reasonable belief of the presence of a controlled substance in the defendant's body; or 2) there is drug or alcohol abuse related to the offense</p>	<p>If it will serve to reasonably assure the appearance of the defendant for trial, shall require the defendant to:</p> <ol style="list-style-type: none"> 1) Submit to testing for alcohol or a controlled substance; and 2) Participate in an alcohol or drug abuse treatment or education program <p>- <i>Code of Criminal Procedure Art. 17.03(c)</i></p>

(See Order Imposing Bond Condition Form)

Magistration Benchcard 8A: Notice of Bond Conditions

Notice to Defendant:

You or your designee must provide a written notice to the defendant of the bond conditions and the penalties for violating a bond condition.

You must make a separate record of the notice given to the defendant.

See OCA Form for Notice of Bond Condition to Defendant.

Magistrate's Notice to Sheriff:

If you impose a bond condition on a defendant for a violent offense (listed below) or stalking under Penal Code 42.072, you must notify the sheriff of the bond condition no later than the next day. And you must notify the sheriff of any bond modification or revocation or disposition of the offense (if aware).

“Violent offense” here means an offense under the following sections of the Penal Code or any offense involving family violence:

Section 19.02 (murder);

Section 19.03 (capital murder);

Section 20.03 (kidnapping);

Section 20.04 (aggravated kidnapping);

Section 21.11 (indecent with a child);

Section 22.011 (sexual assault);

Section 22.02 (aggravated assault);

Section 22.021 (aggravated sexual assault);

Section 22.04 (injury to a child, elderly individual, or disabled individual);

Section 29.03 (aggravated robbery);

Section 21.02 (continuous sexual abuse of young child or children);

Section 20A.03 (continuous trafficking of persons).

Note: This list of violent offenses is different than the list on Magistration Bench Card 6.

Notice to Protected Person or Alleged Victim of Violent or Stalking Offense:

The court must send any order imposing a bond condition in a violent offense or stalking offense to any named person that the condition is intended to protect, as well as any victim of the alleged offense, if different. The order must be sent no later than the next business day after the court issued the order. *Code of Criminal Procedure Art. 17.50(e)*.

Clerk's Duty to Report Bond Conditions in All Cases:

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. They may delay sending a copy of the order only if they lack information necessary to ensure service and enforcement.

If the bond condition order prohibits a defendant from going near a child-care facility or school, the clerk must send a copy of the order to the facility or school.

The clerk may send this information electronically or by any manner that can be accessed by the recipient. *Code of Criminal Procedure 17.51(d)*.

Magistration Benchcard 9: DWI Bond Conditions

If the defendant is charged with any of the following offenses:

- Intoxication Assault
- Intoxication Manslaughter
- DWI with Child Passenger
- A second or subsequent offense of DWI, or Boating or Flying While Intoxicated, or Boating While Intoxicated with Child Passenger

Then, you must require as a bond condition that the defendant:

- Have an Ignition Interlock Device (IID) installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant; **and**
- That the defendant must not operate any motor vehicle unless equipped with an IID.
- This requirement may be waived only if you find that to require the IID would not be in the best interest of justice.
- For example, the defendant has been ordered to have a SCRAM device (Secure Continuous Remote Alcohol Monitoring).
- A SCRAM device is a possible alternative to an IID.

You **may** require an IID even for a **first** offense of DWI.

- Some counties have a policy of ordering IID if the defendant's BAC was .15 or higher even if this is a first offense of DWI.

You may also order the defendant to abstain from any use of alcohol.

You should appoint a monitoring agency to monitor the reports generated by the IID provider or SCRAM device, and to notify you as the magistrate or (after an indictment or information has been filed) the trial judge of any violation of the bond conditions.

- Possible monitoring agencies could include: CSCD, prosecutor's office, sheriff, or court staff.

(See DWI Bond Condition Form.)

