

# MAGISTRATE DUTIES

## CHAPTER 1

## MAGISTRATE DUTIES

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## CHAPTER 1 MAGISTRATE DUTIES

### General Provisions Applicable to Adults

All judges are magistrates. Art. 2.09, C.C.P. All magistrates have co-equal jurisdiction with all other magistrates within the county and their jurisdiction is coextensive with the limits of the county. *Gilbert v. State*, 493 S.W.2d 783 (Tex. Crim. App. 1973), and *Ex parte Clear*, 573 S.W.2d 224 (Tex. Crim. App. 1978). As magistrates, municipal judges are authorized to warn adult offenders of their respective rights as required by law.

The duties of arresting peace officers and of magistrates are detailed in the Code of Criminal Procedure. Article 14.06 provides that peace officers must take the accused before a magistrate when a warrantless arrest is made pursuant to one of the exceptions to the warrant requirement. Such exceptions are stated in Chapter 14. Similarly, Article 15.17, C.C.P., requires that individuals arrested pursuant to a warrant also be brought before a magistrate. Presentation before a magistrate must take place without unnecessary delay, but in no event more than 48 hours after the person is arrested. Art. 15.17, C.C.P.

Texas law contains no specific term for the presentation of the accused before a magistrate. The lack of a statutory term has resulted in the use of various terms (e.g., “magistration,” “15.17 hearing”) and contributes to potential confusion. In the past, the U.S. Supreme Court has referred to the accused’s presentation before the magistrate as an “initial appearance,” although the term “magistration” appears to be gaining ground. In 2008, the U.S. Supreme Court in *Rothgery v. Gillespie County*, 554 U.S. 191, noted the lack of a formal term for what they acknowledged as “magistration.” While the Court of Criminal Appeals has shown no preference for any one term, it has taken issue with courts and attorneys erroneously referring to it as an “arraignment.” *Watson v. State*, 762 S.W.2d 591 (Tex. Crim. App. 1988). An arraignment involves fixing the identity of the offender and taking a plea. See Checklist 6-3.

In 2007, the Legislature gave peace officers the authority to issue citations for certain Class A and B misdemeanors. Individuals issued such citations are nevertheless required to make an appearance before a magistrate. In contrast to citations for Class C misdemeanors, which act as limited charging instruments, citations for Class A and B misdemeanors do not act as substitutes for a formal charging instrument (i.e., a complaint or information). While the use of such citations is presently limited, it is critical to distinguish such citations from those issued for Class C misdemeanors.

Generally, a magistrate is involved in the preliminary stages of a criminal proceeding. Such proceedings involve adults accused of criminal offenses. Because the juvenile justice laws in Texas are civil proceedings, the preliminary stages of a child being taken into custody are governed by Title 3 of the Texas Family Code, not Article 15.17 of the Code of Criminal Procedure. In this sense, children who are taken into custody are not “magistrated” in the same manner as adults. Magistrates are, however, frequently involved in the procedures governing the taking of a confession by a child. See Checklists 13-27 and 13-28.

For more information on the role of magistrates, see *TMCEC The Municipal Judges Book*, Chapter 1.

**General Provisions Applicable to Adults**

**1. Magistrate’s Warning for Adult, Article 15.17, C.C.P.**

Checklist 1-1	Script/Notes
<p><input type="checkbox"/> 1. Determine whether the person has been (1) subject to custodial arrest; or (2) arrested and released after being issued a citation for an enumerated Class A or B misdemeanor.</p> <p style="padding-left: 40px;"><input type="checkbox"/> a. Determine probable cause.</p> <p style="padding-left: 80px;"><input type="checkbox"/> (1) If arrest is by a warrant, no further inquiry as to probable cause is needed.</p> <p style="padding-left: 80px;"><input type="checkbox"/> (2) If arrest is without a warrant, conduct probable cause hearing either by sworn testimony or written affidavit to review the facts and circumstances of the arrest to determine if probable cause exists for continued detention of arrestee.</p> <p style="padding-left: 80px;"><input type="checkbox"/> (3) If there is no probable cause, release the arrestee.</p> <p style="padding-left: 80px;"><input type="checkbox"/> (4) If there is probable cause, proceed.</p> <p style="padding-left: 80px;"><input type="checkbox"/> (5) Appearance before a magistrate may be broadcast by closed-circuit television to the magistrate. Two-way communication must be possible and the warning must be recorded.</p> <p><input type="checkbox"/> b. Citation for enumerated Class A or B misdemeanor</p> <p style="padding-left: 40px;"><input type="checkbox"/> (1) If the person resides in the county where the offense occurred, a peace officer who is charging a person with committing an offense</p>	<p><i>Gerstein v. Pugh</i>, 420 U.S. 103 (1975).</p> <p><i>County of Riverside v. McLaughlin</i>, 500 U.S. 44 (1991).</p> <p>Magistrate to use a practical common sense approach to determine probable cause by considering all facts presented under oath; the “totality of the circumstances” test to determine whether there is a fair probability that the arrestee committed the offense with which he or she is charged. <i>Guzman v. State</i>, 955 S.W. 2d 85 (Tex. Crim. App. 1997).</p> <p>See <i>TMCEC Forms Book</i>: Release: Magistrate’s Determination of No Probable Cause.</p> <p>Art. 15.17(a), C.C.P.</p> <p>Art. 14.06(c), C.C.P.</p>

that is an enumerated Class A or B misdemeanor may, instead of taking the person before a magistrate pursuant to Article 14.06(a), C.C.P., issue a citation to the person that contains written notice of the time and place the person must appear before a magistrate, the name and address of the person charged, and the offense charged.

- |  |  |
|--|--|
| <p><input type="checkbox"/> (2) Citations may only be issued for the following enumerated Class A or B misdemeanors:</p>   | <p>Art. 14.06(d), C.C.P.</p>   |
| <p><input type="checkbox"/> (a) Possession of four ounces or less of marihuana;</p>  | <p>Sec. 481.121(b)(1)-(2), H.S.C.</p>  |
| <p><input type="checkbox"/> (b) Possession of four ounces or less of a substance in Penalty Group 2-A;</p>   | <p>Sec. 481.1161(b)(1)-(2), H.S.C. Effective September 1, 2011, Penalty Group 2-A also includes K2 and other forms of synthetic marihuana.</p> |
| <p><input type="checkbox"/> (c) Criminal mischief, where the value of damage done was \$50 or more but less than \$500;</p>  | <p>Sec. 28.03(b)(2), P.C.</p>  |
| <p><input type="checkbox"/> (d) Graffiti, where the value of the damage done was \$50 or more but less than \$500;</p>   | <p>Sec. 28.08(b)(1), P.C.</p>  |
| <p><input type="checkbox"/> (e) Theft, where the value of the property stolen was \$50 or more but less than \$500, or the value of property obtained by a hot check was \$20 or more but less than \$500;</p>                     | <p>Sec. 31.03(e)(2)(A), P.C.</p>   |
| <p><input type="checkbox"/> (f) Theft of a service, where the value of the service stolen was \$20 or more but less than \$500;</p>  | <p>Sec. 31.04(e)(2), P.C.</p>  |
| <p><input type="checkbox"/> (g) Possession of contraband in a correctional facility, if the offense was punishable as a Class B misdemeanor; and</p>   | <p>Sec. 38.114, P.C.</p>   |
| <p><input type="checkbox"/> (h) Driving with an invalid license.</p>   | <p>Sec. 521.457(f), T.C.</p>   |
| <p><input type="checkbox"/> (3) If a person issued a citation pursuant to Article 14.06, C.C.P., appears before a magistrate, the magistrate shall perform the duties imposed by Art. 15.17, C.C.P., as if the person had been</p> | <p>Art. 15.17(g), C.C.P.<br/>This requirement applies to both those defendants issued a citation for an</p>                                    |

arrested and brought before the magistrate by a peace officer.

enumerated Class A or B misdemeanor and those issued a citation for a Class C misdemeanor.

(4) After the magistrate performs the duties imposed by this article, the magistrate, except for good cause shown, may release the person on personal bond.

Art. 15.17(g), C.C.P.

(5) If a person issued a citation under Article 14.06(c) fails to appear as required by that citation, the magistrate before whom the person is required to appear shall issue a warrant for the arrest of the accused.

Art. 15.17(g), C.C.P.

2. Identify yourself to the arrestee.

3. Determine if the arrestee sufficiently understands the English language or possesses any impairments.

4. If necessary, swear in a qualified interpreter.

Art. 38.30, C.C.P.  
See Checklist 12-5.

5. If the arrestee is hearing impaired, obtain the services of an interpreter as provided by Article 38.31, C.C.P., to interpret the warning.

Art. 15.17(c), C.C.P.

6. Determine the arrestee's age at the time of the offense.

a. If the arrestee has not reached his or her 17<sup>th</sup> birthday, or was under 17 at the time of the offense but is now 17 or older, use the juvenile admonishment (warning).

See Checklists 13-28 and 13-29.

b. If the arrestee is at least 17 or was 17 at the time of the offense, continue.

7. Determine whether arrestee is currently on bail for a separate offense.

Art. 15.17(a), C.C.P.

8. Advise the arrestee in clear language of the offense with which he or she is charged.

See *TMCEC Forms Book: Magistrate's Warning*.

a. Name the offense.

