

CHAPTER 1 MAGISTERIAL DUTIES

A. Adult “Magistration”

All judges are magistrates. (Art. 2.09, C.C.P.) All magistrates have co-equal jurisdiction with all other magistrates within the county and their jurisdiction is coextensive with the limits of the county. *Gilbert v. State*, 493 S.W.2d 783 (Tex. Crim. App. 1973), and *Ex parte Clear*, 573 S.W.2d 224 (Tex. Crim. App. 1978). As a magistrate, municipal judges are authorized to warn adult and juvenile offenders of their respective rights as required by law. For a general discussion on the role of magistrates, see *TMCEC The Municipal Judges Book*, Chapter I, Section IV.

The “magistration” hearing or 15.17 hearing must take place without unnecessary delay, but in no event more than 48 hours after the person is arrested.

Warning an offender of his or her rights and setting bail is not an arraignment, although it is sometimes called such. An arraignment involves fixing the identity of the offender and taking a plea. (See Checklist 6-3.)

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

Checklist 1-1	Script/Notes
<p><input type="checkbox"/> 1. Determine probable cause.</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. If arrest is by a warrant, no further inquiry as to probable cause is needed.</p> <p style="padding-left: 20px;"><input type="checkbox"/> b. If arrest is without a warrant, conduct probable cause hearing either by sworn testimony or written affidavit to review the facts and circumstances of the arrest to determine if probable cause exists for continued detention of arrestee.</p> <p style="padding-left: 20px;"><input type="checkbox"/> c. If there is no probable cause, release the arrestee.</p> <p style="padding-left: 20px;"><input type="checkbox"/> d. If there is probable cause, proceed.</p> <p style="padding-left: 20px;"><input type="checkbox"/> e. Appearance before a magistrate may be broadcast by closed circuit television to the</p>	<p><i>Gerstein v. Pugh</i>, 420 U.S. 103 (1975).</p> <p><i>Ex Parte Garcia</i>, 547 S.W. 2d 271 (Tex. Crim. App. 1977).</p> <p><i>County of Riverside v. McLaughlin</i>, 500 U.S. 44 (1991). Magistrate to use a practical common sense approach to determine probable cause by considering all facts presented under oath; the “totality of the circumstances” test to determine whether there is a fair probability that the arrestee committed the offense with which he or she is charged, <i>Illinois v. Gates</i>, 462 U.S. 213 (1983).</p> <p>See <i>TMCEC Forms Book</i>: Release: Magistrate’s Determination of No Probable Cause.</p> <p>Art. 15.17(a), C.C.P.</p>

magistrate. Two-way communication must be possible and the warning must be recorded.

- 2. Identify yourself to the arrestee.
- 3. Determine if the arrestee sufficiently understands the English language or possesses any impairments.
- 4. If necessary, swear in a qualified interpreter.
- 5. If the arrestee is hearing impaired, obtain the services of an interpreter as provided by Art. 38.31, C.C.P., to interpret the warning.
- 6. Determine the arrestee's age at the time of the offense.
 - a. If the arrestee has not reached his or her 17th birthday, or was under 17 at the time of the offense but is now 17 or older, use the juvenile admonishment (warning).
 - b. If the arrestee reached his or her 17th birthday at the time of the offense, continue.
- 7. Determine whether arrestee is currently on bail for a separate offense.
- 8. Advise the arrestee in clear language of the offense with which they are charged.
 - a. Name the offense.
 - b. Make arrestee aware of any affidavit filed in the case.
- 9. Warn the arrestee of the following rights:
 - a. The right to remain silent;
 - b. That the arrestee is not required to make a statement and that any statement made can and will be used against the arrestee;
 - c. The right to have an attorney present during any interview with peace officers or

SEE CHECKLIST 12-5

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

SEE CHECKLIST 13-28

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

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

"You are charged with the offense of _____. It is a _____ Degree/Class Misdemeanor/ Felony."

No right to counsel at probable cause hearing or during "magistration" warnings. *Gerstein, supra*.
Art. 1.051, C.C.P.
Only indigent defendants charged with a crime that may result in punishment by confinement are entitled to have an attorney appointed. However, if a court

prosecutors;

- d. **The right to terminate the interview at any time; and**
 - e. The right to an examining trial if the offense charged is a felony.
 - f. Accusation of offenses may lead to deportation if the arrestee is not a U.S. citizen.
10. Warn arrestee of right to counsel and appointment of counsel.
- a. Warn of the right to retain counsel.
 - b. Warn of the right to request appointment of counsel if the person cannot afford counsel.
 - c. Describe the local procedures, created by the district and county judges, for requesting appointment of counsel.
 - d. Provide the appropriate locally approved paperwork for request of appointment of counsel.
 - e. Ensure reasonable assistance in completing the necessary forms.
 - f. Appoint counsel, only if the magistrate is designated by the local district and county judges as the appropriate authority under Art. 26.09, C.C.P., to appoint counsel.
 - g. Forward the completed paperwork to the appropriate designee if not designated by the local district and county judges to appoint counsel:
 - (1) Without unnecessary delay, and
 - (2) Not later than 24 hours after request for appointment.

concludes that the interests of justice requires representation by counsel, the court may appoint counsel.

See Checklist 8-3 for indigent hearings.

Order or download *Magistrate's Guide to the Vienna Convention on Consular Notification* from the Texas Attorney General's Office: (512) 463-2170 or www.oag.state.tx.us.

SEE CHECKLIST 1-8

- 11. A record must be made of each 15.17 hearing; it may be written, recorded, or in other form adopted by the county, and include:
 - a. The magistrate informing the person of the person's right to request appointment of counsel;
 - b. The magistrate asking the person whether the person wants to request appointment of counsel; and
 - c. Whether the person requested appointment of counsel.

- 12. Inquire if the arrestee understands his or her rights.
 - a. A magistrate has a duty to clarify the rights if the arrestee indicates a lack of understanding.
 - b. A magistrate must ensure that reasonable assistance is given to the arrestee in completing the necessary forms for requesting appointment of counsel at the time of the 15.17 hearing.

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

- 14. Setting Bail

See *TMCEC Forms Book*:
Magistrate Warning.

See Checklist 1-8 if you are the designated authority to appoint counsel.

Art. 26.04, C.C.P.

If a municipal judge appoints an attorney, the city may be responsible for paying the attorney, unless an interlocal agreement is entered to the contrary.

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

See *TMCEC Forms Book*:

- a. Bail should be set at a reasonable amount. The court may consider any factor relevant to the fixing of bail.
- b. The court may consider any other issues deemed appropriate including any or all of the following:
 - (1) The amount must be high enough to ensure the presence of the arrestee when required, but not so high as to be oppressive;
 - (2) The nature and circumstances of the offense;
 - (3) The range of punishment for the offense charged;
 - (4) The arrestee’s ability to make bail in the amount under consideration;
 - (5) Consider the income of a spouse;
 - (6) Do not consider the income of friends or other family members;
 - (7) The arrestee’s community ties;
 - (8) Work record;
 - (9) Family ties;
 - (10) Prior criminal record and appearances in other matters; and
 - (11) Bail, if any, set in the defendant’s other cases.
- c. If a pretrial services agency operates in the judicial district or county, order the arrestee to be interviewed and the information brought to you immediately.
- d. The court must also consider the safety of the

Magistrate’s Commitment Form.

Art. 17.15, C.C.P.

“Do you work?

For whom?

How much do you earn?

Are you married?

How much does your spouse earn?

Does anyone else live with you?

Do you live in _____ County?

How will you get to court if you are released?

Have you ever been arrested before?

When and for what?

What was the outcome of the case?”

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

victim, his or her family, and the community in fixing the amount of bail.

- e. The magistrate may impose any reasonable condition related to safety of the victim or safety of the community.
- f. Bail may only be denied or temporarily denied in certain instances.
- g. If bail is to be denied, or temporarily denied, make a written finding.
- h. Set the amount of bail.
- i. Set conditions of bail.
- j. Record each condition in writing; or
- k. Recite each condition into the record; and

- l. Require the arrestee to acknowledge that he or she understands each condition.
- m. If the charge is a subsequent “Driving, Flying or Boating While Intoxicated,” “Intoxication Assault,” or “Intoxication Manslaughter,” the magistrate shall require on release that a defendant:
 - (1) Have installed on the motor vehicle owned or most regularly operated by the defendant a vehicle ignition interlock device;
 - (2) Not operate any motor vehicle unless the vehicle is equipped with that device;
 - (3) Must have device installed on appropriate motor vehicle within 30 days of release on bond; and
 - (4) Must pay the expense of installation.
- n. You may designate an appropriate agency to

Art. 17.40, C.C.P.

SEE CHECKLIST 1-2

“I now set bail at \$ ____.

