

# MAGISTRATION BENCH CARD 1

## DETERMINING PROBABLE CAUSE

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

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

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

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

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

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

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

## MAGISTRATION BENCH CARD 2

### CONSULAR NOTIFICATION

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

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

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

Determine if that country is a **mandatory reporting country**.

- ~~The list of mandatory reporting countries is available here in this Guide:~~  
<https://travel.state.gov/content/travel/en/consularnotification/QuarantinedForeignNationals/countries-and-jurisdictions-with-mandatory-notifications.html>
- ~~\_\_\_\_\_~~
- A small pocket guide is available at this link and is attached:  
[https://travel.state.gov/content/dam/travel/CNAtrainingresources/CNA%20Pocket%20Card\\_BW.pdf](https://travel.state.gov/content/dam/travel/CNAtrainingresources/CNA%20Pocket%20Card_BW.pdf)
- ~~\_\_\_\_\_ handout is attached. [Provide Guide]~~

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

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

## MAGISTRATION BENCH CARD 3

### INFORMING THE DEFENDANT OF THEIR RIGHTS

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

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

#### **You tell the defendant:**

"I am Judge \_\_\_\_\_. I am here as a **M**agistrate to inform you of the charges against you, to inform you of your rights, and to set bail and bond conditions for your release."

"If you do not understand me at any time, please stop me and let me know, and I will try to clarify."

"You have been charged with the offense of \_\_\_\_\_."

"You have the right to hire an attorney to represent you."

"You have the right to have that attorney present prior to and during any interview or questioning by police officers or attorneys representing the State, and you have the right to terminate the questioning at any time."

"You may have reasonable time and opportunity to consult with your attorney."

"You have the right to remain silent. You are not required to make a statement. Any statement you make may be used against you in a court of law."

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

"If you cannot afford an attorney, you have the right to request the appointment of an attorney."

"Do you wish to request the appointment of an attorney?" If the defendant answers yes, please see Magistration Bench Card 4.

~~"You have the right to remain silent. You are not required to make a statement. Any statement you make may be used against you in a court of law."~~

*If the defendant is charged with a felony:*

"You have the right to an examining trial. This is a hearing where the state must show that they have enough evidence to charge you with this offense."

**Have a checklist** of these rights and as you inform the defendant of them, check them off. **(See Forms 1 – 2)**

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

## MAGISTRATION BENCH CARD 4

### APPOINTMENT OF COUNSEL

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

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

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

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

- A form for this purpose is attached. **(See Forms 3 and 4)**

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

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

- If you are authorized to appoint counsel in your county, then you must do so as soon as possible but no later than:
  - The end of the **third working day** after the request; or
  - The end of the **1<sup>st</sup> working day** after the request in a county with 250,000 people or more.
- If you are not authorized to make the request, you must transmit the form to the person who is responsible for appointing counsel as soon as possible but **no later than 24 hours** after the request.

# MAGISTRATION BENCH CARD 5

## SETTING BAIL

Determine whether you set the bail or whether the bail is set on a warrant:

- You set bail if:
  - It was a warrantless arrest; or
  - The defendant was arrested under a warrant where there is not a criminal case pending against the defendant (a magistrate has issued a warrant to arrest a defendant based on probable cause that an offense has occurred).
    - If a bail amount is listed on a warrant in this situation, it is only a recommended amount and you are not required to set that amount as bail.
- You go by the bail set on the warrant if:
  - The case has already been filed in a trial court and the trial court issued the warrant.
    - For example, where an indictment or information has been filed and the court in which they were filed issues the warrant.
  - The warrant was issued by a court in which the defendant is on probation, parole, or deferred adjudication.
    - For example, where the defendant was arrested on a motion to revoke probation or parole or on a motion to proceed with adjudication of guilt.
    - In these cases, the trial court may require a “cash bond” or may order “no bond.” **(See Magistration Bench Cards 16 - 18)**

Factors to consider in setting bail:

- Prior criminal history.
- Nature of the offense and circumstances under which it was committed.
- Safety of the victim and the community.
- Likelihood to re-offend.
- Likelihood to appear as directed, including for court hearings and trial.
- Ability to make bail, and **evidence may be taken on this issue.**