“You are charged with the offense of \_\_\_\_\_. It is a \_\_\_\_\_ Degree/Class Misdemeanor/ Felony.”

b. Inform arrestee of any affidavit filed in the case.

9. Warn the arrestee of the following rights:

a. The right to remain silent;

- b. That the arrestee is not required to make a statement and that any statement made can and will be used against the arrestee;
  - c. The right to have an attorney present during any interview with peace officers or prosecutors;
  - d. The right to terminate the interview at any time; and
  - e. The right to an examining trial if the offense charged is a felony.
  - f. Accusation of offenses may lead to deportation if the arrestee is not a U.S. citizen.
10. The Vienna Convention on Consular Notifications requires that a foreign national be offered the opportunity to have his or her country's consulate notified that he or she is facing criminal action. The magistrate should do the following:
- a. Determine citizenship **on the record**;
  - b. If the foreign national is a citizen of a mandatory country:
    - (1) Notify the consular office "without delay" regardless of defendant's wishes; and
    - (2) Notify the defendant that you are making the notification.
  - c. If the foreign national is a citizen of a permissive country:
    - (1) Offer to notify the foreign national's consular office (in both English and the foreign national's language);
    - (2) Have the national accept or decline the notification in writing; and
    - (3) If defendant accepted the offer, notify the consular office "without delay."
  - d. Document your notification, the detainee's response, and any other relevant paperwork.
11. Warn arrestee of right to counsel and appointment of counsel.
- a. Warn of the right to retain counsel.

Download the U.S. Dept. of State's *Consular Notification and Access* from the Texas Attorney General's website at [www.oag.state.tx.us/criminal/consular.shtml](http://www.oag.state.tx.us/criminal/consular.shtml).

If foreign national requests consular notification, the magistrate should notify the consulate; it will not satisfy your duty to just let the defendant call consulate.

See Checklist 1-9.

Only indigent defendants

- b. Warn of the right to request appointment of counsel if the person cannot afford counsel.
  - c. Describe the local procedures, created by the district and county judges, for requesting appointment of counsel.
  - d. Provide the appropriate locally approved paperwork for request of appointment of counsel.
  - e. Ensure reasonable assistance in completing the necessary forms.
  - f. Appoint counsel, only if the magistrate is designated by the local district and county judges as the appropriate authority under Article 26.04, C.C.P., to appoint counsel.
  - g. Forward the completed paperwork to the appropriate designee if not designated by the local district and county judges to appoint counsel:
    - (1) Without unnecessary delay; and
    - (2) Not later than 24 hours after request for appointment.
12. A record must be made in each case in which a person is arrested and taken before a magistrate for an Article 15.17 hearing. It may be written, recorded, or in other form adopted by the county, and it should include:
- a. The magistrate informing the person of his or her right to request appointment of counsel;
  - b. The magistrate asking the person whether he or she wants to request appointment of counsel; and
  - c. Whether the person requested appointment of counsel.
13. Inquire if the arrestee understands his or her rights.
- a. A magistrate has a duty to clarify the rights if the arrestee indicates a lack of understanding.
  - b. A magistrate must ensure that reasonable assistance is given to the arrestee in completing the necessary forms for requesting appointment of counsel at the time of the Article 15.17 hearing.

charged with a crime that may result in punishment by confinement are entitled to have an attorney appointed. However, if a court concludes that the interests of justice require representation by counsel, the court may appoint counsel. Art. 1.051, C.C.P. See Checklist 8-3 for indigence hearings.

Art. 15.17(e), C.C.P.  
See *TMCEC Forms Book*:  
Magistrate Warning.

See Checklist 1-9 and Art. 26.04, C.C.P., if you are the designated authority to appoint counsel.

If a municipal judge appoints an attorney, the city may be responsible

14. Bail

- a. Bail is the security given by the accused that he or she will appear and answer the accusation before the proper court.
- b. A defendant may be released on bond by posting a cash deposit or surety bond, or by agreeing to a personal recognizance bond, if permitted by the magistrate.

15. Setting Bail

- a. Bail should be set at a reasonable amount. The court may consider any factor relevant to the fixing of bail.
- b. The court may consider any other issues deemed appropriate including any or all of the following:
  - (1) The amount must be high enough to ensure the presence of the arrestee when required, but not so high as to be oppressive;
  - (2) The nature and circumstances of the offense;
  - (3) The range of punishment for the offense charged;

for paying the attorney, unless an interlocal agreement is entered to the contrary.

A magistrate cannot require a defendant to post bail in cash only. *Ex parte Deaton*, 582 S.W.2d 151 (Tex. Crim. App. 1979); *Ex parte Rodriguez*, 583 S.W.2d 792 (Tex. Crim. App. 1979); Tex. Atty. Gen. Op. JM-363 (1985). The exception to this rule is when a bond forfeiture has been declared and the defendant is arrested on a capias. The court may then require a cash bond. Art. 23.05, C.C.P.

For more on bail bonds, see Article 17.02, C.C.P.

See *TMCEC Forms Book: Magistrate's Determination of Bail and Commitment Form*.

Art. 17.15, C.C.P.

(4) The arrestee’s ability to make bail in the amount under consideration;

(5) The income of a spouse;

(6) Do not consider the income of friends or other family members;

(7) The arrestee’s community ties;

(8) Work record;

(9) Family ties;

(10) Prior criminal record and appearances in other matters; and

(11) Bail, if any, set in the defendant’s other cases.

c. If a pretrial services agency operates in the judicial district or county, order the arrestee to be interviewed and the information brought to you immediately.

d. The court must also consider the safety of the victim, the victim’s family, and the community in fixing the amount of bail.

e. The magistrate may impose any reasonable condition related to safety of the victim or safety of the community.

f. Bail may only be denied or temporarily denied in certain instances.

g. If bail is to be denied or temporarily denied, make a written finding.

h. Set the amount of bail.

“Do you work?

For whom?

How much do you earn?

Are you married?

How much does your spouse earn?

Do you live in \_\_\_\_\_ County?

How will you get to court if you are released?

Does anyone else live with you?

Have you ever been arrested before?

When and for what?

What was the outcome of the case?”

Arts. 17.15(5) and 56.02(a)(2), C.C.P.

Art. 17.40, C.C.P.

See Checklist 1-2.

“I now set bail at \$\_\_\_\_\_.”

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li><input type="checkbox"/> i. Set conditions of bail.</li> <li><input type="checkbox"/> j. Record each condition in writing; or</li> <li><input type="checkbox"/> k. Recite each condition into the record; and</li> </ul>   | <p>See Checklist 1-6.</p> <p>“Further, I am setting the following conditions and I order you to abide by each and every one of them.”</p>   |
| <ul style="list-style-type: none"> <li><input type="checkbox"/> l. Require the arrestee to acknowledge that he or she understands each condition.</li> <li><input type="checkbox"/> m. If the charge is a subsequent “Driving, Flying, or Boating While Intoxicated,” “Intoxication Assault,” or “Intoxication Manslaughter,” the magistrate shall require on release that a defendant:             <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) Have installed on the motor vehicle owned or most regularly operated by defendant a vehicle ignition interlock device;</li> <li><input type="checkbox"/> (2) Not operate any motor vehicle unless the vehicle is equipped with that device;</li> <li><input type="checkbox"/> (3) Have device installed on appropriate motor vehicle within 30 days of release on bond; and</li> <li><input type="checkbox"/> (4) Pay the expense of installation.</li> </ul> </li> <li><input type="checkbox"/> n. You may designate an appropriate agency to verify the installation of the device and to monitor the device.</li> <li><input type="checkbox"/> o. Do not require the installation of the device if to do so would not be in the best interest of justice.</li> </ul> | <p>Where the alleged victim is a child 12 years of age or younger, see Article 17.41, C.C.P., and <i>TMCEC Forms Book: Bail Condition Where Child is Alleged Victim.</i></p> <p>“Do you understand each of these conditions?”</p> <p>Art. 17.441, C.C.P.<br/>See <i>TMCEC Forms Book: Bail with Ignition Interlock Condition.</i></p> |
| <ul style="list-style-type: none"> <li><input type="checkbox"/> 16. Consider the arrestee for release on personal bond.</li> <li><input type="checkbox"/> 17. Set conditions of personal bond, if arrestee qualifies.             <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Insure that the arrestee acknowledges and understands each condition.</li> </ul> </li> <li><input type="checkbox"/> 18. If the offense is punishable by fine only, you may, after identifying the defendant:             <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Release the defendant on personal bond;</li> </ul> </li> </ul>   | <p>See Checklist 1-5.</p> <p>See Checklist 1-6.</p> <p>Art. 15.17(b), C.C.P.</p>  |

- b. Order the defendant in writing to appear in the appropriate court for arraignment at a specific:
    - (1) Date;
    - (2) Time; and
    - (3) Place;
  - c. Provide the arrestee with a copy of the order.
  - d. Other restrictions
    - (1) Magistrate does not have discretion to restrict the type of bail, cash, or surety, to the exclusion of the other. A magistrate may require a cash bond only when a forfeiture of bail has been declared. A magistrate may designate that personal recognizance bond be denied by stating “cash or surety” on the bail setting.
    - (2) A magistrate may not set differential bail based on the type of bond (e.g., \$200 cash or \$500 surety).
    - (3) A magistrate cannot set bail that would be an instrument of oppression (i.e., too high in light of financial resources).
19. Other consideration
- a. Enter magistrate’s “Order for Emergency Protection.”
20. Special procedures for fine-only offenses:
- a. Magistrate may set surety/cash appearance bond.
  - b. Magistrate may set personal bond.
  - c. Magistrate may release without setting bond:
    - (1) Only in fine-only misdemeanors;
    - (2) Magistrate must give defendant the time and place to appear to answer to the charges against him or her in writing;
    - (3) Release without bond is not available if defendant has a prior felony or Class A or B misdemeanor conviction.

