



# FUNDAMENTALS OF MAGISTRATION

# What is “Magistration?”

- Magistration is the process of informing a person who has been arrested of their rights and setting bail and bond conditions.
  - Magistration is conducted by a Magistrate.
- Magistrates include **justices of the peace** and many other officials, including district judges, county judges, municipal judges, and mayors.

-- Arts. 2.09, 15.17, Code of Criminal Procedure.

# What are the Duties of a Magistrate?

**Determining whether probable cause exists to keep a defendant in custody**

**Telling people accused of crimes what their rights are**

**Setting bail and bond conditions**

Issuing search and arrest warrants

Issuing emergency mental health detention warrants

Issuing peace bonds

Issuing orders for emergency protection

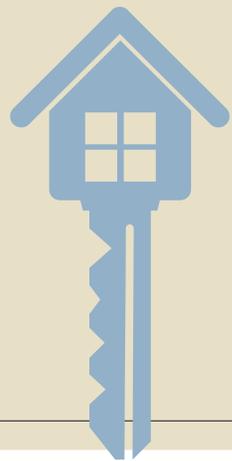
Conducting examining trials

Determining if someone in custody requires a mental health assessment



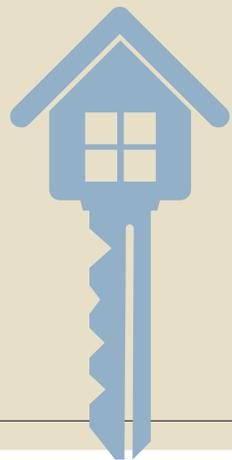
Work  
Problems!

# Work Problem 1

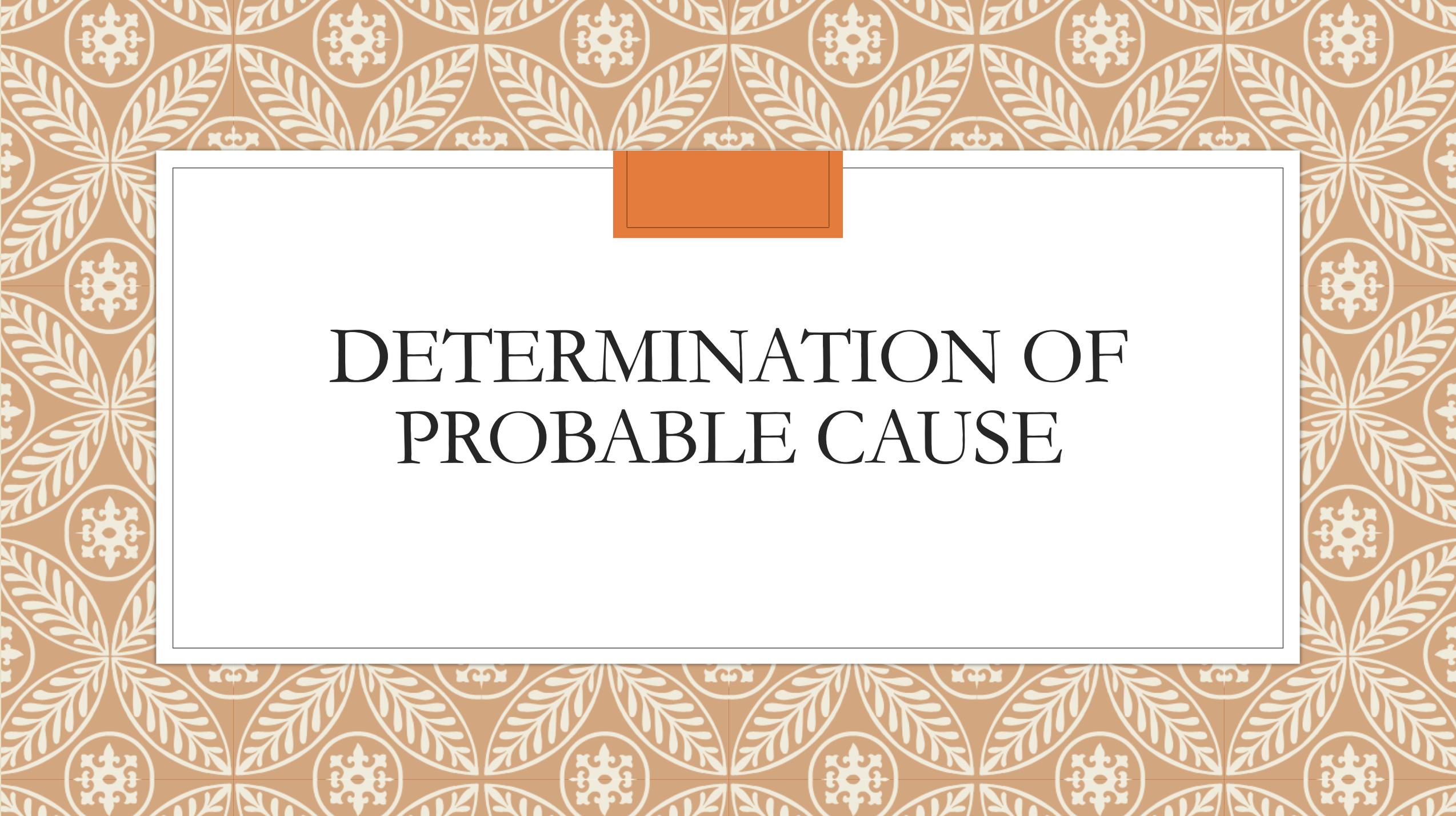


- Q. If someone gets arrested in my county can any Justice of the Peace magistrate that person or does it have to be a certain Justice of the Peace?
- See Magistration Deskbook at pages 1 – 2.

# Work Problem 2



- Q. We have 4 JP's in the county. Each of us takes our turn magistrating at the jail. Is there any reason that the Municipal Judges in our county cannot take a turn magistrating at the jail? Article 15.17 of the code of criminal procedures says that the person arrested has to be taken before a magistrate. So that means that a municipal court judge who is also considered a magistrate has the authority to magistrate at the jail. Correct?
- See Magistration Deskbook at pages 1 – 2.



# DETERMINATION OF PROBABLE CAUSE



Where Are  
We in the  
Process?

# Warrantless Arrests & Probable Cause

- The first step if someone is brought to jail on a **warrantless arrest** is for a neutral magistrate to determine if **probable cause** existed for the arrest.
  - Mandated by the U.S. Supreme Court in *County of Riverside v. McLaughlin*.
- A **warrantless arrest** is one where an officer makes an arrest because they witness a crime occurring, rather than because of an arrest warrant.
  - DWI is a very common example.

# Warrantless Arrests & Probable Cause

- Why doesn't the magistrate have to determine probable cause when someone is arrested based on an **arrest warrant**?
- A magistrate already determined that probable cause existed when they issued the warrant!

# Determining Probable Cause for Arrest

- What is probable cause?
  - Reasonably trustworthy information that would lead a reasonable person to believe the person has committed the offense.
- Remember that probable cause does **not** necessarily mean that there is enough evidence to convict the person at a trial!
  - Different standard of proof at trial.
  - Some evidence you use to determine probable cause might not come in at trial.

# Determining Probable Cause for Arrest

- After making a warrantless arrest, an officer must file a **probable cause affidavit** describing the circumstances leading to the person's arrest. This affidavit must contain detailed information that leads to the officer's conclusions, not just state the officer's conclusions.
- You consider that affidavit when determining if probable cause exists for the arrest, **even if** the information in that affidavit might not be usable at trial.