Bail may be denied only if:

- Defendant violated a bond condition in a family violence or child victim case.
- Defendant is arrested for violation of probation or parole, and denial of bail is requested by the trial judge until the defendant is brought before that judge.
  - Defendant is arrested on a parole violation from another state and is subject to the Interstate Compact on Adult Offender Supervision. **(See Magistration Bench Card 22)**

## MAGISTRATION BENCH CARD 6

### PERSONAL BOND v. ~~SURETY~~-BAIL BOND

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

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

A defendant **must** be released on a personal bond if they were arrested without a warrant and a determination of whether or not probable cause exists has not been made within 24 hours for a misdemeanor or 48 hours for a felony.

- Normally this will occur only if a magistrate was not available within the required times; ~~the defendant may be released by the sheriff;~~ the defendant may be released by the sheriff in very limited circumstances.
- The amount of the personal bond for a misdemeanor may not be more than \$5,000.
- The amount of the personal bond for a felony may not be more than \$10,000.

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

A defendant may **not** be released on a personal bond if charged with any of the following offenses under the Penal Code:

- Section 19.03 (Capital Murder);
- Section 20.04 (Aggravated Kidnapping);
- Section 22.021 (Aggravated Sexual Assault);
- Section 22.03 (Deadly Assault on Law Enforcement or Corrections Officer, etc.);
- Section 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual);
- Section 29.03 (Aggravated Robbery);
- Section 30.02 (Burglary);
- Section 71.02 (Engaging in Organized Criminal Activity);
- Section 21.02 (Continuous Sexual Abuse of Young Child or Children); or
- Section 20A.03 (Continuous Trafficking of Persons).

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



# MAGISTRATION BENCH CARD 7

## CASH BOND

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

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

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

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

A cash bond **may be required:**

- When a defendant has been re-arrested after failing to appear on the original bond in a **bail forfeiture proceeding**; or
- When the surety is seeking to be released from the bond in a **surety surrender proceeding**.
- When a defendant has been arrested on a motion to revoke probation or a motion to proceed or adjudicate.
- When a defendant has been arrested on a child support warrant.  
**(See Magistration Bench Cards 13 - 14 and 16 - 17)**

# MAGISTRATION BENCH CARD 8

## BOND CONDITIONS

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

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

Common bond conditions:

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

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

<u>Offense</u>	<u>Bond Condition</u>
Chapter 21 or 22 Penal Code Offenses, Prohibited Sexual Conduct, or Sexual Performance by a Child, with a child <14 years old as victim	<p><b>Shall</b> require the defendant not to:</p> <ol style="list-style-type: none"> <li>1) directly communicate with the alleged victim; or</li> <li>2) go near a residence, school, or other location specifically described in the bond, frequented by the alleged victim.</li> </ol> <p><b>May</b> allow the defendant supervised access to the victim.</p> <p style="text-align: center;">- <i>Code of Criminal Procedure Art. 17.41</i></p>
Any	<p><b>May</b> require that the defendant submit to:</p> <ol style="list-style-type: none"> <li>1) Home confinement and electronic monitoring by a designated agency; or</li> <li>2) Testing on a weekly basis for the presence of a controlled substance in the defendant’s body</li> </ol> <p style="text-align: center;">- <i>Code of Criminal Procedure Art. 17.44</i></p>
DWI with Child Passenger, Intoxication Assault, Intoxication Manslaughter, subsequent offenses of Driving, Flying or Boating While Intoxicated	<p>Unless the magistrate determines it is not in the best interest of justice, <b>shall</b> require the defendant to:</p> <ol style="list-style-type: none"> <li>1) have an ignition interlock device installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant, <b>and</b></li> <li>2) not operate any motor vehicle unless the vehicle is equipped with that device.</li> </ol> <p style="text-align: center;">- <i>Code of Criminal Procedure Art. 17.441</i></p>
Prostitution	<p><b>May</b> require the defendant to receive counseling, education, or both, relating to AIDS or HIV.</p> <p style="text-align: center;">- <i>Code of Criminal Procedure Art. 17.45</i></p>