*Ex parte Deaton*, 582 S.W.2d 151 (Tex. Crim. App. 1979);  
*Ex parte Rodriguez*, 583 S.W.2d 792 (Tex. Crim. App. 1979);  
 Art. 23.05, C.C.P.

Bail that is more than what the court would accept as a fine in a fine-only misdemeanor case is probably too high when there is no history of failing to appear.

See Checklist 1-8.

Art. 15.17(b), C.C.P.

See *TMCEC Forms Book*:  
 Release: With Order to Appear.

- 21. A magistrate may take a plea of guilty if person was arrested under warrant for a fine-only offense issued in a county other than the one in which the person is arrested.
  - a. Magistrate has discretion to take a plea in lieu of setting bail.
  - b. Defendant must make written plea of guilty or nolo contendere and waiver of jury trial.
  - c. Magistrate shall:
    - (1) Set fine;
    - (2) Determine costs;
    - (3) Accept payment;
    - (4) Give credit for time served:
      - (a) Determine a period of time between eight and 24 hours;
      - (b) Credit of at least \$50 for each period of time.
    - (5) Determine indigence.
    - (6) On satisfaction of judgment, discharge the defendant.
  - d. Magistrate must, before the 11<sup>th</sup> business day following the plea, transmit to the court with jurisdiction the following:
    - (1) Written plea;
    - (2) Any orders entered in the case; and
    - (3) Any fine or cost collected in the case.
- 22. If the arrested person fails or refuses to give bail as provided in Article 15.18, C.C.P., the magistrate shall commit the person to the jail of the county where the person was arrested. It is the magistrate's duty to immediately notify the sheriff of the county in which the offense was committed: (1) that the arrest and commitment occurred; and (2) whether the person was also arrested under a warrant issued under Section 508.251, G.C., in relation to the conditions of his or her parole or mandatory supervision.
  - a. The sheriff, upon receiving notice under Article 15.19, C.C.P., of a person's arrest pursuant to a warrant for violation of a condition of parole or mandatory

Art. 15.18, C.C.P.  
See *TMCEC Forms Book*:  
Out-of-County  
Magistrate's Bench  
Judgment.

Art. 45.048, C.C.P.

See Checklist 8-3.

Art. 15.18(b), C.C.P.

Art. 15.19, C.C.P.

Art. 15.20, C.C.P.

supervision, should have the arrested person brought before the proper magistrate or court before the 11<sup>th</sup> day after the day the person was committed to jail.

- b. The arrested person shall be discharged from custody if the proper office of the county where the offense is alleged to have been committed does not demand the arrested person and take charge of the person before the 11<sup>th</sup> day after the date the person is committed to the jail of the county in which the person is arrested.

Art. 15.21, C.C.P.

**MAGISTRATE DUTIES**

**General Provisions Applicable to Adults**

**2. When Bail May Be Denied or Delayed**

Checklist 1-2	Script/Notes
<p><input type="checkbox"/> 1. Bail may be denied in capital cases when the State presents proof evident that conviction and death sentence will result from trial.</p> <p><input type="checkbox"/> 2. A district judge may deny bail in non-capital cases when there is a substantial showing by the State within seven days of arrest that the defendant:</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. Is guilty of the charged felony, with two prior convictions; the second being subsequent to the first:</p> <p style="padding-left: 40px;"><input type="checkbox"/> (1) Both in point of time of commission of the offense; and</p> <p style="padding-left: 40px;"><input type="checkbox"/> (2) Conviction;</p> <p style="padding-left: 20px;"><input type="checkbox"/> b. Committed a felony while on bail for a prior felony for which he or she was indicted;</p> <p style="padding-left: 20px;"><input type="checkbox"/> c. Committed a felony involving the use of a deadly weapon after being convicted of a prior felony; or</p> <p style="padding-left: 20px;"><input type="checkbox"/> d. Committed a violent or sexual offense while under the supervision of a criminal justice agency of the State or political subdivision of the State for a prior felony.</p> <p><input type="checkbox"/> 3. The State’s burden is:</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. To prove guilt of the defendant in Steps 2(a) and (c) above; or</p> <p style="padding-left: 20px;"><input type="checkbox"/> b. That the offense was committed while on bail in Steps 2(b) or 2(d) above.</p>	<p>Art. I, Sec. 11, Tex. Const.</p> <p>When a person accused of a felony is brought before a magistrate, the magistrate should contact the district court. Art. 17.21, C.C.P. If the court is not in session, then the magistrate may set the bail. Art. 17.22, C.C.P. Because Art. I, Sec. 11a, Tex. Const., provides that only a district judge may deny bail in non-capital cases and that the order denying the bail must be entered within seven calendar days of a defendant’s incarceration, a municipal judge exercising his or her authority as a magistrate should notify the district court immediately and send the warning sheet to the district court as soon as possible.</p> <p><i>Bills v. State</i>, 796 S.W.2d 194 (Tex. Crim. App. 1990).</p> <p>Art. I, Sec. 11a, Texas Const.</p>

- 4. A judge or magistrate may deny bail pending trial for a defendant:
  - a. Charged with a felony offense from the following provisions of the Penal Code, if committed against a child younger than 14 years of age:
    - (1) Chapter 21 (Sexual Offenses);
    - (2) Section 25.02 (Prohibited Sexual Conduct); or
    - (3) Section 43.25 (Sexual Performance by a Child);
    - (4) Section 20A.02 (Trafficking of Persons), if the defendant is alleged to have trafficked the child with the intent or knowledge that the child would engage in sexual conduct as defined under Section 43.25 or if the defendant benefited from participating in a venture that involved a trafficked child engaging in sexual conduct as defined under Section 43.25; or
    - (5) Section 43.05(a)(2) (Compelling Prostitution); or
  - b. Who has been found, by the magistrate or judge at a hearing by a preponderance of the evidence, to have violated a condition of bond set under Article 17.41, C.C.P., related to the safety of the victim or the safety of the community.
- 5. The court's order is reduced to writing.
- 6. In non-capital cases only, set aside the order after 60 days and set bail if the defendant has not been tried.
- 7. A district judge at a subsequent hearing to set or reinstate bail may deny bail to any person accused of a felony who is released on bail pending trial and whose bail is subsequently revoked or forfeited for a violation of a condition of release related to the safety of a victim of the alleged offense or to the safety of the community.

Art. 17.153, C.C.P.

Art. I, Sec. 11b, Tex. Const.

☐ 8. A magistrate or judge may deny bail to any person who is accused of a felony or an offense involving family violence if the person has previously been released on bail and whose bail is subsequently revoked or forfeited for a violation of a condition of release. In order to deny bail, a magistrate or judge must determine by a preponderance of the evidence at a subsequent hearing that the person violated a condition of release related to the safety of a victim of the alleged offense or to the safety of the community.

Art. I, Sec. 11b, Tex. Const.  
(added Nov. 6, 2007)

☐ 9. A magistrate or judge may deny bail to any person who is arrested for (1) violating an order for emergency protection, (2) an offense involving family violence, (3) violating an active protective order rendered by a court in a family violence case (including a temporary ex parte order that has been served on the person), or (4) engaging in conduct that constitutes an offense involving the violation of any of the proceeding orders. Subsequent to being taken into custody, bail may be denied if, following a hearing, a judge or magistrate determines by a preponderance of the evidence that the person violated the order or engaged in the conduct constituting the offense.

