

Setting Bail and Bond Conditions Under The Damon Allen Act

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What We Will Cover

Resources

Setting the Stage

The Damon Allen Act

The Bail Decision

New Offense While Released on Bail

Notice of Bond Conditions

Questions and Discussion

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Resources

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Resources

- TJCTC Bail Page
 - Includes links to OCA and DPS resources
- Self-paced Modules:
 - Damon Allen Act
 - General Magistration Module
- Webinar (April 2022)
- Magistration Deskbook (updated Jan. 2022)
- Magistration Bench Cards (updated Jan. 2022)

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SETTING THE STAGE

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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, CCP; Magistration
Deskbook, Chapter 2.D.

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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 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!

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What is a Bail Bond?

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

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What is a Bail Bond?

- A defendant who is ordered to post a bail bond to be released from custody may also 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.

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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 for the \$5,000 in a bail forfeiture proceeding.

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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 bail amount**.
- 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.

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What is a PR Bond?

- 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.

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What is a
“PR Bond”?

- Many people (including judges) mistakenly call **all** personal bonds “PR Bonds.”
 - This is incorrect: if the bond has a monetary amount the defendant agrees to pay if they fail to appear, then it is a **personal** bond; if there is no monetary amount, then it is a “PR Bond.”

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What is a
“PR Bond”?

- “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.

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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.”

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What are Bond Conditions?

Bond conditions are specific obligations included as terms of the bond the defendant signs and that the defendant must meet as a condition of their release from custody.

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What are Bond
Conditions?

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

-- Art. 17.40(a), CCP

For example:

Ignition Interlock Device

No contact with the
victim

Drug testing

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THE DAMON
ALLEN ACT

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What is the
Damon Allen
Act?

- Reforms the bail system in Texas by giving magistrates better information about a defendant, including their criminal record history, in order to be able to distinguish between those defendants:

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What is the
Damon Allen
Act?

- who may be released on a personal bond, with or without bond conditions, and those
- who may not be released on a personal bond due to a violent offense or a new offense while released on bail for a previous violent offense.

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Who is Eligible to Release a Defendant on Bail?

- A defendant charged with a felony or misdemeanor punishable by confinement may only be released on bail by a magistrate who is in compliance with the training requirements in Arts. 17.024 and 17.0501 (discussed on next two slides).

-- Art. 17.023, CCP

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What are the Training Requirements?

- An 8-hour initial training course that includes training by DPS on the use of CJIS/CCH in order to obtain criminal history record information; and
- A 2-hour continuing education course every two years.

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What are the Training Requirements?

- A magistrate must complete the 8-hour course within 90 days of taking office.
 - But a magistrate who is serving on 4/1/22 has until 12/1/22 to complete the course.
 - Art. 17.024, CCP
- See the TJCTC Magistration Education page for additional information: <https://www.tjctc.org/bail/education.html>

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The Public Safety Report System

- OCA had to develop and maintain a Public Safety Report System which must provide:
 - Information on the eligibility of the defendant for a personal bond.
 - Information on the applicability of any required or discretionary bond conditions.
 - The criminal history of the defendant in summary form, including:

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The Public Safety Report System

Previous misdemeanor or felony convictions.

Pending charges.

Previous sentences imposing confinement.

Previous convictions or pending charges for violent offenses (including violence directed to a peace officer).

Previous failures of the defendant to appear in court following release on bail.

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The Public Safety Report

The PSRS became active on April 1.

A Public Safety Report must be prepared for a defendant charged with a Class B misdemeanor or higher level offense using the PSRS.

A magistrate must consider the PSR before setting bail in those cases.

And submit a bail form to OCA within 72 hours after setting bail.

Bronson will explain the PSRS and how to create a PSR in the next class.

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Rules for Setting Bail

- Bail and bond conditions must be set under the following rules in Art. 17.15(a):
 - 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.

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Rules for Setting Bail

- The criminal history record information for the defendant must be considered, including:
 - Information maintained by DPS in CJIS/CCH and 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.

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The Bail Decision

- After individualized consideration of all the factors listed in Art. 17.15(a), 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.

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The Bail Decision

- In setting bail the **magistrate 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 the community, law enforcement and the victim.

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The rules for setting bail do not require a magistrate to conduct an evidentiary hearing unless required by some other law.

-- Art. 17.028, CCP

Special rules apply if bail is set under a Bail Schedules or Standing Orders: See Handout 1

The Bail Decision

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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.

-- See Handout 2

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Denial of Bail

- Bail may also 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.