# What if the PC Affidavit is Insufficient?

- If the probable cause affidavit is **insufficient** to support the person's arrest, the person **must be immediately released without bail**.
  - **Bail** secures a person's release from custody.
  - But you have determined that there is no legal basis to have the person in custody in the first place, so there is no legal basis to require the person to put up bail to get released from custody.

# What Makes a PC Affidavit Insufficient?

The affidavit is insufficient if it gives conclusions instead of facts that support those conclusions:

**“Defendant was drunk.”**

**NO GOOD**

**“Defendant had glassy, bloodshot eyes as well as slurred speech and a strong odor of alcoholic beverage.”**

**MUCH BETTER**

# What Makes a PC Affidavit Insufficient?

- The affidavit is insufficient if it fails to establish any evidence of one or more of the **elements** of the criminal offense:
  - Example:
    - Public Intoxication requires that the person was a danger to themselves or others (in addition to being intoxicated and in public).
    - An affidavit simply showing a person was drunk while in a public place is **not enough** to establish probable cause for that offense.

# Can I Have the Officer Fix the Affidavit?

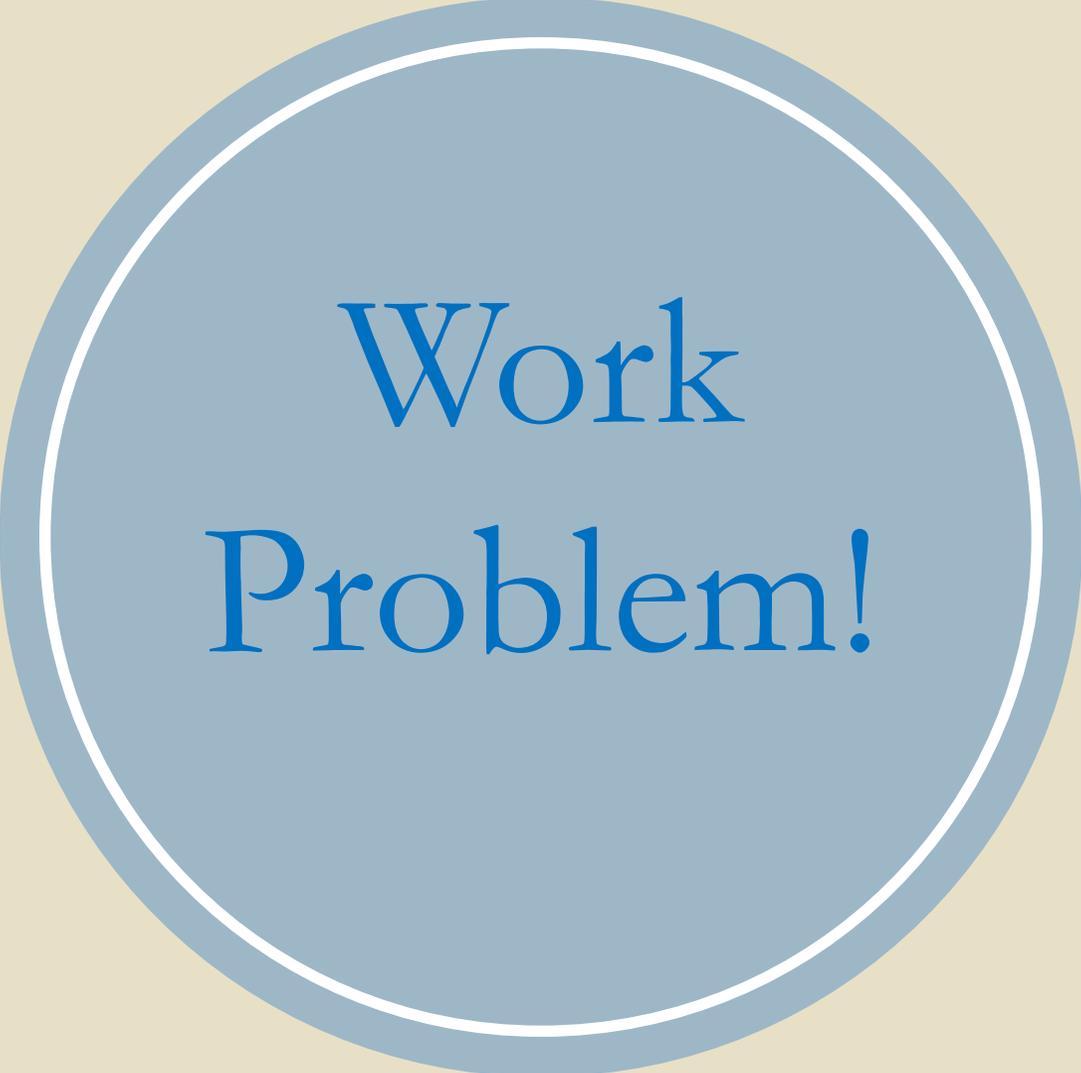
- It is critical for the magistrate to remain neutral, which is why the magistrate **should not** coach the officer on what else to say to establish probable cause.
- That said, it **is** reasonable to point out to the officer a technicality, such as failure to fill in a blank or failure to sign the affidavit, which doesn't suggest to the officer changes to the substance of the document.

# Release Due to Lack of Probable Cause

- If you release an arrested person without bail due to a lack of probable cause, you are **not** “dismissing” the case. The defendant **can** still be prosecuted for the criminal offense.
  - All you have determined is that there wasn’t enough legal reason to arrest the person, so they are currently free to go.
- Remember that your determination of probable cause is based on what you have in front of you at the time, and often will be different than the decision of guilt or innocence made by the trial court.