Art. I, Sec. 11c, Tex. Const.  
(added Nov. 6, 2007)

**CHAPTER 1 MAGISTRATE DUTIES**

**General Provisions Applicable to Adults**

**3a. Release Because a Magistrate Has Not Determined Whether Probable Cause Exists**

Checklist 1-3(a)	Script/Notes
<p><input type="checkbox"/> 1. All persons arrested must be brought before a magistrate without unnecessary delay, never later than 48 hours after arrest.</p>	<p>Art. 15.17(a), C.C.P. See <i>TMCEC Forms Book</i>: Release: Magistrate’s Determination of No Probable Cause.</p>
<p><input type="checkbox"/> 2. A person arrested without a warrant must be released if a magistrate has not determined whether probable cause exists to believe that the person committed the offense within a certain time frame.</p>	<p>This law presumably is used in the absence of a magistrate, as the release is triggered not when a magistrate has determined there is no probable cause, but rather when a magistrate has not determined whether probably cause exists.</p>
<p><input type="checkbox"/> 3. In misdemeanor cases, if a magistrate has not determined whether probable cause exists:</p>	<p>Art. 17.033(a), C.C.P.</p>
<p><input type="checkbox"/> a. A defendant arrested without a warrant must be released on bond not to exceed \$5,000, not later than the 24<sup>th</sup> hour after the arrest; or</p>	
<p><input type="checkbox"/> b. The arrestee must be released on a personal bond if arrestee is unable to make or secure surety/cash appearance bond.</p>	
<p><input type="checkbox"/> 4. In misdemeanor cases in a county with a population of three million or more, if a magistrate has not determined whether probable cause exists:</p>	<p>Art. 17.033(a-1), C.C.P. This provision expires September 1, 2013.</p>
<p><input type="checkbox"/> a. A defendant arrested without a warrant must be released on bond not to exceed \$5,000, not later than the 36<sup>th</sup> hour after the arrest; or</p>	
<p><input type="checkbox"/> b. The arrestee must be released on a personal bond if arrestee is unable to make or secure surety/cash appearance bond.</p>	
<p><input type="checkbox"/> 5. In felony cases, if a magistrate has not determined whether probable cause exists:</p>	<p>Art. 17.033(b), C.C.P.</p>
<p><input type="checkbox"/> a. A defendant must be released on bond not to exceed \$10,000, not later than the 48<sup>th</sup> hour after the arrest; or</p>	

- b. The arrestee must be released on a personal bond if arrestee is unable to make or secure surety/cash appearance bond.
  - 6. On application by the prosecutor, the magistrate may postpone release for not more than 72 hours from arrest.
    - a. Application must state the reason why a magistrate has not made a probable cause determination.
  - 7. The time limits for release as outlined above do not apply to a person arrested without a warrant who is taken to a medical facility before being taken before a magistrate. Such an arrestee's time limit begins to run at the time of release from the facility rather than from the time of arrest.
- Art. 17.033(c), C.C.P.
- Art. 17.033(d), C.C.P.

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**3b. When the Defendant Must Be Released Because the State is Not Ready**

Checklist 1-3(b)	Script/Notes
<p>The magistrate that enters orders under Article 15.17, C.C.P., keeps jurisdiction of the defendant’s charge until a charging instrument (indictment, information, or complaint) is filed in a court with jurisdiction. Once the charging instrument has been filed in the cause, the magistrate has no further jurisdiction or responsibility.</p> <p><input type="checkbox"/> 1. When the State is not ready and the defendant is unable to post the bail previously set, the defendant must be released on personal bond, or reasonable bail that the defendant can make must be set, if the defendant is charged with:</p> <p><input type="checkbox"/> a. Any grade of felony and he or she has been incarcerated for 90 days;</p> <p><input type="checkbox"/> b. A misdemeanor punishable by 180 days in jail or more and he or she has been incarcerated for 30 days;</p> <p><input type="checkbox"/> c. A misdemeanor punishable by 180 days in jail or less and he or she has been incarcerated for 15 days; or</p> <p><input type="checkbox"/> d. A misdemeanor punishable by fine only and he or she has been incarcerated for five days.</p> <p>AND</p> <p>The defendant is not otherwise:</p> <p><input type="checkbox"/> e. Serving a sentence of confinement for another offense;</p> <p><input type="checkbox"/> f. Being detained pending trial of another case and time has not yet lapsed on that case;</p> <p><input type="checkbox"/> g. Incompetent to stand trial, during a period of incompetence; or</p>	<p><i>Guerra v. Garza</i>, 987 S.W.2d 593 (Tex. Crim. App. 1999).</p> <p>Art. 17.151, C.C.P.;  <i>Jones v. State</i>, 803 S.W.2d 712 (Tex. Crim. App. 1991).</p>

- h. Being detained for a violation of the conditions of a previous release related to the safety of a victim of the alleged offense or to the safety of the community.
- 2. When defendant is indigent, either reduce bail to an amount the defendant can post or release the defendant on personal bond.



☐ 3. Sureties, generally:

- ☐ a. If only one surety, must be worth at least double the amount of bail set less exempted, encumbered, or indebted property.
- ☐ b. Must be a resident of this state.
- ☐ c. A corporate surety must have a power of attorney designating an authorized agent on file.
- ☐ d. A minor may not be a surety.
- ☐ e. A person who has signed as a surety on a bond and is in default is disqualified to sign as a surety as long as he or she is in default.

Art. 17.13, C.C.P.

Arts. 17.07, C.C.P.

Art. 17.10, C.C.P.

Art. 17.11, Sec. 2, C.C.P.

A surety is in default from the time execution may be issued on the final judgment in a bond forfeiture proceeding unless the final judgment is superseded by the posting of a supersedeas bond (a bond required of someone who petitions to set aside a judgment or execution).

If surety is a corporation, see Section 1704.212(c), O.C.

A corporation may not act as a bail bond surety in a county in which the corporation is in default on five or more bonds.



<ul style="list-style-type: none"> <li><input type="checkbox"/> b. Aggravated kidnapping;</li> <li><input type="checkbox"/> c. Aggravated sexual assault;</li> <li><input type="checkbox"/> d. Deadly assault on law enforcement officer, corrections officer, parole board member or employee, or court participant;</li> <li><input type="checkbox"/> e. Injury to a child, elderly individual, or disabled individual;</li> <li><input type="checkbox"/> f. Aggravated robbery;</li> <li><input type="checkbox"/> g. Burglary;</li> <li><input type="checkbox"/> h. Organized criminal activity;</li> <li><input type="checkbox"/> i. Continuous Sexual Abuse of Young Child or Children;</li> <li><input type="checkbox"/> j. Continuous Trafficking of Persons;</li> <li><input type="checkbox"/> k. Any aggravated felony under Chapter 481 or Section 485.033, H.S.C.; or</li> <li><input type="checkbox"/> l. Failure to submit to testing as required by the court or a magistrate or whose test results for alcohol or drugs are positive.</li> </ul>	
<ul style="list-style-type: none"> <li><input type="checkbox"/> 3. Order drug or alcohol testing, education, and treatment if you, or the investigating or arresting law enforcement officer, reasonably believe: <ul style="list-style-type: none"> <li><input type="checkbox"/> a. That drug or alcohol abuse was related to the offense; or</li> <li><input type="checkbox"/> b. Drugs or alcohol are presently in the body of the defendant; and</li> <li><input type="checkbox"/> c. The condition will serve to reasonably assure the appearance of the defendant in court.</li> </ul> </li> </ul>	<p>Art. 17.03(c), C.C.P.</p>
<ul style="list-style-type: none"> <li><input type="checkbox"/> 4. Costs of testing may be assessed as a condition of bond or as court costs.</li> </ul>	<p>Art. 17.03(e), C.C.P.</p>
<ul style="list-style-type: none"> <li><input type="checkbox"/> 5. Order the personal bond fee: <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Paid before the defendant is released;</li> <li><input type="checkbox"/> b. Paid as a condition of bond;</li> </ul> </li> </ul>	<p>Art. 17.03(g), C.C.P.  Art. 17.42, C.C.P.  Bond fees can be assessed only if a court releases a defendant on a personal bond at the recommendation of a personal</p>



- e. Appropriate community based mental health services are available for the defendant under Section 534.053, H.S.C., or through another mental health services provider.
- 7. Consider ordering as a condition of bond that the defendant submit to outpatient or inpatient mental health treatment if the defendant's:
  - a. Mental illness is chronic in nature; or
  - b. Ability to function independently will continue to deteriorate if the defendant is not treated.
- 8. Consider imposing any other conditions reasonably necessary to protect the community. Arts. 17.032(d), 17.40, and 56.02(a)(2), C.C.P.
- 9. If the county from which the warrant of arrest was issued has a personal bond office, a copy of the bond must be forwarded to the personal bond office in that county. Art. 17.031(b), C.C.P.

**CHAPTER 1 MAGISTRATE DUTIES**

**General Provisions Applicable to Adults**

**6. Conditions of Bond**

Checklist 1-6	Script/Notes
<p><input type="checkbox"/> 1. Magistrates have the general discretion to impose any of the following as conditions of release for any offense:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Any reasonable condition related to the safety of the victim of the alleged offense or the safety of the community.</li> <li><input type="checkbox"/> b. Home curfew and electronic monitoring.</li> <li><input type="checkbox"/> c. Weekly drug testing for controlled substances.</li> <li><input type="checkbox"/> d. Providing to a local law enforcement agency one or more specimens for the purpose of creating a DNA record under Subchapter G, Chapter 411, G.C.</li> </ul> <p><input type="checkbox"/> 2. Magistrates have the discretion to impose any of the following as conditions of release for the following specific offenses:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> a. An offense involving family violence:                             <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) Refrain from going to or near a residence, school, place of employment, or other location as specifically described in the bond, frequented by an alleged victim of the offense;</li> <li><input type="checkbox"/> (2) Carry or wear a global positioning system (GPS) device and pay the costs associated with the device; or</li> <li><input type="checkbox"/> (3) Pay the costs associated with providing the victim a receptor that can receive information from the GPS device won by the defendant and that notifies the victim if the defendant is at or near a prohibited location.</li> </ul> </li> </ul>	<p>Art. 17.40, C.C.P.</p> <p>Arts. 17.43 and 17.44(a)(1), C.C.P.</p> <p>Art. 17.44(a)(2), C.C.P.</p> <p>Art. 17.47(a), C.C.P.</p> <p>Art. 17.49, C.C.P.</p> <p>Before imposing this condition, a magistrate must give the victim an opportunity to provide a list of areas from which the victim would like the defendant excluded. Art. 17.49(c), C.C.P.</p> <p>Before imposing this condition, a magistrate must provide the victim information regarding the GPS system, the victim’s rights to participate or refuse to participate, procedures for assistance, etc. Art 17.49(d), C.C.P.</p> <p>If the magistrate determines that a</p>