Magistration Benchcard 10: Bond Conditions in Family Violence Cases

If the defendant is charged with family violence:

- You may order the defendant not to have any contact with the victim of the offense.
 - You may order the defendant to undergo counseling, including attending an anger management course.
 - You may order the defendant to refrain from tracking or monitoring personal property or a motor vehicle in the possession of the alleged victim of the offense, without the victim's effective consent, including by using a tracking app on a personal electronic device in the possession of the victim, by using a tracking device, or by physically following the victim or causing another to physically follow the victim.
 - If the defendant was alleged to be intoxicated, you may order the defendant not to consume alcohol or other intoxicants.
-

A bond condition is **separate from** and in addition to an Emergency Protective Order (EPO). (See **Magistration Bench Card 11** for EPO information.)

- A bond condition remains in effect until the criminal offense has been adjudicated.
- Even if an EPO is not imposed on a defendant while in custody, a bond condition may still be imposed on the defendant to protect a victim of family violence.

“Family violence” includes:

- Violence by member of family or household against another member intended to result in physical harm, bodily injury, assault, or sexual assault or a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault.
- Abuse by a member of family or household toward a child including:
 - physical injury or a genuine threat of substantial harm
 - sexual conduct harmful to a child’s mental, emotional, or physical welfare
 - compelling or encouraging the child to engage in sexual conduct.
- An act by an individual against another with whom that person has or has had a dating relationship or because of the victim’s relationship with someone the individual had a previous dating relationship with
 - Intended to result in physical harm, bodily injury, assault, or sexual assault or a threat thereof.

You may delay the release of a defendant for up to **24 hours** by issuing a written order stating that violence would continue if the defendant is released.

- You may extend the delay up to **48 hours** if within the last ten years the defendant has been arrested:
 - More than once for offenses involving family violence; or
 - For any offense where a deadly weapon was used or exhibited.

(See Family Violence and GPS Monitoring Bond Condition Forms.)

Magistration Benchcard 11: Emergency Protective Orders

An EPO is a separate order (not a bond condition) that you may issue at a defendant's appearance before a magistrate after arrest for:

- an offense involving family violence (see definition on [Magistration Bench Card 10](#));
 - human trafficking;
 - sexual assault or aggravated sexual assault; or
 - stalking.
-

You **may** issue an EPO for any of the offenses listed above if you believe it is appropriate **or** if it is requested by:

- the victim;
 - the guardian of the victim;
 - a peace officer; or
 - a prosecutor.
-

You **must** issue an EPO if the defendant:

- used or exhibited a deadly weapon during an assault; or
 - inflicted serious bodily injury on the victim.
-

If the EPO is mandatory **and** the defendant exhibited a deadly weapon during the commission of the offense, then the EPO must remain in effect for **at least 61 days but no more than 91 days**.

Otherwise, the EPO must remain in effect for **no less than 31 days but no more than 61 days**.

In the EPO you may order the defendant not to:

- commit family violence or an assault on the person protected under the order;
- commit an act in furtherance of trafficking of persons or stalking;
- communicate directly with a member of the family or household or with the person protected under the order in a threatening or harassing manner;
- communicate a threat through any person to a member of the family or household or to the person protected under the order;
- if you find good cause, communicate in any manner with the person protected under the order or a member of their family or household (except through the party's attorney or a person appointed by the court);
- go to or near the residence, place of employment, or business of a member of the family or household or of the person protected under the order;
- possess a firearm (unless the person is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision);
- go to or near the residence, childcare facility, or school where a child protected under the order resides or attends; or
- track or monitor personal property or a motor vehicle in the possession of the person protected under the order or of a member of the family or household of the person protected under the order, without the protected person's effective consent, including by using a tracking application on a personal electronic device in the possession of the person or the family or household member, using a tracking device, or by physically following the person or the family or household member or causing another to physically follow the person or member.

You may **not order** the defendant to stay a minimum distance from the victim in an EPO; but you could do this as a bond condition (see [Magistration Bench Card 10](#)).

You **must** suspend the handgun license of the defendant.

A copy of the EPO must be sent immediately to DPS, so they can suspend the handgun license in their system.

You must send a copy of the EPO to the chief of police in the municipality where the family member or individual protected by the EPO resides; or to the sheriff of the county if the person does not reside in a municipality. This must be done as soon as possible but not later than the next business day.

You must also enter a copy of the EPO and any application into OCA's Protective Order Registry as soon as possible, but not more than 24 hours after filing/issuance.

If the victim is not present when the EPO is issued, you must order a peace officer to make a good faith effort to notify the victim within 24 hours that the EPO has been issued.