Further, I am setting the following conditions and I order you to abide by each and every one of them.”

Where the alleged victim is a child 12 years of age or younger, see Art. 17.41, C.C.P., and *TMCEC Forms Book: Bail Condition where Child is Alleged Victim*.

“Do you understand each of these conditions?”

Art. 17.441, C.C.P.
See *TMCEC Forms Book: Bond with Ignition Interlock Condition*.

verify the installation of the device and to monitor the device.

- o. Do not require the installation of the device if to do so would not be in the best interest of justice.
- 15. Consider the arrestee for release on personal bond.
- 16. Set conditions of personal bond, if arrestee qualifies.
 - a. Insure that the arrestee acknowledges and understands each condition.
- 17. If the offense is punishable by fine only, you may, after identifying the defendant:
 - a. Release the defendant on personal bond;
 - b. Order the defendant in writing to appear in the appropriate court for arraignment at a specific:
 - (1) Date;
 - (2) Time;
 - (3) Place; and
 - c. Provide the arrestee with a copy of the order.
 - d. Other restrictions
 - (1) Magistrate does not have discretion to restrict the type of bail, cash, or surety, to the exclusion of the other. A magistrate may require a cash bond only when a forfeiture of bail has been declared. A magistrate may designate that personal recognizance bond be denied by stating “cash or surety” on the bail setting.
 - (2) A magistrate may not set differential bonds (*e.g.*, \$200 cash or \$500 surety).
 - (3) A magistrate cannot set a bond that would be an instrument of oppression (*i.e.*, high in light of financial

SEE CHECKLIST 1-5

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

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

resources).

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

18. Other consideration

- a. Enter magistrate’s “Order for Emergency Protection.”

SEE CHECKLIST 1-7

19. Special procedures on fine-only offenses

- a. Magistrate may set surety/cash appearance bond.
- b. Magistrate may set personal bond.
- c. Magistrate may release without setting bond:
 - (1) Only in fine-only misdemeanors;
 - (2) Magistrate must give defendant the time and place to appear to answer to the charges against him or her in writing;
 - (3) Release without bond is not available if defendant has a prior felony or Class A or B misdemeanor conviction; and
 - (4) If defendant fails to appear and a subsequent warrant is executed, the magistrate may set bail and should set the amount of bail at twice the potential fine and cost.

Art. 15.17(b), C.C.P.
See *TMCEC Forms Book*: Order Releasing under 15.17(b), C.C.P., with Order to Appear.

20. Magistrate may take a plea of guilty if person was arrested under warrant for a fine-only offense issued in a county other than the one in which the person is arrested.

- a. Magistrate has discretion to take a plea in lieu of setting bail.
- b. Defendant must make written plea of guilty or *nolo contendere* and waiver of jury trial.

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

- c. Magistrate must enter a judgment that includes the following:
 - (1) Set fine;
 - (2) Determine cost;
 - (3) Accept payment;
 - (4) Give credit for time served:
 - (a) Determine what constitutes a day, a period between eight and 24 hours; Art. 45.048, C.C.P.
 - (b) Credit of at least \$50 for each “day”. For offenses committed before January 1, 2004, the credit is \$100 for each eight to 24 hour period.
 - (5) Determine indigency.
 - d. On satisfaction of judgment, discharge the defendant. SEE CHECKLIST 8-3
-
21. Magistrate must, before the 11th business day following the plea, transmit to the court with jurisdiction the following: Art. 15.18(b), C.C.P.
 - a. Written plea;
 - b. Any orders entered in the case; and
 - c. Any fine or cost collected in the case.

CHAPTER 1 MAGISTERIAL DUTIES

A. Adult “Magistration”

2. When Bail May Be Denied or Delayed

Checklist 1-2	Script/Notes
<p><input type="checkbox"/> 1. Bail may be denied in capital cases when the state presents proof evident that conviction and death sentence will result from trial.</p> <p><input type="checkbox"/> 2. A district judge may deny bail in non-capital cases when there is a substantial showing by the state within seven (7) days of arrest that the defendant:</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. Is guilty of the charged felony, with two (2) prior convictions;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (1) The second being subsequent to the first;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (2) Both in point of time of commission of the offense; and</p> <p style="padding-left: 40px;"><input type="checkbox"/> (3) Conviction therefore;</p> <p style="padding-left: 20px;"><input type="checkbox"/> b. Committed a felony while on bail for a prior felony for which he or she was indicted;</p> <p style="padding-left: 20px;"><input type="checkbox"/> c. Committed a felony involving the use of a deadly weapon after being convicted of a prior felony; or</p> <p style="padding-left: 20px;"><input type="checkbox"/> d. Committed a violent or sexual offense while under the supervision of a criminal justice agency of the State or political subdivision of the State for a prior felony.</p> <p><input type="checkbox"/> 3. The State’s burden is:</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. To prove guilt of the defendant in Step 2(a) and (c) above; or</p>	<p>Art. I, Sec. 11, Texas Constitution</p> <p>When a person accused of a felony is brought before a magistrate, the magistrate should contact the district court. Article 17.21, C.C.P., provides that if the court is not in session, then the magistrate may set the bail. Because Art. I, Sec. 11a, Texas Constitution, provides that only a district judge may deny bail in non-capital cases and that the order denying the bail must be entered within seven (7) calendar days of a defendant’s incarceration, a municipal judge exercising his or her authority as a magistrate should notify the district court immediately and send the warning sheet to the district court as soon as possible.</p> <p><i>United States v. Salerno</i>, 481 U.S. 770 (1987), sanctioned the denial of bail if person was found to be a threat to individuals or the community after clear and convincing evidence of those facts presented at an adversarial hearing.</p> <p>Art. I, Sec. 11a, Texas Constitution</p> <p><i>Bills v. State</i>, 796 S.W.2d 194 (Tex. Crim. App. 1990).</p>

- b. That the offense was committed while on bail in Step(b) and (d) above.
- 4. The court's order is reduced to writing.
- 5. In non-capital case only, set aside the order after 60 days and set bail if the defendant has not been tried.

CHAPTER 1 MAGISTERIAL DUTIES

A. Adult “Magistration”

3a. When the Defendant Must Be Released Because a Magistrate Has Not Found Probable Cause

Checklist 1-3(a)	Script/Notes
<p><input type="checkbox"/> 1. All persons arrested must be brought before a magistrate without unnecessary delay, never later than 48 hours after arrest.</p>	<p>Art. 15.17(a), C.C.P. See <i>TMCEC Forms Book</i>: Release: Magistrate’s Determination of No Probable Cause.</p>
<p><input type="checkbox"/> 2. Persons arrested without warrants must be released if a magistrate has not determined probable cause exists to believe that the person committed the offense within certain time frames.</p>	<p>Art. 17.033, C.C.P. The article is difficult because it requires the granting of a personal recognizance bond on a finding of no probable cause. It is further difficult because only the magistrate should be able to set a bond, yet the scheme only comes into play when there is no magistrate.</p>
<p><input type="checkbox"/> 3. In misdemeanor cases:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. 24 hours; <input type="checkbox"/> b. Bonds not to exceed \$5,000; <input type="checkbox"/> c. Personal bonds if arrestee is unable to make or secure surety/cash appearance bond. 	
<p><input type="checkbox"/> 4. In felony cases:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. 48 hours; <input type="checkbox"/> b. Bonds not to exceed \$10,000; <input type="checkbox"/> c. Personal bonds if arrestee is unable to make or secure surety/cash appearance bond. 	
<p><input type="checkbox"/> 5. On application by the prosecutor, the magistrate may postpone release for 72 hours from arrest.</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. Application must state sufficient reasons why a magistrate has not made a probable cause determination. 	

CHAPTER 1 MAGISTERIAL DUTIES

A. Adult “Magistration”

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

Checklist 1-3(b)	Script/Notes
<p>The magistrate that enters orders under Article 15.17, Criminal Code of Procedures, keeps jurisdiction of the defendant’s charge until a charging instrument (indictment, information, complaint) is filed in a court with jurisdiction. Once the charging instrument has been filed in the cause, the magistrate has no further jurisdiction or responsibility.</p> <p><input type="checkbox"/> 1. When the State is not ready and the defendant is unable to post the bail previously set, the defendant must be released on personal bond, or reasonable bail that the defendant can make must be set, if the defendant is charged with:</p> <p><input type="checkbox"/> a. Any grade of felony and he or she has been incarcerated for 90 days;</p> <p><input type="checkbox"/> b. A misdemeanor punishable by 180 days in jail or more and he or she has been incarcerated for 30 days;</p> <p><input type="checkbox"/> c. A misdemeanor punishable by 180 days in jail or less and he or she has been incarcerated for 15 days; or</p> <p><input type="checkbox"/> d. A misdemeanor punishable by fine only and he or she has been incarcerated for five (5) days.</p> <p>AND</p> <p>The defendant is not otherwise:</p> <p><input type="checkbox"/> e. Serving a sentence of confinement for another offense;</p> <p><input type="checkbox"/> f. Being detained pending trial of another case and time has not yet lapsed on that case; or</p> <p><input type="checkbox"/> g. Incompetent to stand trial, during a period of incompetence.</p>	<p><i>Guerra v. Garza</i>, 987 S.W.2d 593 (Tex. Crim. App. 1999).</p> <p>Art. 17.151, C.C.P.; <i>Jones v. State</i>, 803 S.W.2d 712 (Tex. Crim. App. 1991).</p> <p>Art. 17.151(4), C.C.P.</p>

- 2. When defendant is indigent, either reduce bail to an amount the defendant can post, or release the defendant on personal bond.