- b. Prostitution:
  - (1) Attend AIDS/HIV education;
  - (2) Attend AIDS/HIV counseling.
- c. Stalking:
  - (1) No direct or indirect communication with the alleged victim;
  - (2) Prohibited from going near a residence, place of employment, or business of the victim or to go near a school, day-care facility, or similar facility where a dependent child of the victim is in attendance.
- 3. Magistrates are required to impose specific conditions of release for the following specific offenses:
  - a. If the charge is a subsequent “Driving, Flying or Boating While Intoxicated,” “Intoxication Assault” or “Intoxication Manslaughter,” the magistrate shall require on release that a defendant:
    - (1) Have installed on the motor vehicle owned or most regularly operated by the defendant a vehicle ignition interlock device;
    - (2) Not operate any motor vehicle unless the vehicle is equipped with that device;
    - (3) Have the device installed on appropriate motor vehicle within 30 days of release on bond; and
    - (4) Pay the expense of installation.

defendant is indigent, the magistrate may require the defendant to pay costs based on a sliding scale established by local rule in an amount less than the full amount associated with operating the GPS system. Art. 17.49(h) and (i), C.C.P.

Art. 17.45, C.C.P.

Art. 17.46, C.C.P.

Note: The magistrate must specifically describe the prohibited locations and the minimum distances, if any, that the defendant must maintain from the locations.

Art. 17.441, C.C.P.

See *TMCEC Forms Book: Bail with Ignition Interlock Condition*.

You may designate an appropriate agency to verify the installation of the device and to monitor the device.

Magistrates may not require the installation of the device if to do so would not be in the best interest of justice.

- b. Sexual offenses, assaultive offenses, prohibited sexual conduct, or “Sexual Performance by a Child,” if committed against a child younger than 14:
  - (1) No direct communication with the alleged victim;
  - (2) Prohibited from going near a residence, school, or other location as specifically described in the bond, frequented by the alleged victim.
- c. If the charge is “Aggravated Kidnapping with Intent to Inflict Injury or Sexual Abuse,” “Indecency with a Child,” “Sexual Assault,” “Aggravated Sexual Assault,” “Prohibited Sexual Conduct,” “Burglary of a Habitation with/or without Intent to Commit a Felony (excluding felony theft),” “Compelling Prostitution,” “Sexual Performance by a Child,” or “Possession or Promotion of Child Pornography,” the defendant shall provide to a local law enforcement agency one or more specimens for the purpose of creating a DNA record under Subchapter G, Chapter 411, G.C.

Art. 17.41, C.C.P.

Note: To the extent that this condition conflicts with an existing court order granting possession or access to a child, this order prevails for a period specified by the magistrate, not to exceed 90 days.

Art. 17.47(b), C.C.P.

**CHAPTER 1 MAGISTRATE DUTIES**

**General Provisions Applicable to Adults**

**7. When Bail May Be Raised, Changed, or Forfeited**

Checklist 1-7	Script/Notes
<p><input type="checkbox"/> 1. Bail may be changed if:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> a. The initial bail bond is defective;</li> <li><input type="checkbox"/> b. The initial bail bond is excessive;</li> <li><input type="checkbox"/> c. The initial bail bond is insufficient;</li> <li><input type="checkbox"/> d. The sureties, if any, are not acceptable;</li> <li><input type="checkbox"/> e. The initial bail was set prior to indictment and indictment is returned; or</li> <li><input type="checkbox"/> f. The initial bail bond was conditioned upon treatment under Article 17.40, C.C.P., and that condition is violated.</li> </ul>	<p>Art. 17.09, Sec. 3, C.C.P.</p> <p>In order to change bonds properly set by a magistrate, another judge must have jurisdiction of the case. Jurisdiction vests upon the filing of a charging instrument in the proper trial court. <i>Guerra v. Garza</i>, 987 S.W.2d 593 (Tex. Crim. App. 1999).</p> <p><i>Ex parte King</i>, 613 S.W.2d 503 (Tex. Crim. App. 1981).</p> <p>Art. 11.56, C.C.P.</p> <p>Art. 22.021, C.C.P.</p>
<p><input type="checkbox"/> 2. Bail may not be raised or forfeited:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Without cause;</li> <li><input type="checkbox"/> b. If the defendant fails to hire counsel as ordered by the court; or</li> <li><input type="checkbox"/> c. If defendant is only slightly late, with no prior forfeiture history.</li> </ul>	<p>Art. 17.09, Sec. 3, C.C.P.</p> <p>Three to five minutes late is not enough. Art. 22.02, C.C.P.; <i>Meador v. State</i>, 780 S.W.2d 836 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1989, no pet.).</p>
<p><input type="checkbox"/> 3. In certain instances, magistrates are required to provide reasonable notice of a proposed bail reduction and an opportunity for a hearing to the attorney representing the state or the defendant's counsel.</p>	<p>Art. 17.091, C.C.P.</p> <p>Note: This requirement only applies to offenses listed in Section 3g, Article 42.12, C.C.P., or an offense described by Article 62.01(5), C.C.P., (defining “reportable conviction or adjudication.”) Offenses include: murder, capital murder, aggravated sexual assault, aggravated robbery, continuous sexual assault of a young</p>

| child, and trafficking of persons.

**CHAPTER 1 MAGISTRATE DUTIES**

**General Provisions Applicable to Adults**

**8. Magistrate’s Order for Emergency Protection (MOEP), Article 17.292, C.C.P.**

After an arrest involving family violence, stalking, sexual assault, or aggravated sexual assault, a magistrate may enter a magistrate’s order of emergency protection for either: (1) a period of not less than 31 days or more than 61 days; or (2) a period of not less than 61 days or more than 91 days if the alleged offense involves the use or exhibition of a deadly weapon. The order may be entered upon the magistrate’s own motion or upon request by the victim, the guardian of the victim, a peace officer, or by the attorney representing the State. If an order is issued, it must be issued at the time the accused appears before the magistrate.

The order may prohibit the arrested person from:

1. committing further violence or threats;
2. communicating directly with the victim or a family member of the victim in a threatening manner;
3. communicating a threat through any person to a family member;
4. going to or near the residence, place of employment, or business of a family or household member; and
5. going to or near a child care facility or school where a child protected under the order resides or attends.

It should also prohibit the defendant from possessing a firearm.

The prohibited locations and distances must be particularly described. If the magistrate’s order for emergency protection conflicts with other existing orders, the magistrate’s order for emergency protection shall prevail for the duration of the period imposed, except under limited circumstances.

The magistrate must also suspend the defendant’s license to carry a concealed handgun issued under Section 411.177 of the Government Code.

Checklist 1-8	Script/Notes
<p><input type="checkbox"/> 1. Determine if any of the following persons are present, and whether there is a motion by any of the following for a MOEP:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> a. A peace officer involved in the arrest;</li> <li><input type="checkbox"/> b. The attorney representing the State of Texas;</li> <li><input type="checkbox"/> c. The victim; or</li> <li><input type="checkbox"/> d. The guardian of the victim.</li> </ul> <p><input type="checkbox"/> 2. If none of the above is present, consider requesting the presence of one or more of the above, or granting an order on the magistrate’s motion.</p>	<p>See <i>TMCEC Forms Book</i>: Magistrate’s Order for Emergency Protection.</p>

- 3. Determine if the case involves “family violence,” “stalking,” “sexual assault,” or “aggravated sexual assault.”

Family violence could be:

- a. An act or threat of violence by one member of a family or household against another member of a family or household;
- b. Abuse of a child of the family or household by a member of the family or household; or
- c. Dating violence, where victim and defendant have a dating relationship (more than a casual acquaintanceship or ordinary fraternization).

- 4. Based upon the information provided supporting the arrest of the defendant, consider whether a protection order is necessary.

- a. At a defendant’s appearance before a magistrate after an arrest for a family violence offense, a magistrate **shall** issue an order for emergency protection for offenses involving:
  - (1) Serious bodily injury to the victim; or
  - (2) The use or exhibition of a deadly weapon during the commission of an assault.

- 5. Identify the:

- a. Victim;
- b. Members of the victim’s family or household; and
- c. Children.

- 6. Identify the:

- a. Residence;
- b. Place of employment or business; and
- c. School or child care facility where a child to be protected by the order is in attendance or is enrolled.

Art. 17.292(a), C.C.P.  
Stalking is found in Section 42.072, P.C.

Sec. 71.004, F.C.

Sec. 71.0021, F.C.

Art. 17.292(b), C.C.P.

