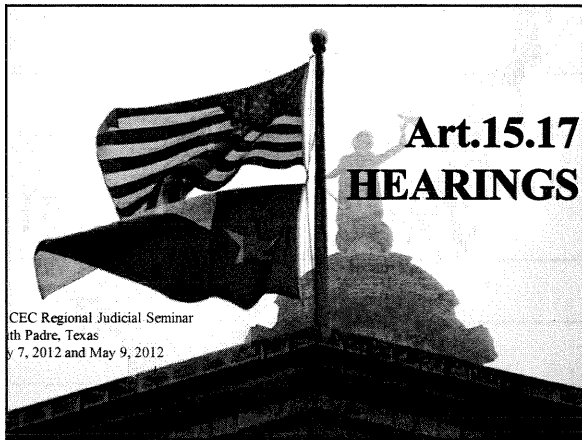




*When was the last time you read
Article 15.17, CCP?*

- 0% 1. Within the last 10 years
- 0% 2. Within the last year
- 0% 3. Yesterday in preparation for today's class
- 0% 4. After walking in for today's class
- 0% 5. None of the above

**Article 15.17
Statutory
Requirements**

BIG PICTURE THINKERS

1. Notice of charges
2. Advise of rights
3. Set bail
4. Insure opportunity for consultation with counsel

Art. 15.17 Duties of Arresting Officer

- ☐ For every arrest
- ☐ Person in custody of arrestee
- ☐ Shall without unnecessary delay & within 48 hours*
- ☐ Take arrestee before magistrate
- ☐ In person or by electronic broadcast system

Art. 15.17 Duties of Magistrate

“The magistrate shall inform in clear language the person arrested ...”

“... of the accusation against him and any affidavit filed therewith ...”

Magistrate shall inform of right to:

- retain counsel
- request appointment of counsel
- remain silent
- help of counsel during interview
- terminate interview
- examining trial (felony only)

Magistrate shall explain:

- ☐ No requirement to give a statement
- ☐ Any statement made may be used against him

Non-English speaking or deaf

Article 15.17(c)

“The magistrate shall inform the person in a manner consistent with articles 38.30 and 38.31”

**Interpreters for
Non-English speaking/Deaf**

**Interpreters qualified & sworn pursuant
to Tx CCP art. 38.31**

- Shall interpret required warnings
 - In a language the non-english
speaking/deaf accused can understand

Magistrate shall

- **Determine if arrestee
currently on bail**
- **Admit arrestee to bail *if
allowed by law***

Magistrate shall also ...

**“... allow the person arrested
reasonable time and
opportunity to consult
counsel ...”**

“The magistrate shall ensure that reasonable assistance in completing necessary forms for requesting appointment of counsel is provided to the person at the same time.”

Record of events

Requirements of the Art. 15.17 record

Subsection (a)

“A recording of the communication between the arrested person and the magistrate shall be made.”

requires a recording of the communication between the arrestee and the magistrate ...

Requirements of the Art. 15.17 record

Subsection (e)

"In each case in which a person arrested is taken before a magistrate as required by subsection (a), a record shall be made of: . . ."

[Fair Defense Act]

requires recording whether arrestee was informed, asked and requested court appointed counsel.

Subsection (f) - a record under (e) may be WRITTEN or ELECTRONIC and may require ADDITIONAL INFORMATION pursuant the local county indigent defense plan.

Magistrate may . . .

15.17(b)—Release accused without bond if:

- ☐ Arrestee charged with "fine only" misdemeanor
- ☐ Arrestee identified with "certainty"
- ☐ Arrestee ordered to appear in writing
 - Time, date & place
 - Signed by magistrate
 - Arrestee given copy of order

➤ but NOT applicable if arrestee previously convicted of an offense other than a "fine only" misdemeanor

Art. 15.17(d) - "fresh pursuit" arrest by out-of-state officers authorized to make felony arrests

• Unlawful arrest

Magistrate shall release arrestee

• Lawful arrest

Fugitive from justice pursuant to Tx CCP art. 51.13—Uniform Criminal Extradition Act

“Catch and Release Proceedings”

Article 15.17(g)

- For citations under Art. 14.06 (b) & (c) the magistrate shall perform duties in same manner as an arrest
- shall issue warrant if person does not appear as required on citation

