



TEXAS ASSOCIATION *of* COUNTIES
JUDICIAL EDUCATION
TEXAS JUDICIAL ACADEMY

SB 6: DAMON ALLEN ACT - SETTING BAIL & OTHER CONSIDERATIONS

Important Training Requirements:

Note: Training requirements of Article 17.024 are applicable to **all** judges exercising authority over criminal matters.

Upon registering for the Public Safety Reporting System (PSRS), OCA will send you webinars and online training opportunities hosted by Automon that will be helpful in utilizing the system.

In order to access the criminal history report in the PSRS, you must maintain a *TLETS mobile access certification*. This certification is granted after the completion training through DPS. New users have six months to complete the training after initial access is granted and a TLETS user ID is assigned. Recertification is required after two years.

For all county judges serving on April 1, 2022:

Those who make decisions regarding bail must be in compliance with educational requirements. These include an eight-hour course on magistrate duties by Dec. 1, 2022, for judges in office on April 1, 2022, including a Department of Public Safety course on accessing criminal history records.

Additionally, two hours of education on a magistrate's duties must be completed each subsequent state fiscal biennium (the two-year period beginning on Sept. 1 in odd-numbered years, such as Sept. 1, 2023-Aug. 31, 2025). *Code of Criminal Procedure Articles 17.023, 17.024.*

For all new county judges taking office after April 1, 2022:

They will need an eight-hour course on magistrate duties within 90 days of taking office, including a DPS course on accessing criminal history records (see the FAQ below for more details).

Additionally, a two-hour course on a magistrate's duties must be completed each subsequent state fiscal biennium (the two-year period beginning on Sept. 1 in odd-numbered years, such as Sept. 1, 2023-Aug. 31, 2025). *Code of Criminal Procedure Articles 17.023, 17.024.*



Public Safety Reporting System (PSRS)

- MUST be prepared for a defendant charged with a Class B misdemeanor or higher level offense using the Public Safety Report System.
- MUST consider the report before setting bail
- MUST submit bail form to OCA no later than 72 hours after bail is set.
- Magistrate MAY prepare or consider a report for a defendant charged with a fine only offense who receives a citation under Art.(c).
- Magistrate MAY set bail for a defendant charged with a misdemeanor without preparing or considering a report if the PSRS is unavailable for more than 12 hours due to technical failure at OCA
- To be used beginning April 1, 2022.

Who Prepares the report?

A magistrate may personally prepare the report before or while making a bail decision using the Public Safety Report System.

Otherwise, the magistrate must order a personal bond office or suitably trained personnel (including judicial personnel or sheriff's office personnel) to prepare the report and provide it to the magistrate no more than 48 hours after the defendant's arrest.

The magistrate may not order the sheriff's office to prepare the report without their consent. Art. 17.022, CCP

Rules for Setting Bond

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

The nature of the offense must be considered, including whether it involved violence under Art. 17.03 or violence against a peace officer.

The ability to make bail must be considered and proof may be taken on this point.

The future safety of the community, law enforcement and a victim are to be considered.

The criminal history record information for the defendant must be considered, including:

- Information maintained by DPS in CJIS/CCH and in the Public Safety Report System
- Any acts of family violence.
- Other pending criminal charges.
- Any instances in which the defendant failed to appear in court after release on bail.
- The citizenship status of the defendant.



The Bail Decision

After individualized consideration of all the factors listed in Art. 17.15(a), the magistrate must order that the defendant be:

- Granted a personal bond with or without conditions;
 - Granted a bail bond with or without conditions; or
 - Denied bail under the Texas Constitution and other law.
- This order must be made without unnecessary delay but no later than 48 hours after the defendant is arrested.
 - In setting bail the **magistrate must impose the least restrictive conditions**, if any, and the personal bond or bail bond necessary to reasonably ensure the defendant's appearance in court and the safety of the community, law enforcement and the victim.
 - The rules do not require a magistrate to conduct an evidentiary hearing unless required by some other law. – Art. 17.025, CCP

Notice & Reporting Requirements:

Magistrate

- Magistrate or designee must provide written notice to the defendant of the bond conditions and penalties for violating a bond condition.
- Magistrate must make a separate record of the notice provided to the defendant.
- OCA must promulgate a form for the magistrate to provide notice to the defendant. (Currently in development.)
- Bond conditions on a defendant or a violent offense under Art. 17.50(a)(3) must be sent to Sheriff no later than the next day.
- Magistrate must also notify Sheriff of any bond medication of revocation for a violent offense or disposition of the underlying charges (if they are aware).

Clerk (Art. 17.51, CCP)

- Clerk of Court must send a copy of order imposing, modifying or removing bond conditions to the Sheriff of the County where the defendant resides.
 - The clerk must do this as soon as practicable but no later than the next business day after a magistrate issues the order.
 - The clerk may delay sending a copy of the order only if they lack information necessary to ensure service and enforcement.
- If the bond condition order prohibits a defendant from going near a child-care facility or school, the clerk must send a copy of the order to the facility or school.