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|---|---|
| <p><input type="checkbox"/> 7. Determine the minimum distances the defendant must maintain from each location.</p>  | <p>Art. 17.292(e), C.C.P.</p>   |
| <p><input type="checkbox"/> 8. Determine whether the children, if any, should be protected by the order.</p>  |   |
| <p><input type="checkbox"/> 9. Determine if the location is within:</p> <p style="margin-left: 20px;"><input type="checkbox"/> a. A municipality; or</p> <p style="margin-left: 20px;"><input type="checkbox"/> b. The unincorporated part of the county.</p>   |   |
| <p><input type="checkbox"/> 10. Determine whether a family lawsuit involving the parties is pending.</p>  | <p>Art. 17.292(f), (f-1) and (f-2), C.C.P.</p>  |
| <p><input type="checkbox"/> 11. The MOEP controls over other court orders with conflicting conditions, including child custody orders, while the MOEP is pending, unless:</p> <p style="margin-left: 20px;"><input type="checkbox"/> a. The order is a protective order issued by a family court after a hearing; or</p> <p style="margin-left: 20px;"><input type="checkbox"/> b. The order is an ex parte order of the family court that was aware of the MOEP and specifically dictates that the new order controls.</p> | <p>Art. 17.292(f), C.C.P.</p> <p>Art. 17.292(f-1), C.C.P.</p> <p>Art. 17.292(f-2), C.C.P.</p>   |
| <p><input type="checkbox"/> 12. Determine if possession of firearms should be prohibited. Magistrates should note if the defendant is a peace officer.</p>  | <p>Sec. 46.04, P.C.</p>   |
| <p><input type="checkbox"/> 13. Determine if the defendant has a concealed handgun license.</p> <p style="margin-left: 20px;"><input type="checkbox"/> a. You are required to suspend the handgun license.</p> <p style="margin-left: 20px;"><input type="checkbox"/> b. Upon suspension of the license, you or the clerk must immediately send a copy of the order to DPS.</p>   | <p>Arts. 17.292(l) and 17.293, C.C.P.</p> <p>Attention: Suspension/<br/>Revocation, Texas Department of<br/>Public Safety, Concealed Handgun<br/>Licensing, Section #0235, Austin,<br/>Texas 78765-4143<br/>512.424.2000, ext. 3.</p> |
| <p><input type="checkbox"/> 14. Determine if a condition should be imposed as described by Article 17.49(b), C.C.P., including ordering a defendant’s participation in a GPS monitoring system or allowing participation in the system by an alleged victim or other person.</p>  | <p>Art. 17.292, C.C.P.</p>  |
| <p><input type="checkbox"/> 15. Identify the defendant on the order by date of birth.</p>   |   |

- 16. Enter these findings in the protection order.
- 17. Explain the contents and meaning of the order to the defendant.
- 18. Sign the order.
  - a. The order must contain the following statements printed in bold-faced type or in capital letters:

**A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE OR A STALKING OFFENSE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS. THE POSSESSION OF A FIREARM BY A PERSON, OTHER THAN A PEACE OFFICER AS DEFINED BY SECTION 1.07, PENAL CODE ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME, PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO THIS ORDER MAY BE PROSECUTED AS A SEPARATE OFFENSE PUNISHABLE BY CONFINEMENT OR IMPRISONMENT.**

**NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER.**

- 19. Ensure that a copy of the order is served on the defendant and that he or she signs the acknowledgment.
- 20. File the original order and acknowledgment with your court clerk.

Art. 17.292, C.C.P.  
See Checklist 1-6.

- 21. Instruct the court clerk to transmit copies of the order to the Chief of Police, where the member of the family or household or individual protected by the order resides, and a copy to the victim.
- 22. If the victim is not present at the time the order is issued, order an appropriate peace officer to make a good faith effort to notify the victim within 24 hours by calling the victim's residence and place of employment.
- 23. The MOEP lasts no less than 31 days or more than 61 days unless the alleged offense involves the exhibition of a deadly weapon. Then the period shall last no less than 61 days or more than 91 days.
- 24. A MOEP may be transferred to the court with jurisdiction of the underlying criminal case:
  - a. On motion, notice, and hearing (serve all parties, including the State); or
  - b. On agreement of all parties.
- 25. The magistrate or the court to which a MOEP was transferred under Step 24 may modify all or part of the MOEP if:
  - a. Notice is made to each affected party of a hearing; and
  - b. The magistrate finds that:
    - (1) The order as originally issued is unworkable;
    - (2) The modification will not place the victim at greater risk than the original order; or
    - (3) The modification will not in any way endanger a person protected under the order.

Art. 17.292(h), C.C.P.  
See *TMCEC Forms Book*: Clerk's Letter: Copy of Magistrate's Order of Emergency Protection.

Art. 17.292(n), C.C.P.

Art. 17.292(j) and (n), C.C.P.  
See *TMCEC Forms Book*: Motion to Modify Magistrate's Order of Emergency Protection.

Art. 17.292(j), C.C.P.

See *TMCEC Forms Book*: Order Modifying Magistrate's Order of Emergency Protection.

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**9. Appointment of Counsel – When the Right Attaches**

<b>Checklist 1-9</b>	<b>Script/Notes</b>
<p><input type="checkbox"/> 1. The right to counsel “attaches” at magistration.</p> <p><input type="checkbox"/> 2. Article 26.04, C.C.P., controls appointment of counsel and requires the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county to adopt and publish written countywide procedures for appointment of counsel.</p> <p><input type="checkbox"/> 3. Those judges acting as a body may designate someone to make the actual appointment under the guidelines and procedures they adopt. That could be a municipal judge.</p> <p><input type="checkbox"/> 4. The procedures adopted by the body of judges must include procedures, financial standards, and forms to determine indigence, and whether counsel should be appointed.</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. Standards can include all of the defendant’s financial information including spousal income available to the defendant.</p> <p style="padding-left: 20px;"><input type="checkbox"/> b. The designee appointing counsel cannot consider whether the defendant posted bail.</p> <p><input type="checkbox"/> 5. If a municipal judge is made the designee of the district or county judges to appoint counsel, the municipal judge should review the local plan concerning the responsibility to notify counsel of assignment and the information that is required to be provided to the accused.</p>	<p><i>Rothgery v. Gillespie County</i>, 554 U.S. 191 (2008).</p> <p>See Checklist 1-1.</p> <p>It is rare that the municipal judge acting as a magistrate will be required to appoint counsel; this duty is normally the prerogative of the local administrative statutory county court judge and local administrative court judge.</p> <p>Consult your county’s indigent defense plan. A copy of your jurisdiction’s local indigent defense plan and guidelines is available online at: <a href="http://tfid.tamu.edu/Public/">http://tfid.tamu.edu/Public/</a></p>

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**10. Examining Trial**

Checklist 1-10	Script/Notes
<input type="checkbox"/> 1. The defendant in any felony case is entitled to an examining trial prior to indictment to determine the truth of the accusation against the defendant or to review bail.	Art. 16.01, C.C.P.
<input type="checkbox"/> a. An examining trial may also be held upon the filing of an affidavit or sworn motion alleging that:	Art. 16.16, C.C.P.
<input type="checkbox"/> (1) The amount of bail is insufficient;	
<input type="checkbox"/> (2) The sureties are not worth twice the amount of the bail; or	
<input type="checkbox"/> (3) The bail bond is defective.	
<input type="checkbox"/> 2. The right to an examining trial in a felony terminates upon the return of an indictment.	
<input type="checkbox"/> 3. There is no right to an examining trial in a misdemeanor.	
<input type="checkbox"/> 4. The defendant may be either in custody or free on bail.	
<input type="checkbox"/> 5. The defendant must be allowed sufficient time prior to any hearing to obtain counsel.	Art. 16.01, C.C.P.
<input type="checkbox"/> 6. Appointment of counsel must be made pursuant to the procedures adopted by the local criminal courts. The magistrate should provide appropriate assistance to the defendant to obtain counsel through that system.	Arts. 1.051 and 16.01, C.C.P. See Checklist 1-9.
<input type="checkbox"/> 7. The Texas Rules of Evidence apply to the examining trial.	Art. 16.07, C.C.P.
<input type="checkbox"/> 8. The defendant must be present at the examining trial. The State must be represented by the district attorney.	Art. 16.08, C.C.P.
<input type="checkbox"/> 9. The court may issue a subpoena, or an attachment without having first issued a subpoena, for any witness within the county.	Art. 16.10, C.C.P.