-- See Handout 1

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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; Self-paced Module on Extradition and Fugitives from Justice

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Release of
Defendant
on a
Personal
Bond

- This will be explained in detail by Judge Rick Hill

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Defendant
Charged with
Committing an
Offense While
on Bail

- If a defendant is charged with committing a felony while released on bail for another felony, special rules apply (see next two Slides).

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Defendant Charged with Committing an Offense While on Bail

- If the new offense was committed in the **same** county as the previous offense, then 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.

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Defendant Charged with Committing an Offense While on Bail

- 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 bail decision, determining whether any bail conditions were violated or taking any other applicable action.
- Art. 17.027, CCP

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Role of the Sheriff or Jailer

A sheriff, peace officer or jailer may “take the defendant’s bail” in certain situations when the defendant is in custody.

See Handout 3: When a Sheriff, Peace Officer or Jailer May Take Bail.

-- Arts. 17.20 and 17.22, CCP

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Bond Conditions

- A magistrate has broad authority to impose **any reasonable bond condition** related to the safety of a victim of the offense or to the safety of the community.
-- Art. 17.40(a)
- Bond conditions may be imposed regardless of whether the bond is a bail bond or a personal bond.

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Bond Conditions

- In some cases, including certain DWI cases, bond conditions are mandatory.
- If this is the case, it will be stated on the PSR.
- If used appropriately, bond conditions are often effective in ensuring the defendant appears for court hearings and trial and in protecting the victim and the community.

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Notice of Bond Conditions (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.

The form for notifying the defendant of bond conditions is available at the TJCTC Bail Page under FAQ – Magistration Process under the Damon Allen Act.

• AN 101.0101

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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)

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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.

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Notice of Bond Conditions (Clerk)

- 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.

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Notice of Bond Conditions (Clerk)

- 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 copy of the order may be sent electronically.
 - Art. 17.51, CCP

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Reporting of Bond Conditions (Sheriff)

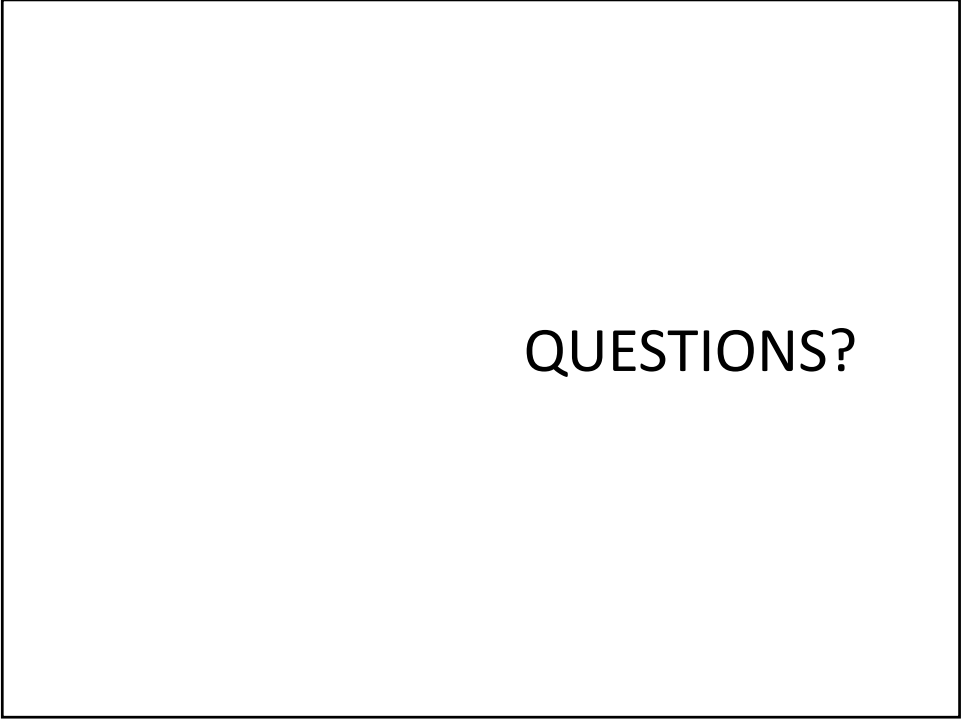
- A chief of police or sheriff who receives a copy of a bond condition order must, as soon as practicable but no later than the 10th day after receiving it, enter information relating to the bond condition into CJIS/CCH, or modify or remove information as appropriate.
 - Art. 17.52, CCP

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Reporting of Bond Conditions (Sheriff)

- In the case of a violent offense, the sheriff must enter, modify or remove the information in the TCIC database no later than the next business day after receiving it.
- And make a good faith effort to notify anyone who is protected by a bond condition, or a victim, of the defendant's release.
 - Art. 17.50, CCP (HB 766)

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QUESTIONS?