Your clerk must send a copy of the EPO to the victim at the victim's last known address as soon as possible but not later than the next business day after the EPO was issued.

You must also send a copy of the EPO to a childcare facility or school if the EPO prohibits a person from going to or near those locations.

(See Magistrate's Order of Emergency Protection Form.)

- The form must contain a warning.
- The defendant must be served with a copy of the EPO, and you must make a separate record of the service in written or electronic format.

Magistration Benchcard 12: Mental Health Assessments

If the jail staff notifies you that they believe someone who has been arrested has a mental illness or intellectual disability, then based on the information they give you and your own observations of the defendant:

- if you find there is **reasonable cause** to believe the defendant has a mental illness or intellectual disability,
 - then you must order an LMHA (Local Mental Health Authority) or another mental health professional to interview and collect information concerning the defendant.
 - Exception: If the defendant has been determined to have a mental illness or intellectual disability within one year prior to the current arrest, is arrested/charged only with a Class C Misdemeanor, or no longer in custody, you are not required to order an interview.
-

The LMHA or mental health professional will prepare a report which they will send back to you. You must then send the report to:

- The trial court where the defendant will be tried for the offense;
- The prosecutor;
- Defense counsel;
- the sheriff or other person responsible for the defendant's medical records while the defendant is confined in county jail; and
- as applicable, any personal bond office established under CCP Article 17.42 for the county in which the defendant is being confined; or the director of the office or department that is responsible for supervising the defendant while the defendant is released on bail and receiving mental health or intellectual and developmental disability services as a condition of bail.

You **must** release a defendant with a mental illness on a **personal bond** if five conditions are met and none of the exceptions below apply.

Conditions:

1. The defendant is not charged with any of the Penal Code offenses listed below:
 - Section 19.02 (murder);
 - Section 19.03 (capital murder);
 - Section 20.03 (kidnapping);
 - Section 20.04 (aggravated kidnapping);
 - Section 21.11 (indecenty with a child);
 - Section 22.01(a)(1) (assault), if the offense involved family violence as defined by Section 71.004, Family Code;
 - Section 22.011 (sexual assault);
 - Section 22.02 (aggravated assault);
 - Section 22.021 (aggravated sexual assault);
 - Section 22.04 (injury to a child, elderly individual, or disabled individual);
 - Section 29.03 (aggravated robbery);
 - Section 21.02 (continuous sexual abuse of young child/disabled individual); or Section 20A.03 (continuous trafficking of persons).
2. The defendant has been interviewed by an LMHA or expert;
3. The LMHA or expert concludes that the defendant has a mental illness or intellectual disability and recommends treatment;
4. You determine with the LMHA or expert that services are available;
5. You determine that the defendant may be safely released.

Exceptions:

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.

A magistrate **may not** release a defendant on personal bond who is civilly committed as a sexually violent predator under Chapter 841 of the Health and Safety Code at the time of the alleged offense.

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).

Unless good cause is shown for not requiring treatment, as a condition of release on a personal bond, you must require that the defendant submit to treatment if:

- The defendant’s mental illness or intellectual disability is chronic in nature; or
- The defendant’s ability to function independently will continue to deteriorate if the defendant is not treated.

You may also impose other bond conditions reasonably necessary to ensure the defendant’s appearance in court and the safety of the community or victim, such as: Counseling; Reporting to adult probation department frequently by telephone or in person; Curfew; or GPS monitoring device.

(See Order for Mental Health Interview and Release on Personal Bond under Art. 17.032 Forms.)

Magistration Benchcard 13: Bail Forfeiture

If a defendant **fails to appear** for a court hearing, and was released on a bond, then the judge of the court where the case is pending, or the magistrate, may initiate a **bail forfeiture** proceeding.

- This means the bail the defendant posted is subject to being forfeited to the State of Texas because the defendant failed to appear for the court hearing.
 - A bail forfeiture proceeding is initiated by the court filing a **Judgment Nisi** (a “judgment unless”) – a preliminary judgment that will be made final **unless** the defendant shows good cause for failing to appear.
-

When a bail forfeiture is declared by a court, a **capias** is issued for the arrest of the defendant.