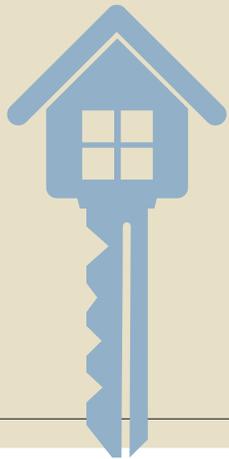
# Warrantless Arrest



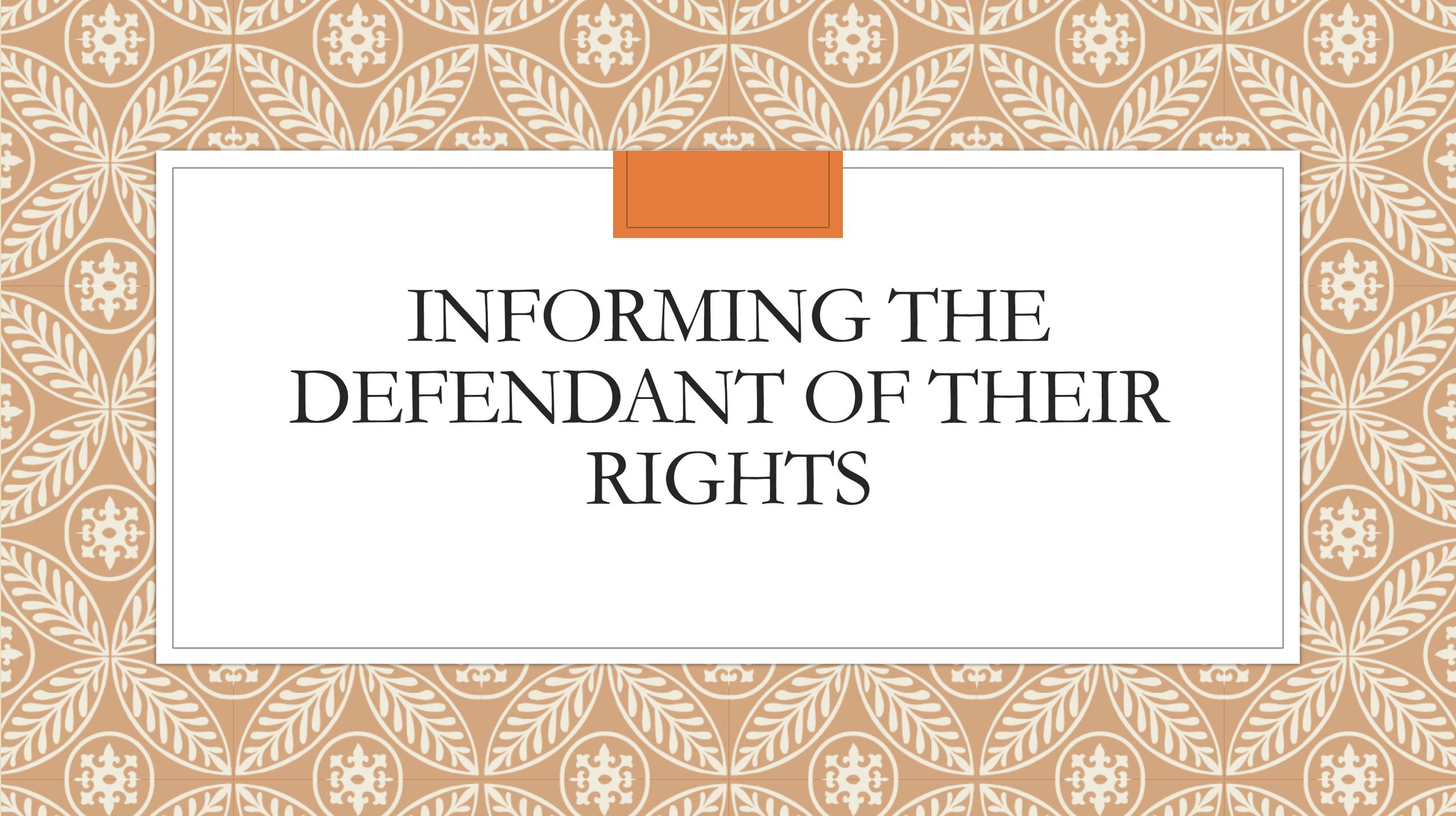


Work  
Problem!

# Work Problem 3



- Q. If an individual is arrested for a class C charge (for example, Public Intoxication), must the arresting Deputy file a probable cause affidavit along with the booking sheet in order to magistrate?
- See Magistration Deskbook at pages 3 - 4.



# INFORMING THE DEFENDANT OF THEIR RIGHTS



Where Are  
We in the  
Process?

# The Article 15.17 Hearing

- Probable cause has now been established, either by the magistrate who issued the arrest warrant, or by the magistrate at the jail after a warrantless arrest.
- The next step is for the magistrate at the jail to inform the defendant what offense they have been charged with, and what rights they have.

# Who Informs the Defendant of Their Rights?

- Any magistrate in the county where the person was arrested.
- If necessary to provide the information more quickly, **any magistrate** in the state of Texas may inform the accused of their rights.

- Code of Criminal Procedure Art. 15.17(a)

# When Must the Defendant be Informed of Their Rights?

- Without unnecessary delay, but no later than **48 hours** after arrest.
- Many counties have a “no later than **24 hours** after arrest” **policy** due to the requirements triggered in certain cases if no determination of probable cause occurs within 24 hours of arrest (discussed later in this class).

- Code of Criminal Procedure Art. 15.17(a)

# How is the Defendant Informed of Their Rights?

- The arrested person may be taken before the magistrate **in person** or the magistrate may hold the hearing by **videoconference**.
- Videoconference, or “**video magistration**” **must** have two-way video **and** two-way audio to be acceptable.
  - Payment for video magistration equipment may be authorized from the justice court technology fund

-- Art. 102.0173, Code of Criminal Procedure

# How is the Defendant Informed of Their Rights?

- If the person does not speak and understand the English language or is deaf, the magistrate **must** inform the person of their rights in a manner consistent with Articles 38.30 and 38.31.
  - Article 38.30 deals with the appointment of an interpreter when they do not understand the English language.
  - Article 38.31 deals with appointment of interpreters for the deaf.
- See Chapter 2, Sec. B(1)(b) of the Magstration Deskbook for more information on interpreters during magistration.

# How is the Defendant Informed of Their Rights?

- It is **critical** that the defendant understands the rights that you are reading to them. Ways to ensure this, beyond having interpreters:
  - Have the defendant check off each right as you read them off, signaling that they understand.
  - Explain legal terms in regular everyday language.
  - **SLOW DOWN**. You are explaining rights, not giving a monologue. No bonus points for speeding through it. It may be your 1000<sup>th</sup> time to say it, but their first time to hear it.

# What Rights is the Defendant Informed of?

- Code of Criminal Procedure Art. 15.17(a) and the U.S. Supreme Court in *Miranda v. Arizona* list several **admonishments**, or explanations of rights, that must be given to an arrested person.
- First, tell the defendant what offense they have been charged with and provide them with a copy of the probable cause affidavit submitted by the officer.

# What Rights is the Defendant Informed of?

- Inform the defendant of their **right to obtain counsel**. This is different than the **right to have counsel appointed**, which we will discuss below.
  - Right to obtain counsel = the right to have an attorney.
  - Right to have counsel appointed = the right to have a “free” attorney if you cannot afford to pay one.

# What Rights is the Defendant Informed of?

- Inform the defendant that they have the right to have an attorney present during any interview with police or prosecutors and that they can terminate that interview at any time.
- Inform the defendant of their right to remain silent, that they do not have to give a statement or interview, and that any statements made may be used against them in court.

# What Rights is the Defendant Informed of?

- **Only if the offense is a felony**, inform the defendant of their right to an **examining trial**.
  - An **examining trial** is a hearing where the state must put on evidence that the defendant committed the offense.
  - See p. 43 of the Magstration Deskbook.
- **Unless the offense is a fine-only misdemeanor**, inform the defendant of their right to have counsel appointed if they cannot afford counsel.

# Consular Notification

- If someone is arrested who is a **foreign national**, meaning a citizen of a country other than the United States, they have a **right** to have their country's **consulate** notified.
- Also, some countries are identified as “**mandatory reporting countries.**” When a citizen of a mandatory reporting country is arrested, the consulate of their country **must** be notified, regardless of the wishes of the arrested person.

# What is a Consulate?

- Just as the United States has a presence via **embassies** and **consulates** in other countries, other countries' governments have a presence in the United States.
- **Consulates** are offices which contain officials of a foreign government who are accredited by the U.S. Department of State and are authorized to provide assistance on behalf of that government to that government's citizens in another country.