CHAPTER 1 MAGISTERIAL DUTIES

A. Adult “Magistration”

4. Requisites of a Bail Bond

Checklist 1-4	Script/Notes
<ul style="list-style-type: none"> <input type="checkbox"/> 1. Requisites of a bail bond: <ul style="list-style-type: none"> <input type="checkbox"/> a. Made payable to “The State of Texas”; <input type="checkbox"/> b. Defendant and surety, if any, bind themselves that the defendant will appear before the proper court or magistrate to answer the accusation against him or her; <input type="checkbox"/> c. States whether the defendant is charged with a felony or misdemeanor; <input type="checkbox"/> d. Signed by name or mark of the defendant and surety, if any, with a mailing address for each; <input type="checkbox"/> e. States the time and place, when and where the defendant binds himself or herself to appear; <input type="checkbox"/> f. States the court or magistrate before whom to appear; <input type="checkbox"/> g. States the defendant is bound to appear before any court or magistrate before whom the matter may be pending at any time and place required under law or by any court or magistrate; <input type="checkbox"/> h. Conditioned that the defendant and sureties, if any, will pay all necessary and reasonable expenses incurred by any and all sheriffs or other peace officers in re-arresting the defendant if failure to appear before the court or magistrate named in the bond at the time stated therein; and <input type="checkbox"/> i. Such expense shall be in addition to the principal amount of the bond. 	<p>Art. 17.08, C.C.P.</p>

- 2. Set any reasonable conditions that will assure the appearance of the defendant.

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

Valenciano v. State, 720 S.W.2d 523 (Tex. Crim. App. 1986).
See *TMCEC Forms Book*:
Magistrate's Commitment Form.

Art. 17.13, C.C.P.

Arts. 17.07 and 17.14, C.C.P.

Art. 17.10, C.C.P.

Art. 17.11, Sec. 2, C.C.P.
A surety is in default from the time execution may be issued on the final judgment in a bond forfeiture proceeding unless the final judgment is superseded by the posting of a *supersedeas* bond (a bond required of someone who petitions to set aside a judgment or execution).

If surety is a corporation, see Sec. 174.212(c), O.C.

- b. Aggravated kidnapping;
 - c. Aggravated sexual assault;
 - d. Deadly assault on law enforcement officer, corrections officer, parole board member or employee, or court participant;
 - e. Injury to a child or elderly individual;
 - f. Aggravated robbery;
 - g. Burglary;
 - h. Organized criminal activity;
 - i. Any aggravated felony under V.T.C.A. Health & Safety Code, Chapter 481 or Sec. 485.033; or
 - j. Does not submit to testing as required by the court or a magistrate or whose test results for alcohol or drugs are positive.
3. In addition to any other reasonable conditions that will assure the appearance of the defendant, consider:
- a. Electronic monitoring or home curfew; Art. 17.43, C.C.P.
 - b. Weekly testing for controlled substances; Art. 17.44(a)(2), C.C.P.
 - c. If charge is prostitution, counseling or education or both for HIV; and Art. 17.45, C.C.P.
 - d. If the charge is stalking, consider a no contact order. Art. 17.46(a), C.C.P., Sec. 42.072, P.C.
4. If the charge is a subsequent “Driving, Flying or Boating While Intoxicated,” “Intoxication Assault” or “Intoxication Manslaughter,” the magistrate shall require on release that a defendant:
- a. Have installed on the motor vehicle owned or most regularly operated by the defendant a vehicle ignition interlock device; Art. 17.441, C.C.P.
See *TMCEC Forms Book*: Bond with Ignition Interlock Condition.
 - b. Not operate any motor vehicle unless the vehicle is equipped with that device;

- | | |
|--|---|
| <ul style="list-style-type: none"> <input type="checkbox"/> c. Must have device installed on appropriate motor vehicle within 30 days of release on bond; and <input type="checkbox"/> d. Must pay the expense of installation. <input type="checkbox"/> e. You may designate an appropriate agency to verify the installation of the device and to monitor the device. <input type="checkbox"/> f. Do not require the installation of the device if to do so would not be in the best interest of justice. | <p>Art. 17.03(c), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 5. Order drug or alcohol testing, education and/or treatment if you, or the investigating or arresting law enforcement officer, reasonably believe: <ul style="list-style-type: none"> <input type="checkbox"/> a. That drug or alcohol abuse was related to the offense; or <input type="checkbox"/> b. Drugs or alcohol are presently in the body of the defendant; and <input type="checkbox"/> c. The condition will serve to reasonably assure the appearance of the defendant in court. | <p>Art. 17.03(c), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 6. Costs of testing may be assessed as a condition of bond or as court costs. | <p>Art. 17.03(e), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 7. Order the personal bond fee: <ul style="list-style-type: none"> <input type="checkbox"/> a. Paid before the defendant is released; <input type="checkbox"/> b. Paid as a condition of bond; <input type="checkbox"/> c. Paid as court costs; <input type="checkbox"/> d. Reduced; or <input type="checkbox"/> e. Waived. | <p>Art. 17.03(g), C.C.P.
Art. 17.42, C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 8. Release a mentally ill offender if: <ul style="list-style-type: none"> <input type="checkbox"/> a. The defendant is not charged with and has not previously received deferred adjudication, community supervision or probation, any deferred final disposition of a case, or a final conviction for: | <p>Art. 17.032, C.C.P.</p> |

- (1) Murder;
- (2) Capital murder;
- (3) Kidnapping;
- (4) Aggravated kidnapping;
- (5) Indecency with a child;
- (6) Assault (Class A);
- (7) Sexual assault;
- (8) Aggravated sexual assault;
- (9) Injury to a child, elderly person, or invalid; or
- (10) Aggravated robbery; and
- b. The defendant is examined for competency as provided in Art. 46.02, C.C.P.;
- c. The report submitted concludes the defendant is mentally ill and incompetent;
- d. The report recommends treatment; and
- e. Appropriate community based mental health services are available for the defendant under Sec. 534.053, Health & Safety Code, or through another mental health services provider.
- 9. Consider ordering as a condition of bond that the defendant submit to outpatient or inpatient mental health treatment if the defendant's:
 - a. Mental illness is chronic in nature; or
 - b. Ability to function independently will continue to deteriorate if the defendant is not treated.
- 10. Consider imposing any other conditions reasonably necessary to protect the community. Arts. 17.032(d), 17.40, and 56.02(2), C.C.P.
- 11. If the county from which the warrant of arrest was issued has a personal bond office, a copy of the bond Art. 17.031(b), C.C.P.

must be forwarded to the personal bond office in that county.

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A. Adult “Magistration”

6. When Bail May Be Raised, Changed, or Forfeited

Checklist 1-6	Script/Notes
<input type="checkbox"/> 1. Bail may be changed if the initial bail bond is: <ul style="list-style-type: none"> <input type="checkbox"/> a. Defective; <input type="checkbox"/> b. Excessive; <input type="checkbox"/> c. Insufficient; <input type="checkbox"/> d. The sureties, if any, are not acceptable; <input type="checkbox"/> e. Set prior to indictment and indictment is returned; or <input type="checkbox"/> f. Conditioned upon treatment under Art. 17.03, C.C.P., and that condition is violated. 	<p>Art. 17.09, Sec. 3, C.C.P.</p> <p><i>Guerra v. Garza</i>, 987 S.W.2d 593 (Tex. Crim. App. 1999). A judge lacks the authority to change the status of bonds set by another judge acting as a magistrate.</p> <p><i>Ex parte King</i>, 613 S.W.2d 503 (Tex. Crim. App. 1981).</p> <p>Art. 11.56, C.C.P.</p> <p>Art. 22.021, C.C.P.</p>
<input type="checkbox"/> 2. Bail may not be raised or forfeited: <ul style="list-style-type: none"> <input type="checkbox"/> a. Without cause; <input type="checkbox"/> b. If the defendant fails to hire counsel as ordered by the court; or <input type="checkbox"/> c. If defendant is only slightly late, with no prior forfeiture history. 	<p>Art. 17.09, Sec. 3, C.C.P.</p> <p>Three (3) to five (5) minutes late is not enough. Art. 22.02, C.C.P.; <i>Meador v. State</i>, 780 S.W.2d 836 (Tex. App.—Houston [14th] 1989).</p>