- The copy of the order may be sent electronically.
- As part of the OCA monthly report the clerk of each court setting bail must report(Section 71.0351, Government Code):
 - The number of defendants for whom bail was set, including the number for each category of offense, the number of personal bonds and the number of bail bonds;
 - The number of defendants released on bail who subsequently failed to appear;
 - The number of defendants released on bail who subsequently violated a bond condition; and
 - The number of defendants who committed an offense while released on bail or community supervision.

Sheriff (Art 17.50/17.52, CCP)

- A chief of police or sheriff who receives a copy of a bond condition order must, as soon as practicable but no later than the 10th day after receiving it, enter information relating to the bond condition into CJIS/CCH, or modify or remove information as appropriate.
- In the case of a violent offense, the sheriff must enter, modify or remove the information in the TCIC database no later than the next business day after receiving it.
- And make a good faith effort to notify anyone who is protected by a bond condition, or a victim, of the defendant's release.

Emergency Protective Orders

An Emergency Protective Order or EPO (also referred to as a Magistrate's Order for Emergency Protection or MOEP) is an order a magistrate may issue at a defendant's appearance before the magistrate after being arrested for an offense involving family violence or an offense of human trafficking, continuous human tracking, sexual assault, indecent assault, aggravated sexual assault or stalking.

An EPO is a separate order from an order imposing bond conditions and has different requirements and consequences.

An EPO may only be issued if the defendant has been arrested for an eligible offense and only when the defendant is in custody. Once the defendant has been released from custody an EPO may not be issued.

A magistrate **MUST** issue an EPO if the arrest is for a family violence offense that involves serious bodily injury to the victim or the use or exhibition of a deadly weapon during the commission of an assault.

If the defendant is charged with an offense which authorizes a magistrate to issue an EPO but the offense does not involve serious bodily injury or the use or exhibition of a deadly weapon, issuance of the EPO is discretionary, meaning the magistrate may issue an EPO but is not required to do so.



If the defendant used or exhibited a deadly weapon during the commission of the offense, then the EPO **MUST** remain in effect for at least 61 days but not more than 91 days. Otherwise, the EPO must remain in effect for at least 31 days but not more than 61 days

When to issue EPO?

A magistrate may issue an EPO following an arrest for any offense involving family violence if the magistrate believes it is appropriate or an EPO is requested by:

- the victim of the offense;
- the guardian of the victim;
- a peace officer; or
- the attorney representing the state.

Even if requested, a magistrate is not required to issue an EPO unless it falls within the mandatory category.

Contents of the EPO

An EPO must suspend the handgun license, if any, of the accused. EPO suspending a handgun license must be sent immediately to DPS so that they may enter the EPO into the Criminal Justice Information System and suspend the license.

Issuance of an EPO also makes it illegal for the defendant to possess a firearm (including a concealed or holstered handgun), whether they have a handgun license or not.

The victim's mailing address may be kept confidential if requested by the victim or if the magistrate determines it is necessary.

An EPO MAY prohibit the defendant from:

- committing family violence or an assault on the person protected under the order;
 - committing an act in furtherance of an offense under Section 42.072, Penal Code (stalking);
 - communicating directly with a member of the family or household or with the person protected under the order in a threatening or harassing manner;
 - communicating a threat through any person to a member of the family or household or to the person protected under the order;
 - communicating in any manner with the person protected under the order or a member of the family or household of a person protected under the order (except through the party's attorney or a person appointed by the court), but only if the magistrate finds good cause;
 - going 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;
- possessing 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); and



- going to or near the residence, childcare facility, or school where a child protected under the order resides or attends.

An EPO may not order the defendant to stay a minimum distance from the person protected by the order. Only from specific places identified in the order. Those places and distances to keep away from them must be stated in the order unless the location is omitted to protect the victim (like a battered women's shelter).

EPO Service & Notice Requirements

The defendant must be served with a copy of the EPO by the magistrate or their designee in person or electronically. The magistrate must make a separate record of the service in written or electronic form.

The EPO has to include a written warning to the defendant of the consequences of violating the EPO. See the EPO form below.

As soon as possible but not later than the next business day after the date the magistrate issues an EPO, the magistrate must send a copy of the EPO to the chief of police or sheriff. If victim is not present, the magistrate must order a peace officer to try to notify the victim within 24 hours. The clerk must send a copy of the order to the victim at their last known address not later than the next business day.

If the EPO prohibits a person from going to or near a school or childcare facility, the magistrate must also send a copy of the order to the school or childcare facility.

The EPO must also be entered in the Protective Order Registry as soon as possible but not more than 24 hours after issuance. If the EPO is vacated or expired, the clerk must update the status of the order in the registry.