- A capias is an arrest warrant requiring the defendant to be brought directly to the judge that issued the capias.
 - Sometimes the court will issue an arrest warrant instead of a capias.
 - The capias or warrant may say “judgment nisi” which is how you will know it is a bail forfeiture because the defendant failed to appear for a court hearing.
-

If the capias or arrest warrant says, “no bond,” then the judge who issued it wants the defendant held until the defendant is brought directly to that judge.

- In this case, **do not release** the defendant on a new bond.
-

Otherwise, you may require the defendant to post a bond, which you may require to be a **cash bond**, in order to be released from custody following an arrest on a capias or warrant resulting from a bail forfeiture.

Magistration Benchcard 14: Surety Surrender

A defendant may be arrested on a *capias* or an arrest warrant if the defendant has posted a bail bond, and the surety for that bond wants to be released from their obligations on the bond.

You may require a defendant who has been arrested on a surety surrender *capias* or warrant to post a bond, which you may require to be a **cash** bond, in order to be released from custody.

Note: With respect to who has jurisdiction to hear the surety surrender motion:

- If the defendant was originally arrested without a warrant, the magistrate who conducted the Art. 15.17 hearing has exclusive jurisdiction over bail issues and therefore another judge cannot change a surety bond to a personal bond.
 - If the defendant was originally arrested on a warrant, the magistrate who issued the warrant has jurisdiction to release the surety from their obligations on the bond.
 - Once a formal charging instrument is filed (a complaint, information or indictment), the trial court has jurisdiction over any bail issues.
-

If the surety is released from their obligations on the bond, then you may set a new bail amount and bond that the defendant has to post to be released from custody.

Magistration Benchcard 15: Bond Modification and Revocation

A defendant may be arrested on a capias or warrant following a motion to modify or revoke his bond.

- If an indictment or information has been filed, then the trial court that will hear the criminal charge against the defendant will decide whether to modify or revoke the defendant's bond.
 - If an indictment or information has not been filed, then the magistrate who magistrated the defendant following his arrest will decide whether to modify or revoke the defendant's bond.
-

A defendant may be arrested on a capias or warrant following a motion to modify or revoke his bond.

- If an indictment or information has not been filed, then the magistrate who magistrated the defendant following his arrest will decide whether to modify or revoke the defendant's bond.

Magistration Benchcard 16: Arrest of a Motion to Revoke Probation

A motion to revoke probation may be filed by a prosecutor where a defendant was put on probation (or community supervision).

- The trial court granting probation orders the defendant to comply with certain conditions in order to avoid a jail sentence.
 - If the defendant fails to comply with those conditions, they may be arrested and brought before the trial court for a hearing to determine whether to revoke their probation.
-

A defendant arrested on a motion to revoke probation should be brought directly to the trial judge who issued the warrant.

- If the trial judge is unavailable, the defendant may be brought before any magistrate.
-

If you magistrate a defendant arrested on a motion to revoke probation:

- You do not need to make a finding of probable cause.
- You do not need to provide all of the Art. 15.17 admonishments since they are not facing charges.
- You should inform them why they were arrested and ask if they wish to request the appointment of counsel.
- You **may not** set bail for the defendant, but you may accept a bond in the amount set by the trial judge.
 - The trial judge may require a “cash bond only.”
 - If the warrant does not specify a bond amount, treat the warrant as ordering the defendant to be held in custody until the probation revocation hearing, and therefore do not set or take a bond.

Magistration Benchcard 17: Arrest of a Motion to Proceed or Adjudicate

A trial court may grant a **deferred adjudication** to a defendant before conviction of an offense.

- If the defendant complies with the conditions of the deferred adjudication, the charges will be dismissed.
 - If the defendant violates the conditions of the deferred adjudication, then the trial judge may have the defendant arrested on a motion to proceed or a motion to adjudicate.
-

A defendant arrested on a motion to proceed or a motion to adjudicate should be brought directly to the trial judge who issued the warrant.

- If the trial judge is unavailable, the defendant may be brought before any magistrate.
-

If you magistrate a defendant arrested on a motion to proceed or a motion to adjudicate:

- You do not need to make a finding of probable cause.
 - You do not need to provide all of the Art. 15.17 admonishments since they are not facing charges.
 - You should inform them why they were arrested and ask if they wish to request the appointment of counsel.
 - You **may not** set bail for the defendant, but you may accept a bond in the amount set by the trial judge.
 - The trial judge may require a “cash bond only.”
-

If the warrant does not specify a bond amount, treat the warrant as ordering the defendant to be held in custody until the motion to proceed or the motion to adjudicate is heard, and therefore do not set or take a bond.