# U.S. State Department Guide

- The list of mandatory reporting countries, and lots more information on consular notification, including how to contact the consulate, is in this guide:
- [https://travel.state.gov/content/dam/travel/CNAtrainingresources/CNA Manual 4th Edition September 2017.pdf](https://travel.state.gov/content/dam/travel/CNAtrainingresources/CNA_Manual_4th_Edition_September_2017.pdf)
- Link also available in Chapter 2, Section C of the Magistration Deskbook

# Consular Notification

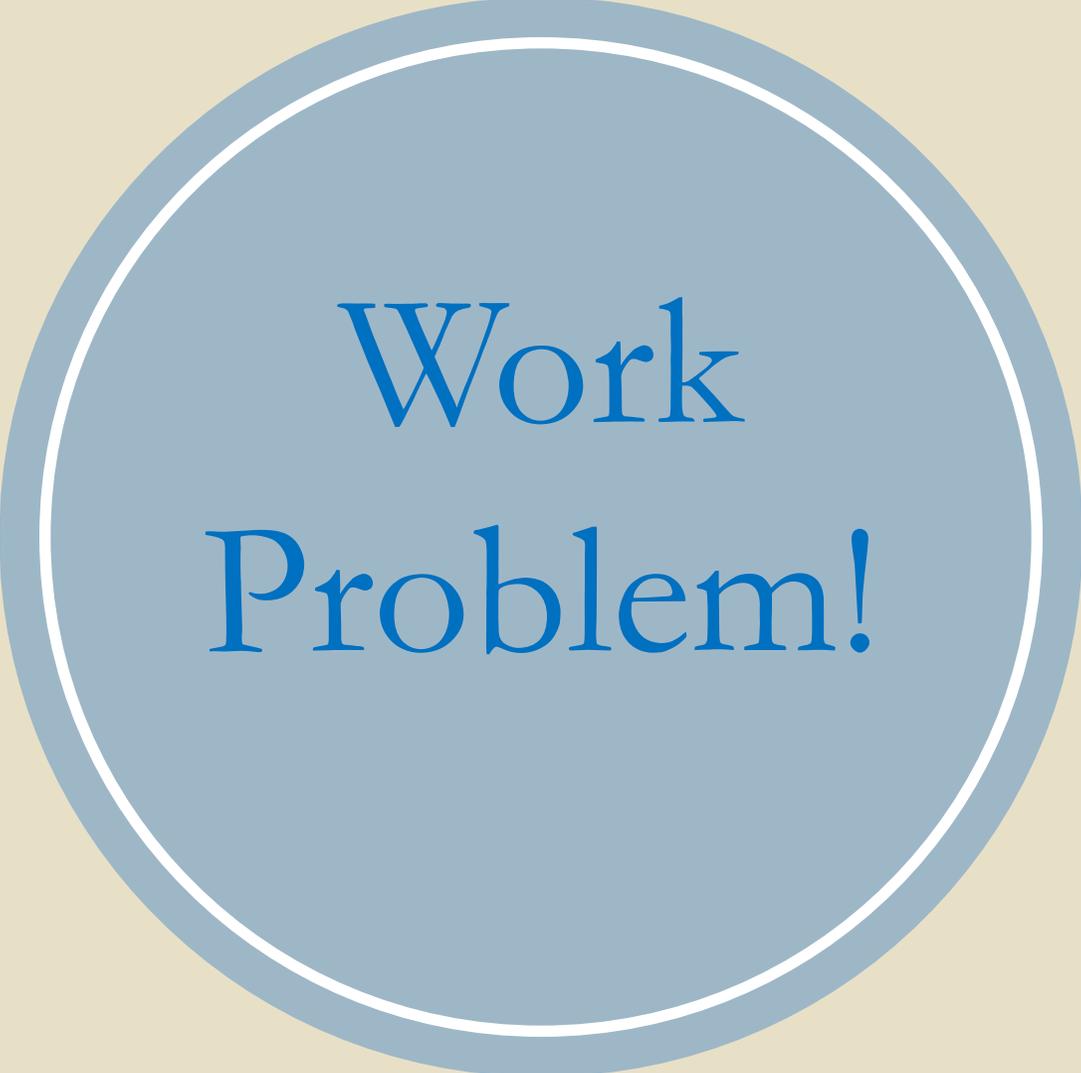
The correct process:

1. Ask each and every person you magistrate if they are a United States citizen. Do **not** make assumptions based on factors such as name or appearance!
2. If they are **not** a U.S. citizen, determine what country the person is from.
3. Determine if that country is a **mandatory reporting country**.
4. If they **are** from a mandatory reporting country, take the necessary steps to notify the consulate of that country (see the Guide linked above).
5. If they **are 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 requested.

# Making a Record of the Magistration

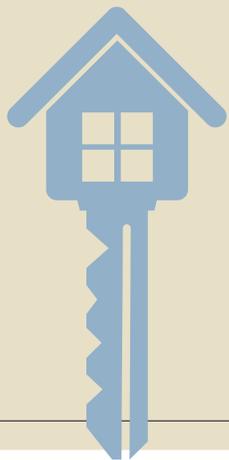
- A **record** (which may be written forms, electronic recordings, etc.) of the communication between the arrested person and the magistrate must be created and kept until whichever is earlier:
  - the date that the pretrial hearing (if any) ends, or
  - the 91st day after the record is made for a **misdemeanor** or
  - the 120th day after the record is made for a **felony**.

- Code of Criminal Procedure Art. 15.17(a).



Work  
Problem!