Stalking	<p><b>May</b> require the defendant not to:</p> <ol style="list-style-type: none"> <li>1) Communicate directly or indirectly with the victim; or</li> <li>2) Go to or near the residence, place of employment or business of the victim or to or near a school, day-care or similar facility where a dependent child of the victim attends.</li> </ol> <p><b>Must</b> specifically describe the prohibited locations, and minimum distances that must be maintained.</p> <ul style="list-style-type: none"> <li>- <i>Code of Criminal Procedure Art. 17.46</i></li> </ul>
Offenses Listed Under Sec. 411.1471(a) of the Government Code <sup>[GRJ1]</sup>	<p><b>Shall</b> require that the defendant provide to a local law enforcement agency one or more specimens for the purpose of creating a DNA record.</p> <p><b>May</b> require this condition on any other offense.</p> <ul style="list-style-type: none"> <li>- <i>Code of Criminal Procedure Art. 17.47</i></li> </ul>
Offenses Involving Family Violence	<p><b>May</b> require the defendant to:</p> <ol style="list-style-type: none"> <li>1) Refrain from going to specifically described locations</li> <li>2) Carry or wear a GPS device and pay the associated costs, unless the defendant is indigent</li> <li>3) On the consent of the alleged victim, unless indigent, pay the costs with providing the victim with an electronic receptor device that notifies the victim if the defendant is near a prohibited location.</li> </ol> <ul style="list-style-type: none"> <li>- <i>Code of Criminal Procedure Art. 17.49</i></li> </ul>

(See Form 5.

For DWI cases see Magistration Bench Card 9 and Form 6.

For Family Violence cases see Magistration Bench Card 10 and Forms 7 and 8.)

**[Insert bond chart from pages 22-23 of Deskbook]**

## MAGISTRATION BENCH CARD 9

### DWI BOND CONDITIONS

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

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

You **must** require as a bond condition that the defendant:

- Have an Ignition Interlock Device (IID) installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant; **and**
- That the defendant **must** not operate any motor vehicle unless equipped with an IID.

◦

- This requirement may be waived only if you find that to require the IID would not be in the best interest of justice.

- For example, the defendant has been ordered to have a SCRAM device (Secure Continuous Remote Alcohol Monitoring).
- A SCRAM device is a possible alternative to an IID.

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

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

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

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

- ~~The Possible monitoring agencies could include~~ may be: CSCD, ~~District Attorney's prosecutor's office, Sheriff's office, or Court staff.~~

A bond condition form is attached. **(See Form 6)**

## MAGISTRATION BENCH CARD 10

### BOND CONDITIONS IN FAMILY VIOLENCE CASES

If the defendant is charged with family violence:

- You may order the defendant not to have any contact with the victim of the offense.
- You may order the defendant to undergo counseling, including attending an anger management course.
- If the defendant was alleged to be intoxicated, you may order the defendant not to consume alcohol or other intoxicants.

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

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

“Family violence” includes:

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

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

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

Bond condition forms are attached. (**See Forms 7 and 8**)

## MAGISTRATION BENCH CARD 11

### EMERGENCY PROTECTIVE ORDERS

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

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

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

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

You **must** issue an EPO if, ~~during a family violence assault,~~ the defendant:

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

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

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

In the EPO you may order the defendant not to:

- commit family violence or an assault on the person protected under the order;
- commit an act in furtherance of stalking;
- communicate directly with a member of the family or household or with the person protected under the order in a threatening or harassing manner;
- communicate a threat through any person to a member of the family or household or to the person protected under the order;
- *if you find good cause*, communicate in any manner with the person protected under the order or a member of their family or household (except through the party's attorney or a person appointed by the court);
- go to or near the residence, place of employment, or business of a member of the family or household or of the person protected under the order;
- possess a firearm (unless the person is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision); or
- go to or near the residence, ~~child care~~[childcare](#) facility, or school where a child protected under the order resides or attends.

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

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

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

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

o

~~Attached is an EPO form. (See Form 11)~~

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

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

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

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

Attached is an EPO form. (See Form 9)

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

## MAGISTRATION BENCH CARD 12

### MENTAL HEALTH ASSESSMENTS

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

- if you find there is **reasonable cause** to believe the defendant has a mental illness or intellectual disability,
- then you must order an LMHA (Local Mental Health Authority) or another mental health professional to interview and collect information concerning the defendant.
- Exception: ~~But if~~ if the defendant has been determined to have a mental illness or intellectual disability within one year prior to the current arrest, you are not required to order an interview.