- a family or household against another member of a family or household;
 - b. Abuse of a child of the family or household by a member of the family or household;
 - c. Dating violence, victim and defendant have a dating relationship (more than a casual acquaintanceship or ordinary fraternization).
- 4. Based upon the information provided supporting the arrest of the defendant, consider whether a protection order is necessary.
 - a. At a defendant's appearance before a magistrate after an arrest for a family violence offense, a magistrate **shall** issue an order for emergency protection for offenses involving:
 - (1) Serious bodily injury to the victim; or
 - (2) The use or exhibition of a deadly weapon during the commission of an assault.
- 5. Identify the:
 - a. Victim;
 - b. Members of the victim's family or household;
 - c. Children.
- 6. Identify the:
 - a. Residence;
 - b. Place of employment or business; and
 - c. School or child care facility where a child to be protected by the order is in attendance or is enrolled.
- 7. Determine the minimum distances the defendant must maintain from each location.
- 8. Determine whether the children, if any, should be protected by the order.

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

- 9. Determine if the location is within:
 - a. A municipality; or
 - b. The unincorporated part of the county.
- 10. Determine whether a family lawsuit involving the parties is pending.
- 11. Determine if possession of firearms should be prohibited. Magistrates should note if the defendant is a peace officer.
- 12. Determine if the defendant has a concealed handgun license.
 - a. You may suspend the handgun license.
 - b. If you suspend the license, you or the clerk must immediately send a copy of the order to DPS.
- 13. Identify the defendant on the order by date of birth (D.O.B.).
- 14. Enter these findings in the protection order.
- 15. Explain the contents and meaning of the order to the defendant.
- 16. Sign the order.
 - a. The order must contain the following statements printed in bold-faced type or in capital letters:

A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE OR A STALKING OFFENSE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS. THE POSSESSION OF A FIREARM BY A PERSON, OTHER THAN A PEACE OFFICER AS

Sec. 46.04, P.C.

While the magistrate appears to have discretion to make this order, the Penal Code appears to make possession of a firearm by a person subject to a magistrate's protective order illegal regardless of the content of the order.
Arts. 17.292(l) and 17.293, C.C.P.

DEFINED BY SECTION 1.07, PENAL CODE ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN FULL-TIME, PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO THIS ORDER MAY BE PROSECUTED AS A SEPARATE OFFENSE PUNISHABLE BY CONFINEMENT OR IMPRISONMENT.

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

- 17. Insure that a copy of the order is served on the defendant, and that he or she signs the acknowledgment.
- 18. File the original order and acknowledgment with your court clerk.
- 19. Instruct the court clerk to transmit copies of the order to the Department of Public Safety and a copy to the victim.
- 20. Send a copy of the order to the chief of police in the municipality or sheriff in the county where the protected persons reside.
- 21. If the victim is not present at the time the order is issued, order an appropriate peace officer to make a good faith effort to notify the victim within 24 hours by calling the victim's residence and place of employment.
- 22. The MOEP controls over other court orders with conflicting conditions, including child custody orders, while the MOEP is pending, unless:
 - a. The order is a protective order issued by a

Art. 17.292(h), C.C.P.
Art. 17.293, C.C.P.

Attention: Suspension/
Revocation, Texas Department of
Public Safety, Concealed Handgun
Licensing, Section #0235, Austin,
Texas 78765-4143
512/424-2000, ext. 3

See *TMCEC Forms Book*: Clerk's
Letter – Copy of Emergency
Protection Order to Victim.

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

Art. 17.292(f-1), C.C.P.

<p>family court after a hearing; or</p>	
<p><input type="checkbox"/> b. The order is an <i>ex parte</i> order of the family court that was aware of the MOEP and specifically dictates that the new order controls.</p>	<p>Art. 17.292(f-2), C.C.P.</p>
<p><input type="checkbox"/> 23. The MOEP should reflect an effective period up to 61 days, but not less than 31 days after the date of issuance.</p>	<p>Art. 17.292(j), C.C.P.</p>
<p><input type="checkbox"/> 24. A MOEP may be transferred to the court with jurisdiction of the underlying criminal case:</p>	<p>Art. 17.292(n), C.C.P.</p>
<p><input type="checkbox"/> a. On motion, notice, and hearing (serve all parties, including the State); or</p>	
<p><input type="checkbox"/> b. On agreement of all parties.</p>	
<p><input type="checkbox"/> 25. The magistrate or the court to which a MOEP was transferred under Step 24 may modify all or part of the MOEP if:</p>	<p>Art. 17.292(j), C.C.P.</p>
<p><input type="checkbox"/> a. Notice is made to each affected party of a hearing; and</p>	
<p><input type="checkbox"/> b. The magistrate finds that:</p>	
<p><input type="checkbox"/> (1) The order as originally issued is unworkable;</p>	
<p><input type="checkbox"/> (2) The modification will not place the victim at greater risk than the original order; or</p>	
<p><input type="checkbox"/> (3) The modification will not in any way endanger a person protected under the order.</p>	

CHAPTER 1 MAGISTERIAL DUTIES

A. Adult “Magistration”

8. Appointment of Counsel – When the Right Attaches

Checklist 1-8	Script/Notes
<ul style="list-style-type: none"> <li data-bbox="181 506 938 674">□ 1. Article 26.04, C.C.P., controls appointment of counsel and requires the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county to adopt and publish written countywide procedures for appointment of counsel. <li data-bbox="181 716 938 842">□ 2. Those judges acting as a body may designate someone to make the actual appointment under the guidelines and procedures they adopt. That could be a municipal judge. <li data-bbox="181 884 938 1262">□ 3. The procedures adopted by the body of judges must include procedures, financial standards, and forms to determine indigency, and whether counsel should be appointed. <ul style="list-style-type: none"> <li data-bbox="279 1052 938 1157">□ a. Standards can include all of the defendant’s financial information including spousal income available to the defendant. <li data-bbox="279 1188 938 1262">□ b. The designee appointing counsel cannot consider whether the defendant posted bail. <li data-bbox="181 1293 938 1430">□ 4. If a municipal judge is made the designee of the county judges, an interlocal agreement should be entered addressing the obligation to compensate counsel appointed by the municipal judge. 	<p data-bbox="987 506 1252 537">SEE CHECKLIST 1-1</p> <p data-bbox="987 579 1398 747">It is rare when the municipal judge sitting as magistrate will be required to appoint counsel; this duty is normally the prerogative of the higher trial courts.</p> <p data-bbox="987 789 1398 1052">Since municipal courts try fine-only offenses, there is no statutory or case law requirement to appoint counsel for a case tried in municipal court. Counsel should be appointed in a municipal court case only when the interests of justice require appointment.</p>

CHAPTER 1 MAGISTERIAL DUTIES

B. Examining Trial

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

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| <p><input type="checkbox"/> 10. An attachment for an out-of-county witness may be issued:</p> <ul style="list-style-type: none"><input type="checkbox"/> a. When the party applying for the attachment makes affidavit that the testimony is material; and<input type="checkbox"/> b. Sets forth the facts expected to be proven by the witness;<input type="checkbox"/> c. Unless the court finds the facts are not material, or they are admitted by the adverse party after a hearing before the court. | Art. 16.11, C.C.P. |
| <p><input type="checkbox"/> 11. The proceeding must be transcribed by a court reporter, or a statement of facts, agreed to by the State and defense and approved by the presiding magistrate, may be used to preserve the testimony of the witnesses.</p> | Art. 16.09, C.C.P. |
| <p><input type="checkbox"/> 12. Before beginning the hearing, inform the defendant:</p> <ul style="list-style-type: none"><input type="checkbox"/> a. Of the right to make a statement relative to the accusation in the complaint;<input type="checkbox"/> b. That he or she may not be compelled to make any statement; and<input type="checkbox"/> c. That if he or she does make a statement, it may be used in evidence against him or her. | Art. 16.03, C.C.P. |
| <p><input type="checkbox"/> 13. If the defendant desires to make a statement he or she may only do so prior to the examination of any witnesses.</p> <ul style="list-style-type: none"><input type="checkbox"/> a. The statement must be reduced to writing, and<input type="checkbox"/> b. Signed, but not sworn to, by the defendant. | |
| <p><input type="checkbox"/> 14. The magistrate shall then attest by his or her own certificate and signature to the execution and signing of the statement.</p> | Art. 16.04, C.C.P. |
| <p><input type="checkbox"/> 15. Allow the prosecutor to question the State's witnesses, and the defense counsel to cross-examine them.</p> | Art. 16.06, C.C.P. |
| <p><input type="checkbox"/> 16. The court may question the witnesses if no prosecutor appears.</p> | Art. 16.06, C.C.P. |