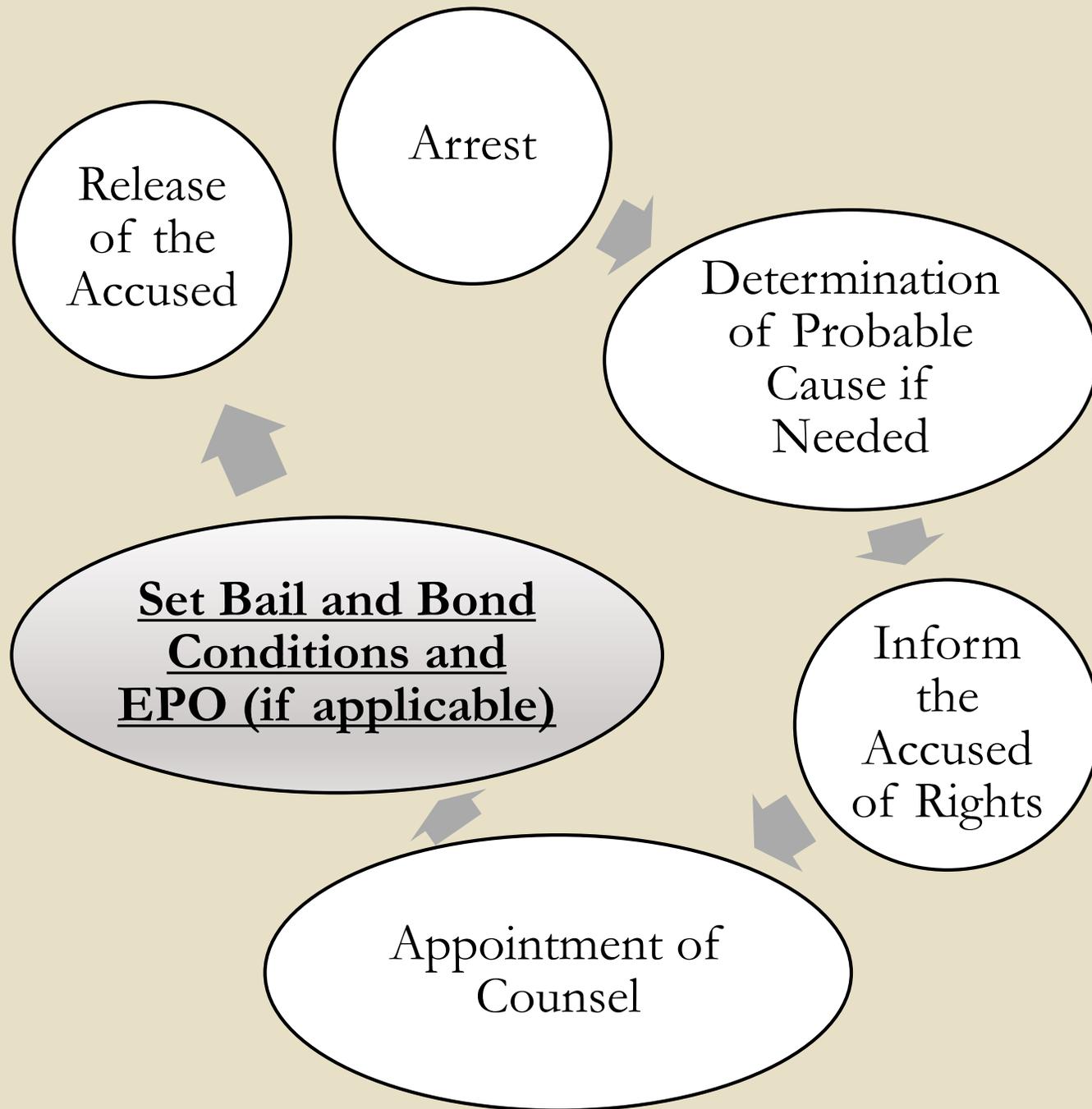
# Work Problem 4



- Q. Can a person be held up to 72 hours, on a felony charge before they are brought before a magistrate? The jail and I have an ongoing feud about this. All I find in the statutes say 48 hours.
- See Magistration Deskbook at pages 3 and 5. Flowchart on page 11; Art. 15.17(a), Code of Criminal Procedure.



# SETTING BAIL



Where Are  
We in the  
Process?

# What is Bail?

- Bail is the security that a defendant puts up to make sure they show up for future court hearings and their trial.
- It may be money, a promise from someone else to pay money if the defendant doesn't appear, a promise from the defendant to pay money if they don't appear, or a simple promise from the defendant to appear.

# The Purpose of Bail

- Setting bail has three general objectives:
  - Ensuring that the defendant appears in court as directed;
  - Protecting the safety of the victim of the offense, if any, as well as the general safety of the community;
  - Releasing the defendant from custody.
- The purpose of bail is **not** to impose an additional punishment for an alleged offense!

# Determining the Amount of Bail

- The first step in setting bail is to determine how much (if any) the dollar amount of the defendant's bail will be.
- Many counties have **bail schedules** based on the type of offense, but if these are used, they **must only** be used as a starting point, with adjustments made for the specific case in front of you.
  - A **bail schedule** is a list of proposed bail amounts for various types and levels of offenses, for example, \$2000 on Class A misdemeanors.
  - Relying only on a bail schedule without considering other factors is **illegal**.

# Do I Have to Use the Bail Amount on the Warrant?

- For a **standard arrest warrant**, the amount listed on the warrant is a **recommended bond amount**. The magistrate has a duty to consider all of the factors listed below, which may result in the bond amount being increased or decreased from what the warrant says.
- By “standard arrest warrant” we mean one where there is not a criminal case pending in a court or where a magistrate has issued a warrant to arrest the defendant based on probable cause that an offense has occurred.

# Do I Have to Use the Bail Amount on the Warrant?

- In situations where another court has **jurisdiction** (authority) over the defendant, **you should follow the amount on the warrant.**
- These situations include:
  - Cases where the **trial court already has the case** filed, such as where the defendant has been indicted, and the trial court issued the warrant.
  - Cases where the **defendant is on probation, parole, or deferred adjudication.**

# Factors to Consider in Setting Bail - Summary

Prior  
Criminal  
History

Nature of the  
Offense

Safety of the  
Community

Likelihood to  
Re-offend

Likelihood to  
Appear as  
Directed

Ability to  
Make Bail

# Bail Factors to Consider – The Statute

- Rules for setting the amount of bail:
  - Bail shall be high enough to give reasonable assurance that the defendant will appear.
  - Bail is **not** to be used as an instrument of **oppression** (punishment).
  - Nature of the offense and the circumstances under which it was committed are to be considered.
  - **Ability to make bail is to be considered**, and evidence of this may be taken.
  - The future safety of a victim of the alleged offense and the community shall be considered.

- Art. 17.15, Code of Criminal Procedure

# Factors NOT to Consider in Setting Bail

- **Do Not Base Bail on Emotional Responses:**
  - Sending a message to the community;
  - Making a political statement;
  - The accused was rude or disrespectful during the Art. 15.17 hearing.
- **Do not** set bail based on “How much bail will keep the defendant locked up?”

# How Much Will Keep Them in Jail?

- Contrary to common belief, the purpose of bail is not to “keep the bad guys in jail.”
- Keeping someone in jail to keep them from doing more bad things is called “**preventive detention,**” and it is only allowed in limited circumstances in Texas, described on the next slides.
- All other defendants are **entitled** to have an amount of bail set.

# Denial of Bail

- Someone can be denied bail **only by a district judge**, and only if:
  - They are accused of a capital offense,
  - They have two prior felony convictions,
  - They are accused of a new felony while on bond for a previous felony, **or**
  - They have a previous felony conviction and are now charged with a felony involving a deadly weapon.

- Magistration Deskbook p. 11-12; Texas Constitution Art. I, Sec. 11a.

# Denial of Bail

- Additionally, defendants who violate **conditions of bond** (discussed later) in family violence cases or child victim cases may be denied bail by a magistrate following a hearing.

- Art. 17.152, Code of Criminal Procedure

# Denial of Bail

- Defendants who are already on probation or parole and are being arrested for violations of those **may be denied bail** on request from the **trial judge** until they are brought before that judge.
- Defendants who are wanted for parole violations from another state are subject to the **Interstate Compact on Adult Offender Supervision** and may be denied bail as well.
  - Info on the process in these cases is available in the Magistration Deskbook, and also in an article by Randy Sarosdy in the Summer 2017 TJCTC Newsletter, available at <http://www.tjctc.org/tjctc-resources/publications.html>.