Bill of Rights

4th –probable cause

5th –counsel (interrogation)

6th – counsel (court & post-magistration interrogation)

**4th Amendment
Probable Cause**

*What phrase below is not part of
Article 15.17?*

- 0% 1. right to retain counsel
- 0% 2. right to remain silent
- 0% 3. right to terminate interview
- 0% 4. determine probable cause
- 0% 5. opportunity to consult counsel

Gerstein v. Pugh 420 U.S. 103 (1975)

Must determine probable cause
within 72 hours

Riverside v. McLaughlin

500 U.S. 44 (1991)

Must determine probable cause
within 48 hours

**5th & 6th
Amendment
Interrogation &
Court Counsel**

Michigan v. Jackson

475 U.S. 625 (1986)

Montejo v. Louisiana

556 U.S. 778 (2009)

Pecina v. State

Tex. Crim. App. LEXIS 143 (Tex. Crim. App., Jan 25, 2012)

Facts of Pecina

The appellant asked for an appointed attorney during a hospital magistration but also said he wanted to talk to the police standing outside his hospital room. The trial judge denied appellant's motion to suppress his statements to police during custodial questioning at a hospital. The trial judge rejected appellant's claim that he had invoked both his 5th and 6th Amendment right to counsel. A Tarrant County jury convicted appellant of murder. On appeal, the court of appeals, held that appellant had invoked his 5th Amendment right to counsel for interrogation during the magistration process. The Court of Criminal Appeals reversed and found the defendant waived both his 5th and 6th Amendment right to counsel affirming the conviction.

**5th & 6th Amendment
right to counsel for
*interrogation***

* Triggered by *Miranda* warnings
given by police before custodial
interrogation

* Counsel must be requested
before/during the interrogation

Question:

Did the trial court properly deny Pecina's motion to suppress his statement made as a result of Police questioning?

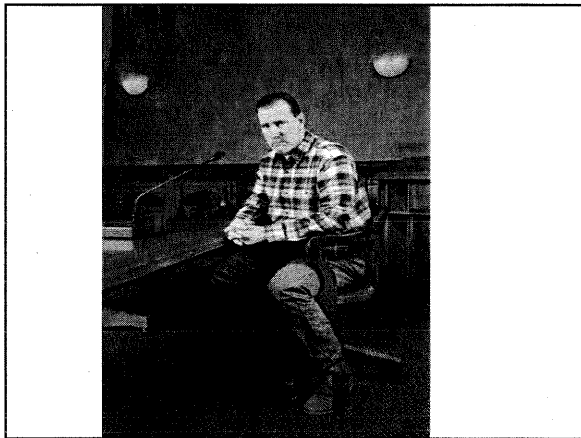
Answer: Yes

Why?

Request for counsel before *Miranda* rights given or actual interrogation is ineffective to invoke Constitutional protection under the 5th or 6th Amendments.

Custodial interrogation involves a person's:

- 0% 1. 5th Amendment right to counsel
- 0% 2. 6th Amendment right to counsel
- 0% 3. both
- 0% 4. none of the above
- 0%



Facts of Rothgery

- Rothgery arrested & released on bond
- Repeatedly requested court-appointed counsel but was ignored
- Subsequently indicted, rearrested, jailed, & unable to bond out he was appointed counsel who had erroneous charges dismissed
- Sued county claiming violation of right to counsel

U.S. Supreme Court holding:

“[A] criminal defendant’s initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel.”

Rothgery (128 S. Ct. at 2592)

Is an indictment required in order to commence adversary judicial proceedings and cause the right to counsel to attach?

0% 1. Yes

0% 2. No

6th Amendment
right to counsel for
court

* Triggered by Article 15.17
magistration or judicial arraignment

*An Article 15.17 hearing invokes a
person's:*

0% 1. 5th Amendment right to counsel

0% 2. 6th Amendment right to counsel

0% 3. both

0% 4. none of the above

0%

Why Do Defendants Need Lawyers After Their Art. 15.17 Hearing?

"[A] defendant subject to accusation after initial appearance is headed for trial and needs to get a lawyer working, whether to attempt to avoid trial or to be ready with a defense when the trial date arrives."

(Rothgery, 128 S. Ct. at 2590)

How quickly must a Defendant be given a lawyer after the Article 15.17 hearing?