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| <p><input type="checkbox"/> 10. An attachment for an out-of-county witness may be issued when:</p> <p style="margin-left: 40px;"><input type="checkbox"/> a. The party applying for the attachment makes affidavit that the testimony is material; and</p> <p style="margin-left: 40px;"><input type="checkbox"/> b. The affidavit sets forth the facts expected to be proven by the witness;</p> <p style="margin-left: 40px;"><input type="checkbox"/> c. Unless the court finds the facts are not material, or the facts are admitted by the adverse party after a hearing before the court.</p> | <p>Art. 16.11, C.C.P.</p>                           |
| <p><input type="checkbox"/> 11. The proceeding must be transcribed by a court reporter; or a statement of facts, agreed to by the State and defense and approved by the presiding magistrate, may be used to preserve the testimony of the witnesses. The State or a defendant may preserve testimony for use in an examining trial by the taking of a deposition.</p>  | <p>Art. 16.09, C.C.P.</p> <p>Art. 39.01, C.C.P.</p> |
| <p><input type="checkbox"/> 12. Before beginning the hearing, inform the defendant:</p> <p style="margin-left: 40px;"><input type="checkbox"/> a. Of the right to make a statement relative to the accusation in the complaint;</p> <p style="margin-left: 40px;"><input type="checkbox"/> b. That he or she may not be compelled to make any statement; and</p> <p style="margin-left: 40px;"><input type="checkbox"/> c. That if he or she does make a statement, it may be used in evidence against him or her.</p>  | <p>Art. 16.03, C.C.P.</p>                           |
| <p><input type="checkbox"/> 13. If the defendant desires to make a statement he or she may only do so prior to the examination of any witnesses.</p> <p style="margin-left: 40px;"><input type="checkbox"/> a. The statement must be reduced to writing, and</p> <p style="margin-left: 40px;"><input type="checkbox"/> b. Signed, but not sworn to, by the defendant.</p>  |   |
| <p><input type="checkbox"/> 14. The magistrate shall then attest by his or her own certificate and signature to the execution and signing of the statement.</p>   | <p>Art. 16.04, C.C.P.</p>                           |
| <p><input type="checkbox"/> 15. Allow the prosecutor to question the State’s witnesses and the defense counsel to cross-examine them.</p>   | <p>Art. 16.06, C.C.P.</p>                           |
| <p><input type="checkbox"/> 16. The court may question the witnesses if no prosecutor appears.</p>  | <p>Art. 16.06, C.C.P.</p>                           |
| <p><input type="checkbox"/> 17. The proceeding may not be continued unless:</p>   | <p>Art. 16.14, C.C.P.</p>                           |

- a. Either the defendant or the prosecutor signs a sworn statement setting forth the following:
    - (1) The name, address, and facts that either expect to prove with the testimony of the witness; or
    - (2) The nature of the evidence.
  - b. The court is satisfied that the testimony or evidence is material, and the adverse party denies the truth.
18. At the conclusion of the proceeding, enter an order: Art. 16.17, C.C.P.
- a. Committing the defendant to jail;
  - b. Discharging the defendant; or
  - c. Admitting the defendant to bail.
19. Failure to enter an order within 48 hours after the proceeding has been completed operates as a finding of no probable cause and the defendant is discharged. Art. 16.17, C.C.P.

**CHAPTER 1 MAGISTRATE DUTIES**

**General Provisions Applicable to Adults**

**11. Mental Impairments. Examination of Defendant in Custody Suspected of Having Mental Illness or Mental Retardation**

Checklist 1-11	Script/Notes
<p><b>Definitions:</b></p> <p>“Mental illness” means an illness, disease, or condition, other than epilepsy, senility, alcoholism, or mental deficiency that: (a) substantially impairs a person’s thoughts, perceptions of reality, emotional process, or judgment; or (b) grossly impairs behavior as demonstrated by recent disturbed behavior.</p> <p>“Mental retardation” means intellectual disability.</p> <p>“Intellectual disability” means significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.</p> <p>“Subaverage general intellectual functioning” refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age-group mean for the tests used.</p> <p>“Department” means the Texas Department of Mental Health and Mental Retardation.</p> <p>“Person with mental retardation” means a person with intellectual disability.</p> <p>“Person with intellectual disability” means a person determined by a physician or psychologist licensed in this state or certified by the department to have subaverage general intellectual functioning with deficits in adaptive behavior.</p> <p>“Adaptive behavior” means how effectively individuals cope with common life demands and how well they meet the standards of personal independence expected of someone in their particular age group, sociocultural background, and community setting.</p> <p><input type="checkbox"/> 1. The sheriff has a duty to notify the judge that there may be reasonable cause to believe that a defendant committed to the sheriff’s custody has a mental illness or is a person with mental retardation.</p>	<p>Sec. 571.003(14), H.S.C.</p> <p>Sec. 591.003(13), H.S.C.</p> <p>Sec. 591.003(7-a), H.S.C.</p> <p>Sec. 591.003(20), H.S.C.</p> <p>Sec. 591.003(7), H.S.C.</p> <p>Sec. 591.003(16), H.S.C.</p> <p>Sec. 591.003(15-a), H.S.C.</p> <p>Sec. 591.003(1), H.S.C.</p> <p>See <i>TMCEC Forms Book</i>: Sheriff’s Notification – Sheriff’s Notification – Person in Custody with Possible Mental Illness/Mental Retardation.</p>

- 2. Determine if there is reasonable cause to believe (1) defendant has a mental illness, or (2) is a person with mental retardation, by considering:
  - a. The defendant’s behavior; and
  - b. The result of a prior evaluation indicating a need for referral for further mental health or mental retardation assessment.
  
- 3. Is there reasonable cause?
  - a. If the judge determines that there is no reasonable cause, no further action is required.
  - b. If reasonable cause is determined, issue a written order that the defendant be examined.
  
- 4. The expert designated by the judge must return a written report within 30 days of the order.
  - a. The judge is required to give copies of the report to the prosecutor and the defense attorney.
  
- 5. What if the defendant fails or refuses to submit to an examination?
  - a. The judge may order the defendant to custody

Sheriff shall notify a magistrate within 72 hours after receiving evidence or a statement that may establish reasonable cause. Art. 16.22(a), C.C.P.

While the statute does not indicate how a magistrate is notified, requiring written notification is strongly advised.

See Checklist 1-5.

See *TMCEC Forms Book*: Magistrate’s Order for Mental Illness/Mental Retardation Exam.

The examination must be conducted by a disinterested expert determined appropriate by the local mental health or mental retardation authority and experienced and qualified in mental health or mental retardation. Art. 16.22(a), C.C.P.

Art. 16.22(b), C.C.P.

See *TMCEC Forms Book*: Order

for examination for a period not to exceed 21 days; but

- b. The judge may not order a defendant to a facility operated by the Texas Department of Mental Health and Mental Retardation without the consent of the head of that facility.

into Custody for Mental Illness/Mental Retardation Exam; Warrant for Mental Health/Mental Retardation Exam – Person Failing to Submit Voluntarily.

It is advisable to work within your community to establish procedures for in-detention examinations. If the defendant has been released from custody, the judge will need to know to which facility to commit the individual.

**CHAPTER 1 MAGISTRATE DUTIES**

**Property Hearings: Disposition of Stolen Property**

**12. Restoration when No Trial Pending**

Chapter 47, C.C.P., governs the disposition of stolen property. Except in instances where a peace officer comes into property governed by the Texas Pawnshop Act (Chapter 371 of the Finance Code), an officer who comes into custody of property alleged to have been stolen must hold it if the property ownership is contested or disputed. Art. 47.01(a), C.C.P. If an officer comes into custody of property governed by the Texas Pawnshop Act, the property must be held regardless of whether the ownership of the property is contested or disputed. Art. 47.01(b), C.C.P. When an officer seizes property allegedly stolen, the officer is required to immediately file a schedule with the court having jurisdiction of the case describing the property seized and its estimated value Art. 47.03, C.C.P. The schedule must certify both that the officer seized the property and the reason for the seizure. Furthermore, the officer is required to notify the court of the names and addresses of each party known to the officer who has a claim to possession of the seized property. The following checklists contemplate property hearings being conducted under one of two scenarios: (1) restoration when no trial is pending, or (2) restoration upon trial or trial pending.

Checklist 1-12	Script/Notes
<p><input type="checkbox"/> 1. Jurisdiction and Venue: Jurisdiction under this section is based solely on jurisdiction as a criminal magistrate and not as a court with civil jurisdiction. Jurisdiction and venue to hear a seizure case lies with any:</p> <p><input type="checkbox"/> a. District judge, county judge, or justice of the peace in the county where the property is held; or</p> <p><input type="checkbox"/> b. Municipal judge in the municipality where the property is being held.</p>	<p>Art. 47.01a, C.C.P.</p> <p>This is one of the few instances remaining in contemporary Texas criminal procedure where the authority of the municipal judge as a magistrate is limited to the boundaries of the municipality.</p>
<p><input type="checkbox"/> 2. Change of Venue: A court may transfer venue to a court in another county on the motion of an interested party.</p>	<p>Art. 47.01a(d), C.C.P.</p>
<p><input type="checkbox"/> 3. Petition for Hearing Filed: If a criminal action involving the property in question is not pending, then any of the courts having jurisdiction may hold a hearing to determine the right to possession of the property, upon the petition of any interested party, including a county, a city, or the state.</p>	<p>Art. 47.01a(a), C.C.P.                      Note: A peace officer is an “interested party” since the evidence may establish that the State has a superior right to possession. A hearing may be held on the petition of a seizing officer.</p>
<p><input type="checkbox"/> 4. Notice Provided.</p>	<p>See <i>TMCEC Forms Book</i>: Notice of Stolen Property Hearing.</p>

- 5. Conduct the Hearing.
- 6. Post-Hearing Orders: After a hearing and appropriate findings, the court may enter the following orders:
  - a. Order the property delivered to whoever has the superior right to possession:
    - (1) Without conditions;
    - (2) Subject to the condition that the property be made available to the State if needed in future prosecutions.
  - b. Order the property be awarded to the custody of a peace officer, pending resolution of the investigation involving the property.
  - c. If it is shown in a hearing that probable cause exists to believe that the property was acquired by theft or by another manner that makes its acquisition an offense and that the identity of the actual owner of the property cannot be determined, the magistrate shall order the peace officer to:

The Code of Criminal Procedure is silent as to the obligation of the Court to provide notice to interested parties. Nevertheless, due to the property interest at stake, due process interests, and a judge's ethical adjudicative responsibilities (Canon 3B(8) *Code of Judicial Conduct*), interested parties should be given notice of the date and time of the hearing.