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|--|---------------------------|
| <p><input type="checkbox"/> 17. The proceeding may not be continued unless:</p> <ul style="list-style-type: none"><input type="checkbox"/> a. Either the defendant or the prosecutor signs a sworn statement setting forth the following:<ul style="list-style-type: none"><input type="checkbox"/> (1) The name, address, and facts that either expect to prove with the testimony of the witness, or<input type="checkbox"/> (2) The nature of the evidence; and<input type="checkbox"/> b. The court is satisfied that the testimony or evidence is material, and the adverse party denies the truth. | <p>Art. 16.14, C.C.P.</p> |
| <p><input type="checkbox"/> 18. At the conclusion of the proceeding, enter an order:</p> <ul style="list-style-type: none"><input type="checkbox"/> a. Committing the defendant to jail;<input type="checkbox"/> b. Discharging the defendant; or<input type="checkbox"/> c. Admitting the defendant to bail. | <p>Art. 16.17, C.C.P.</p> |
| <p><input type="checkbox"/> 19. Failure to enter an order within 48 hours after the proceeding has been completed operates as a finding of no probable cause and the defendant is discharged.</p> | <p>Art. 16.17, C.C.P.</p> |

CHAPTER 1 MAGISTERIAL DUTIES

C. Mental Impairments. Examination of Defendant in Custody Suspected of Having Mental Illness or Mental Retardation, Art. 16.22, C.C.P.

Checklist 1-10	Script/Notes
<p>Definitions:</p> <p>“Mental illness” means an illness, disease or condition, other than epilepsy, senility, alcoholism, or mental deficiency that: (a) substantially impairs a person’s thought, perceptions of reality, emotional process, or judgment; or (b) grossly impairs behavior as demonstrated by recent disturbed behavior.</p> <p>“Mental retardation” means significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.</p> <p>“Subaverage general intellectual functioning” refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age-group mean for the tests used.</p> <p>“Person with mental retardation” means a person determined by a physician or psychologist licensed in this state or certified by the department to have subaverage general intellectual functioning with deficits in adaptive behavior.</p> <p>“Department” means the Texas Department of Mental Health and Mental Retardation.</p> <p>“Adaptive behavior” means how effectively individuals cope with common life demands and how well they meet the standards of personal independence expected of someone in their particular age group, sociocultural background, and community setting.</p> <p><input type="checkbox"/> 1. The sheriff has a duty to notify the judge that there may be reasonable cause to believe that a defendant committed to sheriff’s custody has a mental illness or is a person with mental retardation.</p>	<p>Sec. 571.003(14), H.S.C.</p> <p>Sec. 591.003(13), H.S.C.</p> <p>Sec. 591.003(20), H.S.C.</p> <p>Sec. 591.003(16), H.S.C.</p> <p>Sec. 591.003(7), H.S.C.</p> <p>See <i>TMCEC Forms Book</i>: Sheriff’s Notification – Person in Custody with Possible MH/MR.</p> <p>Sheriff shall notify a magistrate within 72 hours after receiving evidence or a statement that may establish reasonable cause. Art. 16.22(a), C.C.P.</p>

facility operated by the Texas Department of Mental Health and Mental Retardation without the consent of the head of that facility.

As a practical note, it is advisable to work within your community to establish in advance procedures for in-detention examinations. If the defendant has been released from custody, the judge will need to know what facility to commit the individual to.

CHAPTER 1 MAGISTERIAL DUTIES

D. Tow Hearings

Along with many other property rights issues, magistrates are given the authority and responsibility to determine property rights and probable cause issues under Chapter 684 of the Texas Transportation Code, also known as the “towing statute”. Chapter 684 begins with definitions, creates the substantive rules of towing, and then creates a procedure to enforce the substantive rules. This checklist will follow the same order.

It is important to note that jurisdiction is permissive, only justices of the peace must take the cases. Permissive authority is given to magistrates based on towing having occurred in their jurisdiction, Section 685.004(a), Transportation Code. Municipal ordinances on this issue are permitted, but must be “identical” or only impose “additional requirements that exceed the minimum standards” of Transportation Code Chapter 684, Section 684.101, T.C.

This hearing, like other probable cause hearings, is *ex parte* in nature. It does not require a prosecutor and can proceed if only one party appears. The Rules of Evidence do not explicitly apply and there are some specific provisions for photographic evidence. The proceedings are nominally civil, but the statute does not apply the civil pleading and discovery rules.

Checklist 1-11	Script/Notes
Definitions	
“Parking facility” means: (1) public or private; (2) restricted or paid parking; (3) adjacent property or serving property; or (4) including right of way leased by governmental entity.	Sec. 684.001(1), T.C.
“Parking facility owner” means: (1) owner; (2) operator; or (3) an entity, person, or association in contract with either of the above.	Sec. 684.001(2), T.C.
“Towing company” means: (1) must be registered under Chapter 2303, Occupations Code; (2) owner, operator, agent; or (3) not a political subdivision.	Sec. 684.001(4), T.C.
“Unauthorized vehicle” means: (1) vehicle parked, stored, or located; (2) on the parking facility; or (3) without consent of the parking facility owner.	Sec. 684.001(6), T.C.
<input type="checkbox"/> 1. Legal requirements of involuntary towing of vehicles. <ul style="list-style-type: none"> <input type="checkbox"/> a. The first of three justifications for towing is the prohibition of unattended vehicles in certain areas. If a vehicle is left in one of these narrowly defined locations the vehicle can be towed without notice or posted sign. The prohibited places include the following: 	Sec. 684.012(a)(4), T.C.

	the Department of Transportation.	
	<input type="checkbox"/> (ii) Certified, return receipt requested.	
	<input type="checkbox"/> (iii) Requiring the vehicle be moved before the 15th day after postmark.	
	<input type="checkbox"/> (iv) Containing all the information in the windshield notice.	
<input type="checkbox"/> c.	The most common method is if signs prohibiting unauthorized vehicles are located at the parking facility at the time of towing and at least 24 hours preceding towing.	Sec. 684.012(a), T.C.
<input type="checkbox"/> d.	The sign must be:	
	<input type="checkbox"/> (1) Facing and conspicuously visible to the driver of a vehicle that enters the facility.	Sec. 684.031(a)(1), T.C.
	<input type="checkbox"/> (2) Located at each entrance or every 25 feet if there is no clear entrance.	Sec. 684.031(a)(2), T.C.
	<input type="checkbox"/> (3) Permanently attached to a pole or structure.	Sec. 684.031(a)(3), T.C.
	<input type="checkbox"/> (4) The bottom edge of the sign must be between five and eight feet from ground level.	Sec. 684.031(a)(5), T.C.
	<input type="checkbox"/> (5) Made of weather resistant material.	Sec. 684.031(b)(1), T.C.
	<input type="checkbox"/> (6) Is at least 18 inches wide by 24 inches tall.	Sec. 684.031(b)(2), T.C.
	<input type="checkbox"/> (7) Contains the international symbol for towing vehicles:	Sec. 684.031(b)(3), T.C.
	<input type="checkbox"/> (a) A silhouette of a tow truck towing a vehicle;	Sec. 684.032(a)(b)& (c), T.C.
	<input type="checkbox"/> (b) Bright red;	
	<input type="checkbox"/> (c) On a rectangular white background;	

<ul style="list-style-type: none"> <input type="checkbox"/> (d) At least four inches high; <input type="checkbox"/> (e) On the top of the sign or on a separate sign above the towing sign. 	
<input type="checkbox"/> (8) Immediately followed by words “Towing Enforced” in white two (2) inch letters on a red background.	
<input type="checkbox"/> (9) Has a statement describing who may park and excluding all others.	Sec. 684.031(b)(4), T.C.
<ul style="list-style-type: none"> <input type="checkbox"/> (a) This and the remaining information must be at least one (1) inch tall. <input type="checkbox"/> (b) In bright red on a white background. 	Sec. 684.032(d), T.C.
<input type="checkbox"/> (10) Bears the words “Unauthorized Vehicles Will Be Towed at Owner’s or Operator’s Expense”.	Sec. 684.031(b)(5), T.C.
<input type="checkbox"/> (11) Contains the hours and days towing is enforced.	Sec. 684.031(b)(6), T.C.
<input type="checkbox"/> (12) Contains a telephone number (with area code) answered 24 hours a day to enable the owner/operator to locate the vehicle.	Sec. 684.031(b)(7), T.C. Sec. 684.033, T.C.
<ul style="list-style-type: none"> <input type="checkbox"/> (a) This number must be white letters on bright red background. <input type="checkbox"/> (b) At least one (1) inch tall. 	Sec. 684.032(e), T.C.
<input type="checkbox"/> (13) May name the storage facility.	
<input type="checkbox"/> (14) Minor variation of required or minimum height or lettering is not a violation of the chapter.	Sec. 684.087, T.C.
<input type="checkbox"/> 2. Special Rules for Apartment Complexes	Sec. 684.0125, T.C.
<ul style="list-style-type: none"> <input type="checkbox"/> a. An emergency vehicle cannot be removed. <input type="checkbox"/> b. The apartment may have a vehicle removed if it was left unattended and it: 	Sec. 684.0125(c), T.C. Sec. 684.0125(b), T.C.