# But the Warrant Says “No Bail”

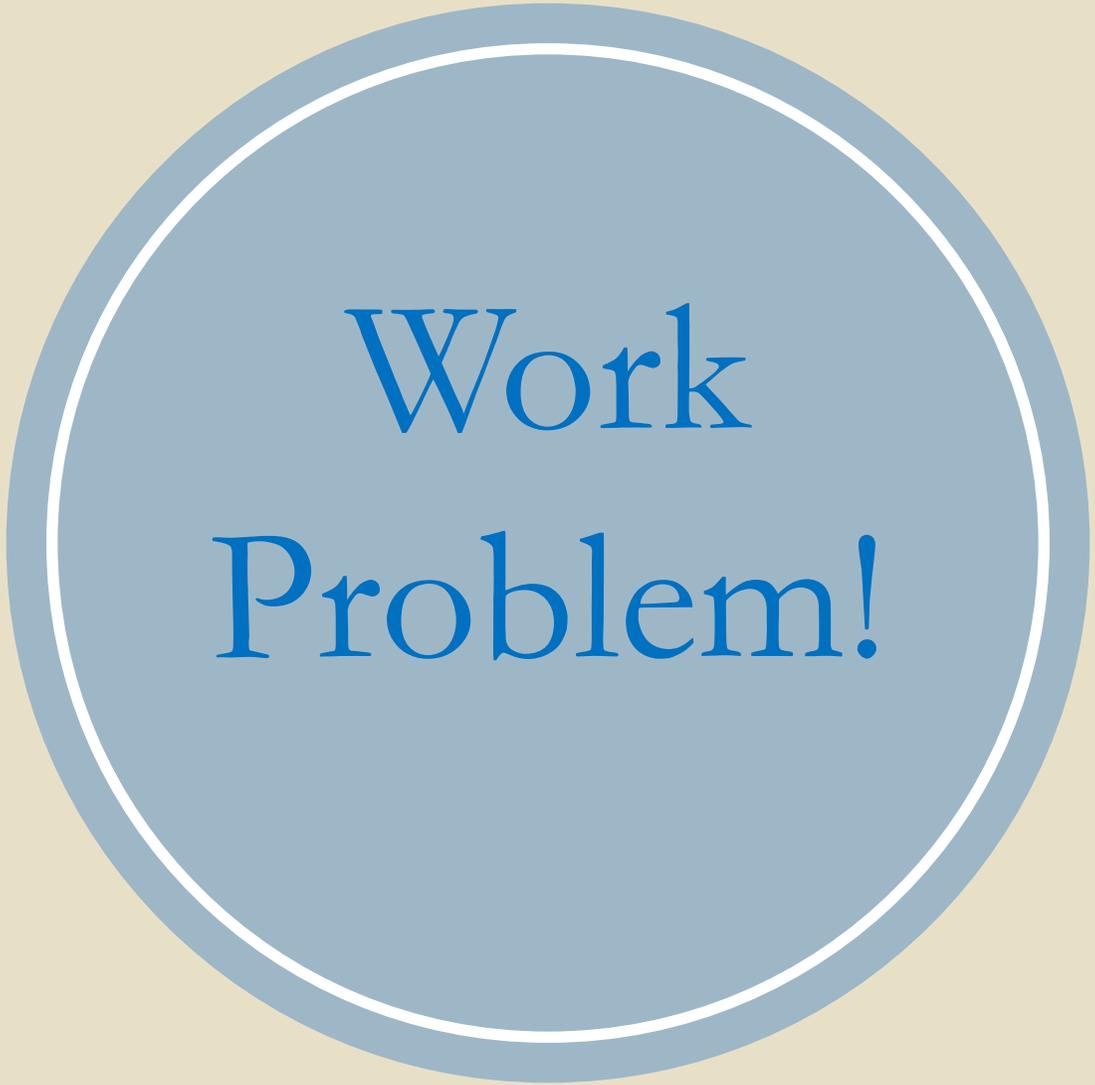
Sometimes you will see a person who was arrested on a warrant that says “no bail.”

This may mean that the issuing magistrate didn't determine bail.

In this case, set the bail as you normally would.

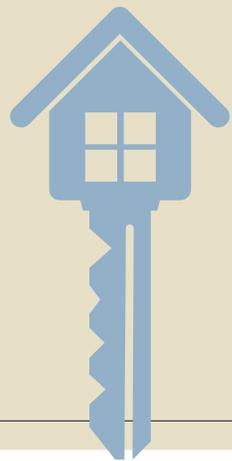
# But the Warrant Says “No Bail”

- Or it may mean they wish the defendant to be **denied bail**.
  - In a case where a district court may deny bail as described above, contact county officials immediately to determine the proper course of action.
  - In a case where the issuing court has authority to deny bail, such as probation/parole/ICAOS warrants, inform the defendant that the court which issued the warrant has denied them bail.
- Otherwise, set the bail as you normally would. Contact the issuing magistrate if necessary to determine what their intention was.

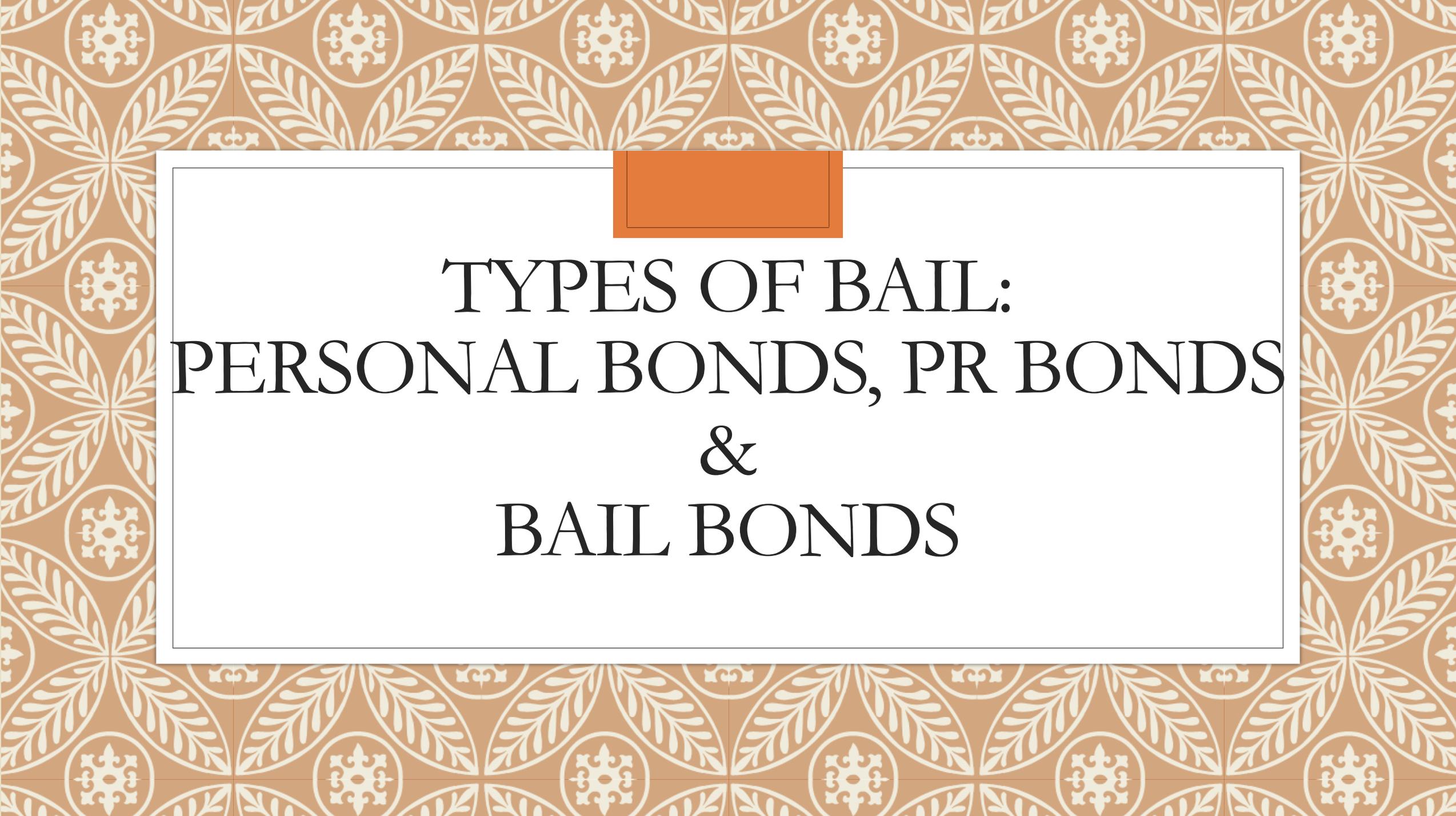


Work  
Problem!