Magistration Benchcard 18: Arrest on a Parole Violation Warrant

Parole means a prisoner is released before completion of their sentence provided they agree to meet certain conditions.

- If the person violates the conditions of their release, the court in which they were convicted may order them to be re-arrested and brought before the court.
 - A parole violation warrant is often called a “**blue warrant.**”
-

If a person is arrested for an administrative parole violation, you may conduct an Art. 15.17 hearing and set bail but **only if**:

- The parole division of the Texas Department of Criminal Justice has authorized the person’s release on bond; **and**
 - You determine that the person is not a threat to public safety.
 - Note: An administrative parole violation includes such things as failure to report a change in residence, failure to appear for meetings with a community supervision office, failure pay restitution or having a positive drug test.
 - A parole violation may also occur if the defendant is charged with committing a new violation of law; that is not considered to be an administrative parole violation.
-

Otherwise, the person should be held in custody until the parole violation may be heard by the court that convicted and sentenced the person.

Magistration Benchcard 19: Arrest on an Out of County Warrant

If a defendant is arrested on an out of county warrant for a Class C misdemeanor, see [Magistration Bench Card 21](#).

Otherwise, if the defendant **makes bail**, transmit the bond to the magistrate who issued the warrant.

If the defendant **fails to make bail**, you must immediately notify the sheriff of the county where the offense occurred.

- That county has 11 days to pick up the defendant.
 - If the county fails to do so, then the defendant must be released on a **personal bond** and that personal bond must then be forwarded to the magistrate who issued the warrant.
-

If the defendant requests appointment of counsel, the appointment will be done by the county that issued the warrant.

- But you must transmit the request for appointment of counsel and the paperwork to the proper official in that county.
- A list of officials who appoint counsel for each county may be obtained from the Texas Indigent Defense Commission at 512-936-6994.

Magistration Benchcard 20: Arrest on a Capias Pro Fine

A capias pro fine is an order to bring a defendant who has failed to satisfy a fine following conviction of a criminal offense before the judge who issued the judgment.

- The reason for arresting the defendant is to hold a hearing to decide if they should be committed to jail to lay out the fine and court costs.
 - If the judge who issued the capias pro fine is not available, the arresting officer may take the person to jail until they can see the judge.
 - But they can only be held in jail until **the next business day after their arrest.**
-

If a defendant is brought before you at magistration on a capias pro fine that was issued by a JP in **your county**, then you have jurisdiction to decide how to resolve the defendant's failure to satisfy the fine and costs.

- But you **do not** have jurisdiction to make that decision if the capias pro fine was issued by another county or the capias pro fine was issued by a municipal court judge, a county judge or a district judge in your county.
 - In that case, you should release the defendant within one business day and order them to appear before the judge who issued the capias pro fine on a specified date and time.
-

You do not need to determine probable cause because the defendant has already been convicted of the offense.

If you have jurisdiction to decide how to resolve the defendant's failure to satisfy the fine and costs, and the defendant notifies you that they are having difficulty paying the fine and costs in compliance with the judgment, then you must hold a hearing to determine whether the judgment imposes an undue hardship on the defendant.

- If you determine that the judgment imposes an undue hardship on the defendant, then you must consider whether to allow the defendant to satisfy the fine and costs under an installment plan or by performing community service, or whether all or part of the fine and court costs should be waived.

If you have jurisdiction to decide how to resolve the defendant's failure to satisfy the fine and costs, you may only order a defendant to lay out the fine in jail following a hearing and a **written** finding that either:

- The defendant is not indigent and has failed to make a good faith effort to discharge the fine and costs; or
- The defendant is indigent, was given the opportunity to perform community service, and has failed to make a good faith effort to discharge the fine by performing community service and could have done so without experiencing any undue hardship.