See Checklist 1-14.

See *TMCEC Forms Book: Magistrate Duties: Order Awarding Possession of Stolen Property.*

Art. 47.01a(a)(1), C.C.P.  
Presumably, this is construed to mean that claimants are exempt from paying charges pursuant to Article 47.07, C.C.P.

Art. 47.01a(a)(2), C.C.P.  
This requires a written motion by an attorney representing the State. Furthermore, it contemplates that a trial is pending and that the motion is made before the trial is to begin.

Art. 47.01a(a)(3), C.C.P.

Art. 47.01a(b), C.C.P.

<ul style="list-style-type: none"> <li><input type="checkbox"/> (1) Deliver the property to a government agency for official purposes;</li> <li><input type="checkbox"/> (2) Deliver the property to a person authorized by Article 18.17, C.C.P., to receive and dispose of the property; or</li> <li><input type="checkbox"/> (3) Destroy the property.</li> </ul>	<p>Art. 47.01a(b)(1), C.C.P.</p>
<ul style="list-style-type: none"> <li><input type="checkbox"/> (2) Deliver the property to a person authorized by Article 18.17, C.C.P., to receive and dispose of the property; or</li> </ul>	<p>Art. 47.01a(b)(2), C.C.P.</p>
<ul style="list-style-type: none"> <li><input type="checkbox"/> (3) Destroy the property.</li> </ul>	<p>Art. 47.01a(b)(3), C.C.P.</p>
<ul style="list-style-type: none"> <li><input type="checkbox"/> 7. Appeals: Appeal from a hearing held in a municipal court or justice court under Article 47.01(a), C.C.P., shall be heard by a county court or a statutory county court. Such appeals are governed by the rules of procedure for appeals for civil cases from justice court to county court.</li> </ul>	<p>Art. 47.12(b), C.C.P.</p>
<ul style="list-style-type: none"> <li><input type="checkbox"/> a. The requirement that the notice of appeal be given at the conclusion of the hearing does not require that the notice be given in open court. The hearing does not conclude until the court’s ruling is both announced and received.</li> </ul>	<p><i>Phillips v. State</i>, 77 S.W.3d 465 (Tex. App.—Houston [1st Dist.] 2002); <i>White v. State</i>, 930 S.W.2d 673 (Tex. App.—Waco 1996).</p>
<ul style="list-style-type: none"> <li><input type="checkbox"/> b. Only an “interested person” who appears at a hearing may appeal and must post an appeal bond by the end of the next business day.</li> </ul>	<p>Art. 47.12(c), C.C.P.</p>
<ul style="list-style-type: none"> <li><input type="checkbox"/> c. The court may require an appeal bond in the amount the court deems appropriate, but not more than twice the value of the property, made payable to the party awarded possession at the hearing, with sufficient sureties.</li> </ul>	<p>Art. 47.12(d), C.C.P.</p>

**CHAPTER 1 MAGISTRATE DUTIES**

**Property Hearings: Disposition of Stolen Property**

**13. Restoration upon Trial or Trial Pending**

Checklist 1-13	Notes
<p><input type="checkbox"/> 1. Jurisdiction: Article 47.02, C.C.P., contemplates jurisdiction being:</p> <p style="padding-left: 40px;"><input type="checkbox"/> a. In a trial court, post-adjudication of a theft or illegal acquisition of property case;</p> <p style="padding-left: 40px;"><input type="checkbox"/> b. In a trial court in which a theft or other illegal acquisition of property case is pending; or</p> <p style="padding-left: 40px;"><input type="checkbox"/> c. With any magistrate having jurisdiction in the county in which criminal action is pending subject to Chapter 501, T.C., (The Texas Certificate of Title Act) and the consent of the prosecuting attorney.</p>	
<p><input type="checkbox"/> 2. Conduct the Hearing.</p>	See Checklist 1-14.
<p><input type="checkbox"/> 3. Post Hearing Orders.</p>	See <i>TMCEC Forms Book</i> : Order Awarding Possession of Stolen Property.
<p><input type="checkbox"/> a. Upon Trial: The court trying the case shall order the property to be restored to a person appearing on presentation of proof to be the owner.</p> <p style="padding-left: 40px;">If the property is not claimed within 30 days of conviction of the person who illegally acquired it, the property shall be disposed of pursuant to Article 18.17, C.C.P.</p> <p style="padding-left: 40px;">The real owner of the property sold pursuant to Article 47.06 may recover such property under the terms prescribed in Article 18.17(e), C.C.P.</p>	<p>Art. 47.02, C.C.P.</p> <p>Art. 47.06, C.C.P.</p> <p>Art. 47.07, C.C.P.</p>
<p><input type="checkbox"/> b. Trial Pending: If it is proved to the satisfaction of the judge that the person is a true owner of the property alleged to be stolen and the property is in the possession of the peace officer, the peace officer by written order shall restore it to the owner.</p>	Art. 47.02, C.C.P.

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| <ul style="list-style-type: none"><li><input type="checkbox"/> c. When Doubt Remains: If the court has doubt as to the ownership of the property, the court may require:<ul style="list-style-type: none"><li><input type="checkbox"/> (1) A bond of the claimant for redelivery of the property should it be thereafter shown not to belong to the claimant; or</li><li><input type="checkbox"/> (2) That the sheriff retains the property until further orders are made regarding possession.</li></ul></li><br/><li><input type="checkbox"/> d. Claimant to Pay Charges: The claimant of the property must pay all reasonable charges for safekeeping prior to delivery of the property. The officer claiming that such charges are owed must verify such charges. If the charges are not paid, the property shall be sold as under execution and the proceeds of the sale, less the charges and cost of the sale, paid to the owner of the property.</li></ul> | <p>Art. 47.05, C.C.P.</p>   |
| <ul style="list-style-type: none"><li><input type="checkbox"/> 4. Appeals: No appeals from hearings under Article 47.02 are authorized.</li></ul>  | <p>Presumably, efforts to appeal would be dependent on the outcome of the appeal of the theft or property acquisition matter.</p> |

**CHAPTER 1 MAGISTRATE DUTIES**

**Property Hearings: Disposition of Stolen Property**

**14. Hearing**

Checklist 1-14	Script/Notes
<ul style="list-style-type: none"> <li><input type="checkbox"/> 1. The court shall:                             <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Order the property delivered to whomever has the superior right to possession; and</li> <li><input type="checkbox"/> b. Make such orders as the facts require.</li> </ul> </li> <li><input type="checkbox"/> 2. If none of the interested parties appear at the hearing after having been properly notified, the court may presume that:                             <ul style="list-style-type: none"> <li><input type="checkbox"/> a. The parties do not have a valid claim to possession;</li> <li><input type="checkbox"/> b. The parties have abandoned their claim to possession; or</li> <li><input type="checkbox"/> c. They do not wish to assert such claim.</li> </ul> </li> <li><input type="checkbox"/> 3. The court may award possession of the property to the law enforcement agency if no interested party has proved a right to possess the property.</li> <li><input type="checkbox"/> 4. If none of the interested parties appear at the hearing, except for the officer who has discovered another interested party since the scheduling of the hearing, the court should:                             <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Instruct the officer to file an amended inventory of property seized, and to include the name and mailing address of the newly-discovered interested party on the amended form;</li> <li><input type="checkbox"/> b. Reset the case; and</li> <li><input type="checkbox"/> c. Notify the interested parties of the hearing.</li> </ul> </li> <li><input type="checkbox"/> 5. When the true owner of a stolen motor vehicle is unknown and there are no lien holders to be found:                             <ul style="list-style-type: none"> <li><input type="checkbox"/> a. The officer should proceed to file a seizure case; and</li> </ul> </li> </ul>	<p>Art 47.01a(a)(1), C.C.P.</p>

- b. The court should notify the respondent (the person from whom the vehicle was seized, if any), of the right to appear at the hearing and assert a claim of possession.
- 6. Order of Proceedings: The hearing should be conducted in an orderly manner to ensure that parties are given an opportunity to be heard. This may be accomplished through a question and answer format facilitated by the judge.
- 7. Burden of Proof: In contrast to criminal cases in which the State’s case must be proven “beyond a reasonable doubt,” a respondent or petitioner must establish a claim to the property by a “preponderance of the evidence.”
  - a. If there are no other interested parties present who might rebut the respondent’s or petitioner’s evidence, the right to possession is established.
- 8. Rules of Evidence: In hearings conducted when no trial is pending, hearsay evidence is admissible.
- 9. Proceed to enter Post-Hearing Orders.

Though the Code of Criminal Procedure is silent as to this issue, Canon 3B8, *Code of Judicial Conduct*, would nonetheless apply.

“Preponderance of the evidence” means the greater weight and degree of credible evidence. *Upjohn Co. v. Freeman*, 847 S.W.2d 589 (Tex. App.—Dallas 1992, no writ).

At the hearing, any interested person may present evidence that the property was not acquired by theft or another offense or that the person is entitled to possess the property.

Art. 47.01a(c), C.C.P. Article 47.02, C.C.P., does not address the admissibility of hearsay statements upon trial or when trial is pending.

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