- (1) Obstructs a gate;
- (2) Obstructs a dumpster;
- (3) Obstructs spaces restricted to employees or maintenance;
- (4) Is in a tow away zone;
- (5) Is a semi-trailer, trailer, or truck-trailer not permitted under the lease; or
- (6) Is leaking a hazardous fluid.
- c. The apartment may not have a vehicle removed merely because it failed to display unexpired:
 - (1) License plates;
 - (2) Registration; or
 - (3) Inspection.
 - (4) Unless the lease includes a provision granting the apartment that power, and
 - (5) 10 days written notice is provided in person or by certified mail.
- 3. Towing Company Responsibilities
 - a. A towing company must be insured against liability for damage while towing and storage to meet the requirements of the statute.
 - b. The towing company must receive written verification that the parking facility owner followed the procedures outlined in Step 1B above.
 - c. Towing must be pursuant to Chapter 684 of the Traffic Code, an identical ordinance, or the order of a peace officer. Sec. 684.014, T.C.
 - d. The towing company or vehicle storage facility must report to the police department of the municipality in which the towed vehicle Sec. 684.015, T.C.

was located the following:

- (1) A general description of the vehicle;
 - (2) Vehicles plate number and state;
 - (3) Vehicle ID numbers (if possible);
 - (4) The location from which the vehicle was towed;
 - (5) The name and location of the vehicle storage facility; and
 - (6) Must occur within two (2) hours.
- e. When the owner/operator of the vehicle pays the cost of the vehicles removal and storage, the towing company or storage facility must give a written notice of rights that contains:
- (1) Notice of the right to request a hearing with in 14 days; Sec. 685.005, T.C.
 - (2) A list of the information the request for a hearing must contain; Sec. 685.006, T.C.
 - (3) Notice of the filing fee charged;
 - (4) The name, address, and telephone number of the towing company;
 - (5) The name, address, and telephone number of the vehicle storage facility; and
 - (6) The name, address, and telephone number of one or more appropriate magistrates to hold the hearing.
4. Procedural Remedies
- a. If the Chapter 684 provisions are followed, the parking facility owner has no liability for damage or loss of the vehicle. Compliance with chapter requires that towing and storage facilities be insured. Sec. 684.083, T.C.
 - b. If the towing company or parking facility owner violates the chapter, they are subject to civil liability for damages to the vehicle Sec. 684.084, T.C.

without a showing of negligence. There is also a separate civil cause of action that includes liquidated damages of \$300, triple actual damages and attorney's fees. This remedy is available in civil cases filed in a district or county court with jurisdiction, not in the magistrate hearing.

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|---|---------------------------------|
| <ul style="list-style-type: none"> <input type="checkbox"/> c. Violations of this chapter may be addressed by injunction. | <p>Sec. 684.086, T.C.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> d. Violations of the chapter are punishable in a criminal action and carry a fine of \$200 to \$500. This is a separate matter from the tow hearing and presumptively must be prosecuted like all other criminal offenses. | <p>Sec. 684.085, T.C.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> e. The tow hearing is initiated by a request by the owner/operator of the towed vehicle. | <p>Sec. 685.007(a)(c), T.C.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> f. Notice must be made within 14 working days of the vehicle being towed. Unless the storage facility fails to give the statutory notice, then there is no time limit until such notice is given. | |
| <ul style="list-style-type: none"> <input type="checkbox"/> g. The court may charge a filing fee of \$10. | <p>Sec. 685.008, T.C.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> h. Notice must be filed with the court in writing and include: <ul style="list-style-type: none"> <input type="checkbox"/> (1) The name, address, and telephone number of the owner/operator of the vehicle; <input type="checkbox"/> (2) The location from which the vehicle was removed; <input type="checkbox"/> (3) The name, address, and telephone number of the person that authorized removal of the vehicle; <input type="checkbox"/> (4) The name, address, and telephone number of the storage facility in which the vehicle was placed; <input type="checkbox"/> (5) The name, address, and telephone number of the towing company that removed the vehicle; | <p>Sec. 685.007, T.C.</p> |

- (6) A copy of any receipt and notification received from the storage or towing company;
- (7) One or more photographs of the location and any signs posted; or
- (8) A statement that there were no signs.
- i. A hearing must be set within seven (7) working days of the request. The owner/operator of the vehicle as well as the owner of the parking facility must be notified of the hearing. Sec. 685.009(a)(b), T.C.
- j. The issues at the hearing are: Sec. 685.009(c), T.C.
 - (1) Whether probable cause existed for removal of the vehicle; and
 - (2) Whether the fees charged were proper under applicable law.
- k. Findings of fact and conclusions of law must be in writing. Sec. 685.009(d), T.C.
- l. The court may award: Sec. 685.009(e), T.C.
 - (1) Court cost;
 - (2) Reasonable cost of photographs;
 - (3) Cost of removal or storage or reimbursement to the owner for the same;
 - (4) The amount of any unauthorized fee.
- m. No provision is made for appeal.

CHAPTER 1 MAGISTERIAL DUTIES

E. Dangerous Dogs

1. Dogs that Are a Danger to Persons

Checklist 1-12	Script/Notes
<p>Definitions:</p> <p>“Animal control authority” is a municipal or county animal control office with authority over the area in which the dog is kept or the county sheriff in an area that does not have an animal control office.</p> <p>“Serious bodily injury” is an injury characterized by severe bite wounds or severe ripping and tearing of muscle that would cause a reasonably prudent person to seek treatment from a medical professional and would require hospitalization without regard to whether the person actually sought medical treatment.</p> <p>“Dangerous dog” is a dog that:</p> <p>a. Makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own; or</p> <p>b. Commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person.</p> <p>“Dog” is a domesticated canine.</p> <p>“Secure enclosure” means a fenced area or structure that is locked, capable of preventing the entry of the general public, including children, capable of preventing the escape or release of a dog, clearly marked as containing a dangerous dog, and in conformance with the requirements for enclosures established by the local animal control authority.</p>	<p>Section 822.047, H.S.C., allows more stringent requirements to be imposed by municipal ordinance.</p> <p>Sec. 822.001(1), H.S.C.</p> <p>Sec. 822.001(2), H.S.C.</p> <p>Sec. 822.041(2)(A), H.S.C.</p> <p>Sec. 822.041(2)(B), H.S.C.</p> <p>Sec. 822.041(3), H.S.C.</p> <p>Sec. 822.041(4), H.S.C.</p>

“Owner” is a person who owns or has custody or control of the dog.

Sec. 822.041(5), H.S.C.

□ 1. Attack Causing Death or Serious Bodily Injury

□ a. If a dog causes the death of a person, the dog must be destroyed.

Sec. 822.003(d), H.S.C.

□ (1) The dog must be destroyed by a licensed veterinarian, trained animal shelter or humane society personnel, or trained animal control authority personnel.

Sec. 822.003(d), H.S.C.

□ b. If a dog causes serious bodily injury to a person, the dog may be destroyed, unless:

□ (1) The dog was being used to protect persons or property and the attack occurred in a properly marked enclosure designed to prevent the dog’s escape and the injured person was at least eight (8) years old and was trespassing; or

Sec. 822.003(f)(1), H.S.C.

□ (2) The dog was not being used to protect persons or property and the attack occurred in an enclosure designed to prevent the dog’s escape and the injured person was at least eight (8) years old and was trespassing; or

Sec. 822.003(f)(2), H.S.C.

□ (3) The dog was being used for law enforcement purposes and the attack occurred during an arrest or other law enforcement action; or

Sec. 822.003(f)(3), H.S.C.

□ (4) The attack occurred while the dog was defending a person from an assault or defending property from damage or theft by the injured person; or

Sec. 822.003(f)(4), H.S.C.

□ (5) The injured person was under eight (8) years of age and the attack occurred in a secured enclosure designed to prevent a person under eight (8) years of age from entering.

Sec. 822.003(f)(5), H.S.C.