# Work Problem 5



- Q. Pre-set bonds at the jail... yes or no. I have looked and looked in the codes but can't find it. Our jail seems to think we have pre-set bonds but I say no pre-set bonds. And you say what?
- See Magistration Deskbook at page 14.



TYPES OF BAIL:  
PERSONAL BONDS, PR BONDS  
&  
BAIL BONDS

# Personal Bonds

- Once you have set the **amount** of bail, now you need to determine if you will allow the defendant to post a **personal bond**.
- A personal bond means that the defendant is **promising** that they will pay the amount of the bond if they don't show up.
  - So if you set a \$2000 personal bond, and the defendant no-shows for court, the state can begin **bond forfeiture** proceedings, where they can get a judgment against the defendant for \$2000.
  - More info on Bond Forfeiture in the Criminal Deskbook.

# Personal Recognizance or “PR” Bonds

- A personal bond with no money amount listed is called a **personal recognizance bond**, or **“PR” bond**.
- Many people incorrectly call all personal bonds “PR bonds.” If the bond has a money amount to be paid if the defendant fails to comply, it is a personal bond; if it does not, it is a PR bond.
- PR bonds generally are used in fine-only and other minor misdemeanor cases only, while personal bonds may be appropriate in other cases as well.

# Personal Recognizance or “PR” Bonds

- If a defendant fails to appear on a **PR bond**, there can't be a bond forfeiture, since there isn't a money amount that the defendant promised to pay, they simply promised to appear as directed.
- However, failing to appear on any bond, including a PR bond, is a criminal offense under Penal Code Sec. 38.10, so a defendant not appearing on a PR bond could be charged with a new criminal offense for that failure.
  - Remember that new offenses are filed by police or prosecutors, not judges.

# No Determination of Probable Cause

- If a defendant was **arrested without a warrant** and no determination has been made if probable cause exists or not (usually because no magistrate was available in the required timeframe), the defendant **must** be released on a personal bond:
  - No later than **24 hours** after arrest and in an amount of no more than **\$5000** if the offense is a **misdemeanor**.
  - No later than **48 hours** after arrest and in an amount of no more than **\$10,000** if the offense is a **felony**.

- Art. 17.033, Code of Criminal Procedure

# No Determination of Probable Cause

- Many counties have a policy that all defendants arrested without a warrant must be seen by a magistrate within 24 hours to avoid triggering this requirement.
- Remember that if you determine there is **no probable cause**, the defendant is released **without** requiring a bond (not even a PR bond).
  - No legal reason to have them in custody, so cannot make them put up anything, even a promise, to get out of that custody.

# No PC vs. No Determination of PC

- Confused on the difference? Don't worry – many people are!
- Ask yourself: **Is there probable cause for the warrantless arrest?**
  - If your answer is **yes**, **set bail** as normal.
  - If your answer is **no**, the defendant must be **immediately released without bail**.
  - If your answer is “**that hasn't been determined yet,**” the defendant must be **released on a personal bond as described above**.
    - This would occur when a magistrate was unavailable, or possibly where the officer needs to fix a technicality on a PC affidavit, but was unable to do so quickly.

# When Personal Bonds **MUST** be Used

- In addition to the above situation, a personal bond **must** be given under certain circumstances for the defendant to receive mental health treatment as described by Art. 17.032, CCP.
  - Discussed further below.

# When Personal Bonds **MAY NOT** be Used

- You **may not** allow a personal bond if the defendant is charged with an offense under the following sections of 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).

# Bail Bonds

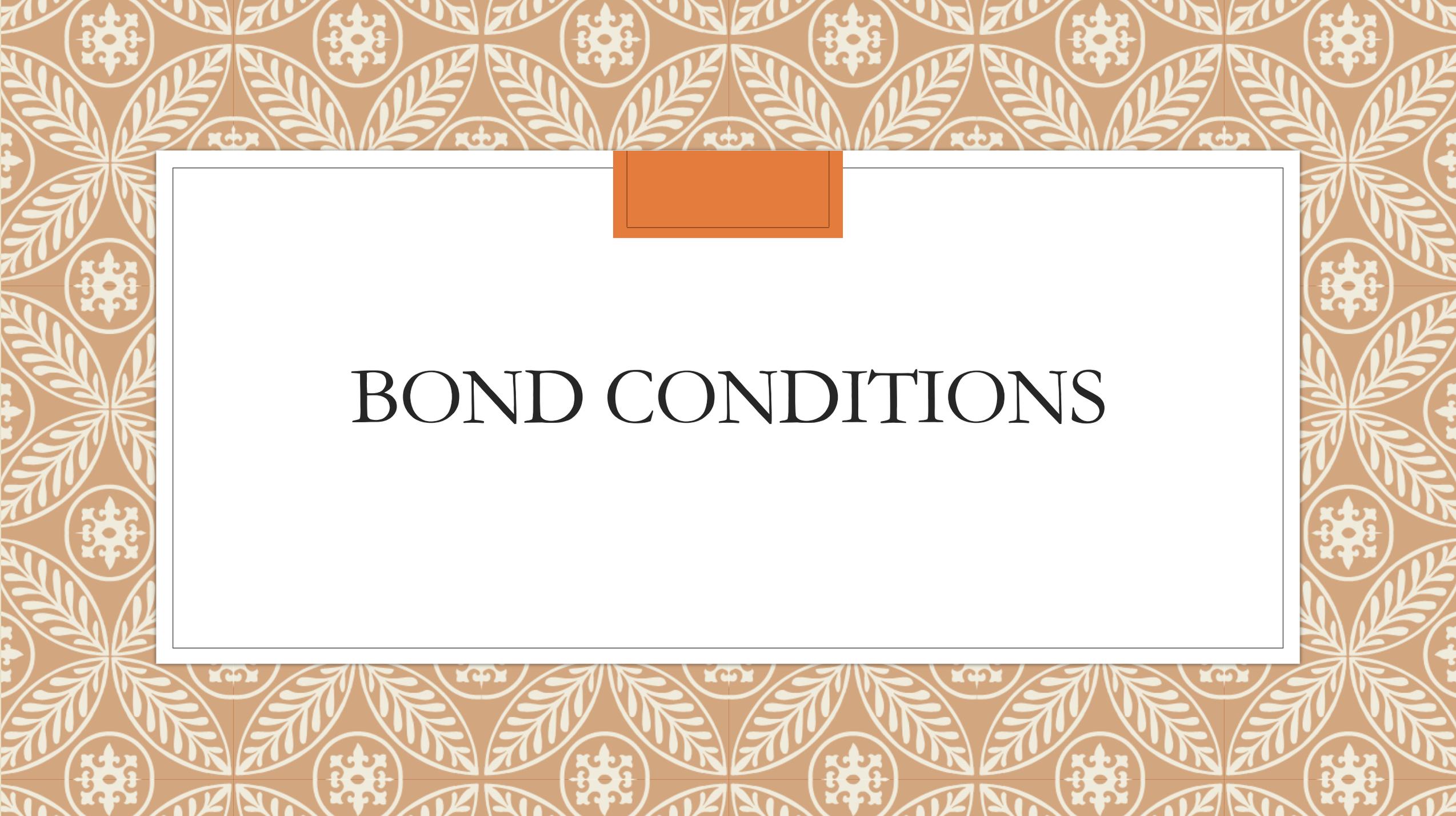
- If a defendant is not allowed by the magistrate or by law to post a personal bond (or a PR bond), they will have to post what is called a **bail bond**. There are two types of bail bonds:
  - **Cash bonds** – The defendant puts up cash in the amount of the bond. If they show up, they get it back. If they do not, bond forfeiture proceedings result.
  - **Surety bond** – Another person or entity, called a **surety**, promises to pay the bond amount if the defendant doesn't show up. Usually the surety is a bail bond company or the defendant's attorney.