Federal law

Under Federal Constitutional Law?

- "[C]ounsel must be appointed within a reasonable time after attachment to allow for adequate representation at any critical stage before trial, as well as at trial itself."

(Rothgery, 128 S. Ct. at 2591)

- Defendants are entitled to counsel to help them prepare for critical-stage proceedings, and to decide whether to undergo optional/voluntary critical-stage proceedings.

(Estelle v. Smith, 451 U.S. 454, 471 (1981))

Example of Critical-Stage Proceedings

- Interrogations after the Art. 15.17 Hearing
- Line-Ups after the Art. 15.17 Hearing
- Examining Trials
- Psychiatric Exams
- Plea Negotiations
- Arraignment
- Pre-Trial Hearings
- Trial

How quickly must a Defendant be given a lawyer after the Article 15.17 hearing?

Texas law

Under the Texas Code of Criminal Procedure?

If the Defendant is in Custody:

“[I]f an indigent defendant is entitled to and requests appointed counsel and if adversarial judicial proceedings have been initiated against the defendant, [the appointing authority] shall appoint counsel as soon as possible,” but not later than **1 to 3 working days** (depending on county size) after the appointing authority receives the defendant’s request for counsel.

(Texas Code of Criminal Procedure Art.1.051(c))

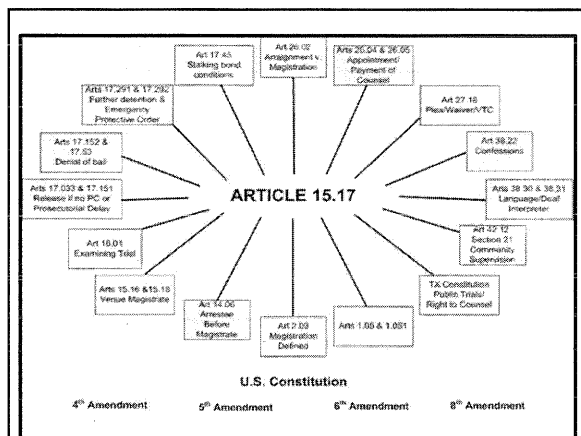
Under the Texas Code of Criminal Procedure?

If the Defendant is Released on Bond:

“Notwithstanding any other provision of this section, if an indigent defendant is released from custody prior to the appointment of counsel under this section, appointment of counsel is not required until the defendant’s **first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.**”

(Texas Code of Criminal Procedure Art.1.051(j))

Related Law



Bail

“if allowed by law”

- Texas Constitution Art. 1,
–Section 11 - “All prisoners shall be
bailable by sufficient sureties, unless
for capital offenses, when the proof is
evident . . .”
- Section 11a – Multiple Convictions;
Denial of Bail

No PC determination by magistrate

Tx CCP art. 17.033(a)

- Misdemeanors
 - Warrantless arrest
 - \$5,000 bond
 - 24 hours

Tx CCP art. 17.033(b)

- Felonies
 - Warrantless arrest
 - \$10,000 bond
 - 48 hours

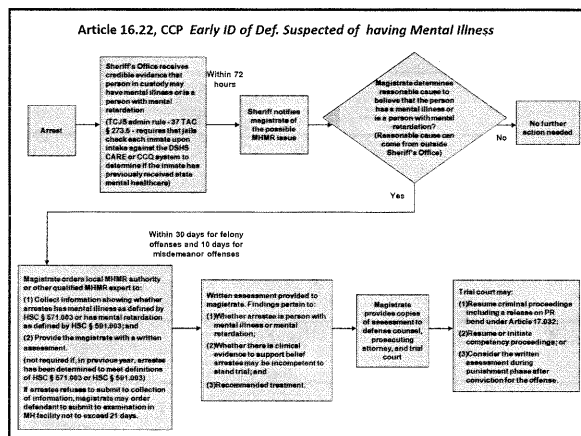
Tx CCP art. 17.033(c)