<ul style="list-style-type: none"> <input type="checkbox"/> c. Provocation for the attack is not a defense to euthanasia. <input type="checkbox"/> d. Location of the attack is not relevant except as provided for in Sec. 822.003(f), H.S.C., outlined above. 	<p>Sec. 822.005, H.S.C.</p>
<p><input type="checkbox"/> 2. Dangerous Dog Hearing</p>	
<ul style="list-style-type: none"> <input type="checkbox"/> a. Any person may file a sworn complaint alleging that a dog attack caused the death or serious bodily injury of a person. 	<p>Sec. 822.003, H.S.C.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> b. The complaint must be supported by an affidavit setting forth sufficient facts to establish probable cause to believe that the dog caused death or serious bodily injury by attacking, biting, or mauling a person. 	<p>Sec. 822.002(a)(1-2), H.S.C. See <i>TMCEC Forms Book</i>: Affidavit to Seize a Dangerous Dog.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> c. When a sworn complaint is filed, the court must issue a warrant authorizing the animal control authority to seize the dog and impound it in secure and humane conditions until the court orders the disposition of the dog. 	<p>Sec. 822.002(a), H.S.C. Sec. 822.002(b), H.S.C. See <i>TMCEC Forms Book</i> for a sample Seizure Warrant.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> d. The warrant contains notice of the time and place of the hearing to determine if the dog caused the death of or serious bodily injury to a person. 	<p>There is no requirement that the warrant contain the notice of hearing. It is simply more efficient to use the warrant to provide the required notice.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> e. The hearing must be set within 10 days of issuing the warrant. 	<p>Sec. 822.003(a), H.S.C.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> f. Any interested person, including the county or city attorney, may present evidence at the hearing. 	<p>Sec. 822.003(c), H.S.C.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> g. At the hearing, the court determines if the dog caused the death or serious bodily injury of a person and whether there are any applicable exceptions to prevent the destruction of the dog. 	<p>Sec. 822.003(d-f), H.S.C.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> h. If there is no finding that death or serious bodily injury occurred, the court must release the dog to its owner or other authorized person. 	

- i. A “preponderance of evidence” standard may be used to make the required findings.

It is unclear whether a “reasonable doubt” or a “preponderance of the evidence” standard should be used in this determination. In *Timmons v. Pecorino*, 977 S.W.2d 603, (Tex. Crim. App. 1998), the Court of Criminal Appeals implicitly acknowledged some confusion regarding the nature of these cases (were civil or criminal) but refused to answer the question for lack of jurisdiction.

- j. There is no provision for appealing a decision of the court under this subchapter.

- 3. Attack Causing Bodily Injury
 - a. If a dog causes bodily injury to a person, the dog may not be destroyed, unless:
 - (1) The court determines, after notice and hearing, that the animal is a dangerous dog; and

Sec. 822.042(c), H.S.C.
 - (2) The owner failed to comply with the requirements upon learning that the dog is dangerous; or

Sec. 822.042(e), H.S.C.
 - (3) The dog previously has been found to be dangerous and makes an unprovoked attack on another person outside it’s secure enclosure.

Sec. 822.044(a), H.S.C.

- 4. Report of a Dog Attack
 - a. Any person may report an incident involving a dog attack.
 - b. If the animal control authority determines, after investigation, that the report is true and the dog is dangerous, it will notify the owner. The determination must be based on sworn statements of witnesses to the attack.
 - c. The owner has 15 days after being notified to appeal the animal control authority’s determination to a municipal, justice, or county court. If an appeal is made, a hearing,

will determine if the dog is dangerous. The owner may also appeal the determination of the trial court in the same manner as any other appeal from these courts.

- 5. Requirements for Owner of Dangerous Dog
 - a. The owner learns the dog is dangerous if the owner knows of an attack, receives notice that a court has found the dog to be dangerous, or the owner is informed by the animal control authority. Sec. 822.042(g), H.S.C.
 - b. Not later than 30 days after the person learns that the person is the owner of a dangerous dog, the owner must:
 - (1) Register the dog with the animal control authority; Sec. 822.0421(a), H.S.C.
 - (2) Restrain the dog in a secure enclosure or on a leash in the immediate control of the owner; Sec. 822.0421(a), H.S.C.
 - (3) Obtain \$100,000 of liability insurance and provide proof of the insurance to the animal control authority; and Sec. 822.0421(b), H.S.C.
 - (4) Comply with any applicable municipal ordinances or county regulations.
 - c. If the owner does not comply with the requirements, he or she must deliver the dog to the animal control authority not later than 30 days after learning the dog is a dangerous dog. Sec. 822.042(a), H.S.C.
 - d. The animal control authority must register all dangerous dogs located within its jurisdiction if the owner pays an annual \$50 fee and presents proof of:
 - (1) Current liability insurance; Sec. 822.042(a)(1), H.S.C.
 - (2) Current rabies vaccination records; and Sec. 822.042(a)(2), H.S.C.
 - (3) The secure enclosure for the dog. Sec. 822.042(a)(3), H.S.C.
 - (4) The secure enclosure for the dog. Sec. 822.042(a)(4), H.S.C.

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| <ul style="list-style-type: none"> □ e. The animal control authority must issue to the owner a registration tag for all dangerous dogs. | <p>Sec. 822.042(b), H.S.C.</p> |
| <ul style="list-style-type: none"> □ f. If the owner sells or moves the dog, the owner has 14 days to notify the animal control authority in the new jurisdiction of the dog's relocation. If the owner presents proof of prior registration and pays a \$25 fee, the new animal control authority must accept the new registration and issue a new tag to be worn on the dog's collar. | <p>Sec. 822.043, H.S.C.</p> |
| <ul style="list-style-type: none"> □ g. An unprovoked attack by a dangerous dog causing bodily injury is a Class C misdemeanor. An unprovoked attack causing serious bodily injury or death is a Class A misdemeanor. The owner is also subject to a \$10,000 civil penalty. | <p>Sec. 822.043(c), H.S.C.</p> |
| | |
| <ul style="list-style-type: none"> □ 6. Non-compliance Hearing | <p>Sec. 822.044, H.S.C.</p> |
| <ul style="list-style-type: none"> □ a. Any person may file an application with a municipal, county, or justice court alleging that a dog is dangerous or that the owner of a dangerous dog has failed to comply with the requirements under Sec. 822.042(a), H.S.C. | <p>See <i>TMCEC Forms Book: Dangerous Dog Judgment.</i></p> <p>Sec. 822.042(c), H.S.C.</p> |
| <ul style="list-style-type: none"> □ b. The court must set a hearing and give written notice of the time and place of the hearing to the owner of the dog and the person making | <p>Sec. 822.0423(b)(1), H.S.C.</p> |

the complaint.

- c. The hearing should be held not later than 10 days after the dog is seized.

Sec. 822.0423(a), H.S.C.

There is a contradiction in the methodology for dangerous dog hearings set forth in Chapter 822. Specifically, 822.042(c) states that if, “after notice and hearing” to determine whether an owner of a dangerous dog has failed to comply with the requirements of Section 822.042(a)(1-4), H.S.C., the court finds a failure to comply, it shall order the seizure of the dog. However, 822.0423(a) states that such a compliance hearing must be held not later than 10 days after the seizure. This apparent conflict can be resolved if the dog is seized pursuant to another seizure provision (*e.g.*, a quarantine or dog-at-large ordinance).

- d. At the hearing, any interested party, including the city or county attorney, may present evidence.

Sec. 822.0423(c), H.S.C.

- e. If the court finds a lack of compliance, it shall order the seizure of the dog and impound the animal in secure and humane conditions pending the owner’s compliance. The owner has 10 days to comply with the requirements to own a dangerous dog. If the owner does not comply, on the 11th day after seizure, the court must order the humane destruction of the dog.

Sec. 822.042(e), H.S.C.

- f. If the court orders the seizure of the dog, but is unable to locate the owner, the court may order the humane destruction of the dog 15 days after the date of impoundment.

Sec. 822.042(f), H.S.C.

- g. The owner is liable for all fees or costs assessed for the seizure, acceptance, impoundment, or destruction of the dog.

Sec. 822.042(d), H.S.C.

- h. The owner or person filing the action may

Sec. 822.0423(d), H.S.C.

appeal the determination of the trial court in the same manner as any other appeal. However, there are no provisions for dealing with the dog during the pendency of the appeal.