Forms for ordering alternative satisfaction of a judgment, including community service or waiver, and for ordering a defendant to lay out the fine and court costs in jail are attached. **(See Forms for Determination of Alternative Satisfaction of Judgment; Community Service Orders; and Order of Commitment)**

Magistration Benchcard 21: Arrests For Illegal Entry or Re-Entry and Return Orders

Note: As of publication of this benchcard, litigation is ongoing regarding the constitutionality of this section. Please monitor the TJCTC website for any developments.

In the Fourth Special Session of the 2023 Legislature, SB 4 was passed, creating new criminal offenses for illegally entering or re-entering Texas. *Penal Code §§ 51.02, 51.03.*

If a person is arrested for one of these offenses, a magistrate during an appearance under Art. 14.06 or 15.17 may, after determining that probable cause exists for the arrest, order the person to be released from custody and issue a written order to return to the foreign nation from which the person entered or attempted to enter.

However, the order **may only be issued if:**

- **the person agrees to the order;**
- the person has not previously been convicted of an offense under Chapter 51 of the Penal Code or obtained a discharge of an offense on condition that they return to a foreign country;
- the person is not charged with another offense punishable as a Class A misdemeanor or higher; and
- before the issuance of the order, the arresting law enforcement agency collects all available identifying information of the person, including fingerprints; uses all applicable measures to identify the person; and cross-references the information with all relevant databases, lists, and classifications.

Code of Criminal Procedure Art. 5B.002

An order issued under this law must include the manner of transportation of the person to a port of entry as defined by Penal Code Sec. 51.01, as well as the law enforcement officer or state agency responsible for monitoring compliance with the order. *Code of Criminal Procedure Art. 5B.002(e)*. That officer or agency must report the issuance of the order to DPS for inclusion in its computerized criminal history system. *Code of Criminal Procedure Art. 5B.002(g)*.

The order must be filed with the county clerk in which the person was arrested. *Code of Criminal Procedure Art. 5B.002(f)*.

If a person fails to comply with an order to return, they commit a new offense that is a second-degree felony. *Penal Code § 51.04*.

Magistration Benchcard 22: Taking a Plea at the Jail

You may take a plea at the jail while magistering a defendant **only if:**

- You are the judge of the trial court in which a complaint or citation charging the defendant with a fine only offense has been filed,
 - A complaint or citation charging the defendant with a fine only offense has been filed in another justice court in your county and you have a bench exchange agreement with that JP, **or**
 - The defendant has been arrested on a warrant issued by another county for a fine-only offense.
-

Do not force or otherwise persuade the defendant to enter a plea.

If the defendant **pleads guilty** or no contest, you must set a fine, determine costs, accept payment, give credit for time served, determine indigency or discharge the defendant as the case may require.

- A plea of guilty or no contest **must** be in writing.
 - You must transmit the plea and any paperwork or money collected to the court having jurisdiction (the court that issued the warrant) within 11 business days.
-

If the defendant **pleads not guilty**, you should set bail for the defendant and release them on a **personal bond** (not a surety bond) on condition that they appear before the court that issued the warrant. **(See Personal Appearance Bond Form)**

Magistration Benchcard 23: Arrest on an Out of State Warrant

If a person is arrested on an out of state warrant, you may need to determine whether that person should be extradited to that state.

There are two different procedures:

- The Uniform Criminal Extradition Act applies when a person who is wanted to stand trial in another state has fled that state.
 - The Interstate Compact for Adult Offender Supervision (ICAOS) applies when a person who was on probation or parole in another state has fled that state.
-

Uniform Criminal Extradition Act procedures:

- If a person is arrested following a complaint that they are a fugitive of justice from another state prior to their conviction, you must commit them to jail for a time not to exceed 30 days.
 - The person may be released on bail unless the offense with which they are charged is punishable by death or life imprisonment under the laws of the other state.
 - You must immediately notify the Secretary of State and the District and County Attorneys of your county, and those officials will notify the Governor of the other state.
- If a person is arrested on a Governor's warrant, then they may be taken before you as a magistrate only if your county borders another state and you have taken a training course through TJCTC that focuses on extradition. If so, then you must inform the person of:
 - The demand from the other state;
 - The crime with which they are charged; and
 - Their right to an attorney.

ICAOS procedures:

- If a warrant is issued under the retaking procedures of ICAOS, the person may **not be released on bond.**