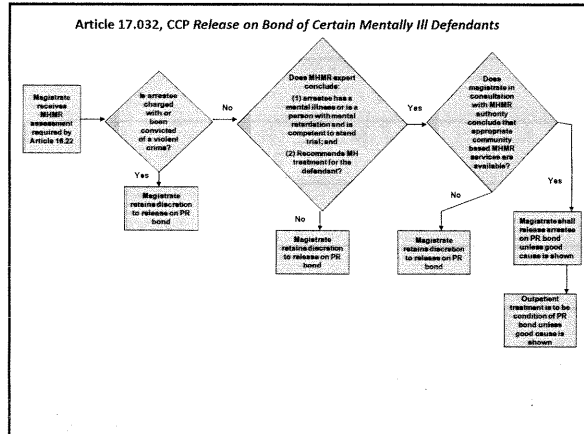
Magistrate may delay release up to
72 hours from time of arrest

Art. 17.151 – get-out-of-jail-free card

- Sec. 1 - State not ready for trial
 - Felony - 90 days
 - Class A - 30 days
 - Class B - 15 days
 - “fine only” - 5 days
- Sec. 2 - restrictions apply
- Sec. 3 - violation of conditions of release

Mentally Ill Offenders





Foreign nationals & treaties

For foreign nationals

☐ Explain right to contact consulate/embassy

☐ Do they want you to contact?

Violations of 15.17

Effect of failure to comply with Article 15.17, et seq.

Art. 38.23 (a) "No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case."

Effect of failure to comply with Article 15.17, et seq.

- Renfro v. State, 958 S.W.2d 880, 887 (Tex.App.—Texarkana 1997, pet. ref'd).
- "without unnecessary delay"
- "It is well settled that the failure to take an arrestee before a magistrate in a timely manner will not invalidate a confession unless there is proof of a causal connection between the delay and the confession. Cantu v. State, 842 S.W.2d 667, 680 (Tex.Crim.App. 1992)."

Indigent defense

Municipal Court Recorder

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The Fair Defense Act: Whose Job Is It Anyway?

By James D. Bethke, Task Force on Indigent Defense, Office of Court Administration and
Dorrie Carmichael, Ph.D., Associate Research Scientist, Public Policy Research Institute (PPRI)

Introduction

This is the first in a three-part series of articles describing Texas magistrates' responsibilities under the Fair Defense Act (FDA), passed in 2001. This article provides an overview of the law, those responsibilities and the variables within which they must act. The second article will describe the magistrates' role conducting Article 15.1 hearings. The final article will elaborate more specifically on the steps regarding determining indigence and assigning counsel under the FDA.

Overview of the Fair Defense Act

Texas Code of Criminal Procedure, Article 1.051(c), provides that "an indigent defendant is entitled to have an attorney appointed to represent him in any adversarial judicial proceeding that may result in punishment by confinement and in any other criminal proceeding if the court concludes that the interests of justice require representation." In 2001, the 77th Texas Legislature modified the State's statutes and codes to reform indigent defense practices through a group of amendments collectively known as "The

Blue Print Laws." Such reforms, combined with a lack of State oversight, allowed indigent defense rates and the quality of representation to vary widely from county to county and even from courtroom to courtroom.¹ The accused in Texas were not uniformly assured prompt access to counsel. Furthermore, since the State did not provide funding for indigent defense, the entire financial burden was shifted to counties. By changing the procedures for conducting magistrate hearings, determining indigence and appointing counsel, the Legislature addressed practices that had been under scrutiny from both inside and

Texas Indigent Defense Commission Task Force Plan Information



County Plan Information

Texas Indigent Defense Commission (TIDC)

[TIDC Home](#) [Members](#) [Committees](#) [Calendar of Events](#) [Contact Information](#) [FAQ](#)

[Public Access to County Indigent Defense Plans](#)

2011 Indigent Defense Plan Submission Instructions and Instruction Letter

To view or print PDF files you must have the Adobe Acrobat® reader. This software may be obtained without charge from Adobe. Download the reader from the Adobe Web site.

(Updated: Sept 12, 2011)

Services to Counties

- Online Access to PPRI for Texas counties
- County Plan submission instructions for counties
- Grants and other funding resources for Texas counties
- Expenditure Reporting Instructions for counties
- Model Policies, Forms and Standards, CLE rules
- Technical Support Requests
- Request Monitor Technical Assistance

Indigent Defense in Texas

- Public access to all county plans, expenditures, grants
- Legislative Information
- Resources Publications and Archives

Related Resources

- Legal Services to the Poor in Criminal Matters Standing Committee of the State Bar of Texas
- CLE Resources
- County web sites

www.txcourts.gov/tide