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

- The trial court where the defendant will be tried for the offense;
- The prosecutor; and
- Defense counsel.

You must release a defendant with a mental illness on a **personal bond** if certain conditions are met.

- ~~But~~ Exception: ~~y~~ You are not required to release them on a personal bond if “good cause” is shown for not doing so.
  - For example, the defendant was previously released on a personal bond and did not appear for a hearing.
- Also, you may not set a personal bond if the defendant is charged with any of the offenses listed on **Magistration Bench Card 10.** ~~(above)~~

You should release the defendant on a personal bond if:

- The defendant has been interviewed by an LMHA or expert;
- The LMHA or expert concludes that the defendant has a mental illness or intellectual disability and recommends treatment;
- You determine with the LMHA or expert that services are available;
- You determine that the defendant may be safely released.
- Unless good cause is shown for not requiring treatment, as a condition of release on a personal bond, you must require that the defendant submit to treatment if:
  - The defendant’s mental illness or intellectual disability is chronic in nature; or
  - The defendant’s ability to function independently will continue to deteriorate if the defendant is not treated.

You may also impose other bond conditions reasonably necessary to ensure the defendant’s appearance in court and the safety of the community or victim, such as:

- ~~Counseling;~~
- ~~Reporting to adult probation department frequently by telephone or in person;~~
- ~~Curfew;~~ or

GPS monitoring device.

Forms for ordering a mental health assessment and a personal bond for a person receiving treatment are attached. (See Forms 10 and 11)

~~[Note: I thought we had a personal bond form for this but I can't find one on our website or in the TJC on Mental Health Bench Book (they just used our forms).~~ **MAGISTRATION BENCH CARD 13**

## BAIL FORFEITURE

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

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

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

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

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

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

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

## MAGISTRATION BENCH CARD 14

### SURETY SURRENDER

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

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

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

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

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

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

## MAGISTRATION BENCH CARD 15

### BOND MODIFICATION AND REVOCATION

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

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

If the case is pending before the trial court, the capias or warrant may [saye](#), "no bond," so that the defendant is held until he can be brought before the judge who issued the capias or warrant.

- In that case do not release the defendant.

## MAGISTRATION BENCH CARD 16

### ARREST ON A MOTION TO REVOKE PROBATION

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

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

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

- ~~But if~~ the trial judge is unavailable, the defendant may be brought before any magistrate.

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

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

## MAGISTRATION BENCH CARD 17

### ARREST ON A MOTION TO PROCEED OR ADJUDICATE

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

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

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

- ~~But if~~ the trial judge is unavailable, the defendant may be brought before any magistrate.

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

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

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

## MAGISTRATION BENCH CARD 18

### ARREST ON A PAROLE VIOLATION WARRANT

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

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

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

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

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

## MAGISTRATION BENCH CARD 19

### ARREST ON AN OUT OF COUNTY WARRANT

If a defendant is arrested on an out of county warrant for a Class C misdemeanor, **see Magistration Bench Card 21**.

Otherwise, if the defendant **makes bail**, transmit the bond to the magistrate who issued the warrant. If the defendant **fails to make bail**, you must immediately notify the sheriff of the county where the offense occurred.

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

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

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

## MAGISTRATION BENCH CARD 20

### ARREST ON A CAPIAS PRO FINE

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

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

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

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

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

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

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

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

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

Forms for ordering alternative satisfaction of a judgment, including community service or waiver, and for ordering a defendant to lay out the fine and court costs in jail are attached. **(See Forms 12 – 15)**

## MAGISTRATION BENCH CARD 21

### TAKING A PLEA AT THE JAIL

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

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

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

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

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

If the defendant **pleads not guilty**, you should set bail for the defendant and release them on a **personal bond** (not a surety bond) on condition that they appear before the court that issued the warrant. **(See Form 16)**

## MAGISTRATION BENCH CARD 22

### ARREST ON AN OUT OF STATE WARRANT

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

There are two different procedures:

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

Uniform Criminal Extradition Act procedures:

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

ICAOS procedures:

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