# Bail Bond Companies

- Usually the defendant will have to pay 10% to the bail bond company up front (often a higher percentage if the bond amount is low). So if you set a \$2000 bond, and don't allow a personal bond, the defendant will have to pay \$200 to the bail bond company.
  - If the defendant then **doesn't show up for court**, the bail bond company must pay the \$2000.
  - If the defendant **does show up for court**, the bail bond company **still** keeps the defendant's \$200, even though they did what they were asked to do.

# May Not Require Cash Bond

- If a personal bond is not allowed, the defendant can decide whether they wish to post a cash bond or a surety bond. You **must not** require a cash bond, and you **may not** impose different amounts depending on which method is used: For example, you **may not** say “Bond is set at \$2000 cash or \$5000 surety bond.”
  - This applies **even if** the warrant says “cash bond only.”
- **Exception:** A cash bond **may** be required when a defendant has been re-arrested after already failing to appear on the original bond.
  - They had the chance to do the right thing and failed to do it.



# BOND CONDITIONS

# Bond Conditions

- In addition to (or instead of) setting a dollar amount on the defendant's bond, the magistrate can order the defendant to follow certain conditions in order to remain out of custody while awaiting trial.
- A magistrate “may impose any reasonable condition of bond related to the safety of a victim . . . or to the safety of the community.”
  - Art. 17.40, Code of Criminal Procedure

# Bond Conditions

- The chart on p. 22-23 of the Magistration Deskbook gives a list of bond conditions that **may**, and in some cases **must**, be imposed in specific circumstances or on specific offenses.
- TJCTC has bond condition forms online, including forms that provide for the conditions listed in the chart. Make sure that all of the bond conditions are given to the defendant **in writing**.

# Bond Conditions

- The magistrate has **broad** discretion to impose conditions, not limited just to those listed in the chart.
- Discretion is **not** unlimited! Don't violate the rights of the defendant by ordering things like "You must donate blood" or "You must attend church" or "You must enlist in the Marines."



# Bond Conditions

- Common bond conditions include:
  - Commit no additional offenses while on bond.
  - Report to the **probation department** for monitoring.
    - Probation department is often called **CSCD** for Community Supervision and Corrections Department.
    - CSCD may impose a fee of **\$25-60 per month** for monitoring.

# Ignition Interlock Device

- One of the most frequently imposed bond conditions is requiring a defendant to install an **ignition interlock device** (IID) on their car and not drive any car that doesn't have an IID installed.
- An ignition interlock device is a device that requires the defendant to provide a breath sample before starting their vehicle.

# Ignition Interlock Device

- This bond condition is **mandatory** if the defendant was arrested for:
  - Intoxication Assault,
  - Intoxication Manslaughter,
  - DWI with Child Passenger, or
  - 2<sup>nd</sup> or greater offense of Driving While Intoxicated, Flying While Intoxicated, or Boating While Intoxicated.
- The magistrate can waive the imposition of this condition if it is “in the interest of justice.”

# Ignition Interlock Device



- An example of when you might waive IID is if you are imposing a condition that the defendant not consume alcohol and must wear a device that constantly monitors the defendant for alcohol in their system (called a **SCRAM device**).
- Since any alcohol consumption is already a violation of their bond conditions, the IID is less necessary.

# Ignition Interlock Device

- What if the defendant says they do not have a car to install an IID on?
- In this situation, you should **still** order the defendant not to drive any car that doesn't have an IID installed.



# Ignition Interlock Device

- A magistrate **may** also impose an IID in situations where it is not mandatory, as long as it is reasonably related to the safety of the victim or the community.
  - For example, some counties have a policy of requiring an IID on a first offense DWI if the defendant's BAC is over 0.15.
  - For more information on TJCTC's DWI Bond Condition Program, see Handout 1.

# Bond Conditions – Family Violence

- In family violence cases, bond conditions are often very appropriate and effective. For example:
  - You could order the accused not to have contact with the alleged victim of the offense.
  - You could order the accused to take an anger management course.
  - If the defendant was alleged to be intoxicated at the time of the assault, you could order them not to consume alcohol or other intoxicants.

# Bond Conditions – Family Violence

- An additional order, an **Emergency Protective Order (EPO)**, also called a **Magistrate's Order for Emergency Protection (MOEP)**, is also often useful and is required in certain cases.
  - Violating an EPO/MOEP is a new criminal offense.
  - More information on EPOs/MOEPs in Stage 2!



# RELEASE OR DETENTION OF THE DEFENDANT



Where Are  
We in the  
Process?

# Release of the Defendant

- When the defendant posts bail, they should be immediately released.
  - Art. 17.29(a), Code of Criminal Procedure
- The release of the defendant may be delayed on certain family violence offenses if there is probable cause that the violence will continue if the person is immediately released.

# Delayed Release – Family Violence

- The **sheriff** can delay the release for up to **4 hours**.
- The **magistrate** can extend this delay for up to **24 hours** by issuing a **written** order stating that the violence would continue if the defendant is released.
- The magistrate can extend the delay up to **48 hours** with the above written order if, in the last **10 years**, the person has been arrested:
  - More than once for offenses involving family violence.
  - For any offense with a deadly weapon used or exhibited.

- Art. 17.291(b), Code of Criminal Procedure

# What if the Defendant Doesn't Make Bail?

- If the defendant cannot post the bail set by the magistrate, they will remain in custody at the jail.
  - However, the defendant **must** be released on a personal or reduced bond if the state is not ready for trial within:
    - 5 days for fine-only misdemeanors.
    - 15 days for misdemeanor with 180 days or less jail time.
    - 30 days for other misdemeanors.
    - 90 days for felonies.
- Art. 17.151, Code of Criminal Procedure

# Release Because of Delay

- These timeframes mean that a strategy of setting a high bail hoping to keep the defendant locked up often won't be effective since the state generally is not ready to go to trial within these periods.
- This is another reason that bonds with effective conditions work better than just setting high dollar bonds.

# Violation of Bond Conditions

- These release timeframes do NOT apply to someone re-arrested for violation of a bond condition related to safety of the victim or community.
- This gives your bond conditions extra teeth, since the defendant violating those conditions means they can now be detained until trial.

# Whose Job is Release Because of Delay?

- Ultimately, it is the sheriff's responsibility to ensure that defendants are not held in the jail illegally.
- Discuss with prosecutors, other judges, and the sheriff in your county how to ensure that defendants who fail to make bail are not held longer than is legally allowed.

# Resources

- TJCTC Magistration Deskbook
- Art. 15.17 hearing flowchart
- Chapters 14, 15 & 17 of the Code of Criminal Procedure (CCP)
- <http://www.tjctc.org/tjctc-resources/forms.html>
- “Bail and Bonds” by Randy Sarosdy, Summer 2017 TJCTC Newsletter
- “Setting Bail Amounts” by Rebecca Glisan, Winter 2017 TJCTC Newsletter
- [www.arnoldfoundation.org](http://www.arnoldfoundation.org) – Risk Assessment Information