CHAPTER 1 MAGISTERIAL DUTIES

E. Dangerous Dogs

2. Dogs that Are a Danger to Animals

Checklist 1-13	Script/Notes
<p>Definitions:</p> <p>“Dog and Coyote” includes a crossbreed of a dog and coyote.</p> <p>“Livestock” is cattle, horses, mules, asses, sheep, goats, and hogs, including grass-eating or plant-eating, single-hoofed or cloven-hoofed mammals that are not indigenous to this state and are known as ungulates, including animals from the swine, horse, tapir, rhinoceros, elephant, deer, and antelope families.</p> <p>“Worry” means to grasp by the throat with the teeth and lacerate or to kill or injure by biting and shaking.</p>	<p>The use of the word “dog” in this Checklist includes dogs, coyotes, and crossbreeds.</p> <p>Sec. 822.011, H.S.C.</p>
<p>☐ 1. The owner, keeper or person in control of a dog that is accustomed to run, worry, or kill live stock, domestic animals or fowl may not allow the dog to run at large.</p>	<p>Source: <i>The American Heritage® Dictionary of the English Language, Fourth Edition</i></p> <p>Sec. 822.012, H.S.C.</p>
<p>☐ 2. Each time a dog runs at large is a separate offense punishable by a fine of not more than \$100.</p>	
<p>☐ 3. The owner of an attacked animal, or his or her agent, or a person witnessing an attack, may kill a dog that is attacking, is about to attack or has attacked livestock, domesticated animals, or fowls.</p>	<p>Sec. 822.013, H.S.C.</p>
<p>☐ 4. A person who kills a dog pursuant to this subchapter is not liable for damages to the owner of the dog.</p>	<p>Sec. 822.013(b), H.S.C.</p>
<p>☐ 5. A person who finds a dog that is known or suspected to have killed livestock may impound the dog or deliver to the owner or the animal control authority. The owner of the dog is liable for all damages caused by the dog and costs incurred to impound and care for the dog.</p>	<p>Sec. 822.013(c), H.S.C.</p>
<p>☐ 6. No hunting license is required to kill a dog under this subchapter.</p>	<p>Sec. 822.013(e), H.S.C.</p>

CHAPTER 1 MAGISTERIAL DUTIES

F. Property Hearings: Disposition of Stolen Property

1. Restoration when No Trial Pending

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

Checklist 1-14	Script/Notes
<p><input type="checkbox"/> 1. Jurisdiction and Venue: Jurisdiction under this section is based solely on jurisdiction as a criminal magistrate and not as court with civil jurisdiction. Jurisdiction and venue to hear a seizure case lies with any:</p> <p style="margin-left: 40px;"><input type="checkbox"/> a. District judge, county judge, or justice of the peace in the county where the property is held; or</p> <p style="margin-left: 40px;"><input type="checkbox"/> b. Municipal judge in the municipality where the property is being held.</p> <p><input type="checkbox"/> 2. Change of Venue: A court may transfer venue to a court in another county on the motion of an interested party.</p> <p><input type="checkbox"/> 3. Petition for Hearing Filed: If a criminal action involving the property in question is not pending, then any of the courts having jurisdiction may hold a hearing to determine the right to possession of the property, upon the petition of any interested party, including a county, a city, or the State.</p>	<p>Art. 47.01a, C.C.P.</p> <p>This is one of the few instances remaining in contemporary Texas criminal procedure where the authority of the municipal judge as a magistrate is limited to the boundaries of the municipality.</p> <p>Art. 47.01a(d), C.C.P.</p> <p>Art. 47.01a(a), C.C.P. Note: A peace officer is an “interested party” since the evidence may establish that the State has a superior right to possession. A hearing may be held on the petition of a seizing officer.</p>

4. Notice Provided

See *TMCEC Forms Book*:
Magistrate Duties: Notice of
Property Hearing.

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

5. Conduct the Hearing

SEE CHECKLIST 1-16

6. Post-Hearing Orders: After a hearing and appropriate findings, the court should enter of the following orders.

a. Order the property delivered to whoever has the superior right to possession:

(1) Without conditions;

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

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

(2) Subject to the condition that the property be made available to the State if needed in future prosecutions.

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

b. Order the property be awarded to custody of a peace officer, pending resolution of the investigation involving the property.

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

c. If it is shown in a hearing that probable cause exists to believe that the property was acquired

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

by theft or by another manner that makes its acquisition an offense and that the identity of the actual owner of the property cannot be determined, the magistrate shall order the peace officer to:

- (1) Deliver the property to a government agency for official purposes;
 - (2) Deliver the property to a person authorized by Article 18.17 of the Code of Criminal Procedure to receive and dispose of the property; or
 - (3) Destroy the property.
- 7. Appeals: Appeal from a hearing held in a municipal court or justice court under Article 47.01a shall be heard by a county court or a statutory county court. Such appeals are governed by the rules of procedure for appeals for civil cases from justice court to county court.
 - a. The requirement that the notice of appeal be given at the conclusion of the hearing does not require that the notice be given in open court. The hearing does not conclude until the court's ruling is both announced and received.
 - b. Only an "interested person" who appears at a hearing may appeal and must post an appeal bond by the end of the next business day.
 - c. The court may require an appeal bond in the amount the court deems appropriate, but not more than twice the value of the property, made payable to the party awarded possession at the hearing, with sufficient sureties.

Art. 47.01a(b)(1), C.C.P.

Art. 47.01a(b)(2), C.C.P.

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

Art. 47.12(b), C.C.P.

Phillips v. State, 77 S.W.3d 465 (Tex. App. Houston [1st Dist.] 2002); *White v. State*, 930, S.W.2d 673 (Tex. App.-Waco 1996).

Art. 47.12(c), C.C.P.

Art. 47.12(d), C.C.P.

CHAPTER 1 MAGISTERIAL DUTIES

F. Property Hearings: Disposition of Stolen Property

2. Restoration upon Trial or Trial Pending

Checklist 1-15	Notes
<p><input type="checkbox"/> 1. Jurisdiction – Article 47.02, C.C.P., contemplates jurisdiction being:</p> <p><input type="checkbox"/> a. In a trial court, post-adjudication of a theft or illegal acquisition of property case;</p> <p><input type="checkbox"/> b. In a trial court in which a theft or other illegal acquisition of property case is pending; or</p> <p><input type="checkbox"/> c. With any magistrate having jurisdiction in the county in which criminal action is pending subject to Chapter 501 of the Transportation Code (The Texas Certificate of Title Act) and the consent of the prosecuting attorney.</p>	
<p><input type="checkbox"/> 2. Conduct the Hearing.</p>	SEE CHECKLIST 1-16
<p><input type="checkbox"/> 3. Post Hearing Orders</p> <p><input type="checkbox"/> a. Upon Trial: The court trying the case shall order the property to be restored to person appearing on presentation of proof to be the owner.</p> <p>If the property is not claimed within 30 days of conviction of the person who illegally acquired it, the property shall be disposed of pursuant to Article 18.17, C.C.P.</p> <p>The real owner of the property sold pursuant to Article 47.06 may recover such property under the terms prescribed in Article 18.17(e), C.C.P.</p> <p><input type="checkbox"/> b. Trial Pending: If it is proved to the satisfaction of the judge that the person is a true owner of the property alleged to be stolen and the property is in the possession of the peace officer, the peace officer by written order shall restore it to the owner.</p>	<p>See <i>TMCEC Forms Book: Magistrate Duties – Order Awarding Property.</i></p> <p>Art. 47.02, C.C.P.</p> <p>Art. 47.06, C.C.P.</p> <p>Art. 47.07, C.C.P.</p> <p>Art. 47.02, C.C.P.</p>

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

CHAPTER 1 MAGISTERIAL DUTIES

F. Property Hearings: Disposition of Stolen Property

3. Hearing

Checklist 1-16	Script/Notes
<p><input type="checkbox"/> 1. The court shall:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. Order the property delivered to whomever has the superior right to possession; <input type="checkbox"/> b. Make such orders as the facts require. <p><input type="checkbox"/> 2. If none of the interested parties appear at the hearing after having been properly notified, the court may presume that:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. The parties do not have a valid claim to possession; <input type="checkbox"/> b. The parties have abandoned their claim to possession; or <input type="checkbox"/> c. They do not wish to assert such claim. <p><input type="checkbox"/> 3. The court may award possession of the property to the law enforcement agency if no interested party has proved a right to possess the property.</p> <p><input type="checkbox"/> 4. If none of the interested parties appear at the hearing, except for the officer who has discovered another interested party since the scheduling of the hearing, the court should:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. Instruct the officer to file an amended inventory of property seized, and to include the name and mailing address of the newly-discovered interested party on the amended form; then <input type="checkbox"/> b. Reset the case; and <input type="checkbox"/> c. Notify the interested parties of the hearing. <p><input type="checkbox"/> 5. When the true owner of a stolen motor vehicle is unknown and there are no lien holders to be found:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. The officer should proceed to file a seizure 	<p>Sec. 501.074(a)(4), T.C.</p>

case; and

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

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

“Preponderance of the evidence” means the greater weight and degree of credible evidence. *Upjohn Co. v. Freeman*, 847 S.W.2d 589 (Tex. App.-Dallas 1992).

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

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