

Setting Bail and Bond Conditions Under The Damon Allen Act

Texas Justice Court Training Center
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SETTING THE STAGE

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What is Bail?

- Bail is the security that a defendant puts up to make sure they show up for future court hearings and their trial.
- If they fail to show up, they may forfeit the bail in a bail forfeiture proceeding.

-- Art. 17.01, CCP; Magistration Deskbook, Chapter 2.D.

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Purpose of Bail

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

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What is a Bail Bond?

- A bail bond is a written undertaking entered into by the defendant **and the defendant's sureties** for the appearance of the defendant before a court or magistrate to answer a criminal accusation.
 - The surety is typically a bail bondsman.
 - If the defendant fails to appear for a hearing or trial, the surety is liable for the amount of the bond.

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What is a Bail Bond?

- A defendant who is ordered to post a bail bond to be released from custody may also deposit **cash** in the amount of the bail and in that case is not required to have a surety co-sign the bond.
- A magistrate may not require a defendant to post a cash bond unless the defendant has been re-arrested after already failing to appear on the original bond or in a surety surrender situation.

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What is a Personal Bond?

- A personal bond means that the defendant is **promising** to pay the amount of the bail if they don't show up.
- But they are not required to have a surety co-sign the bond.
 - So if bail is set at \$5,000 and the defendant is allowed to sign a personal bond rather than a bail bond, and the defendant does not show up for court, the defendant is liable for the \$5,000 in a bail forfeiture proceeding.

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What is a PR Bond?

- The term “PR Bond” or “Personal Recognizance Bond” is never used in Article 17 or any other statute!
 - But it generally refers to a personal bond with **no bail amount.**
- The defendant promises to show up as a condition of being released but they are not liable in a bail forfeiture proceeding under Chapter 22.

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What is a PR Bond?

- But failing to appear on any bond, including a PR bond, is a criminal offense under Penal Code Sec. 38.10 (“Failure to Appear; Bail Jumping”).
- So a defendant who fails to appear after signing a “PR Bond” could be charged with a new criminal offense for that failure.

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What is a “PR Bond”?

- Many people (including judges) mistakenly call **all** personal bonds “PR Bonds.”
 - This is incorrect: if the bond has a monetary amount the defendant agrees to pay if they fail to appear, then it is a **personal** bond; if there is no monetary amount, then it is a “PR Bond.”

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What is a "PR Bond"?

- "PR Bonds" are generally used only in fine-only and other minor misdemeanor cases while personal bonds may be appropriate in other cases as well.

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Who Decides What Kind of Bond is Required?

- The magistrate or judge who sets bail also decides whether the bond must be a bail bond, a personal bond or a "PR Bond."

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What are Bond Conditions?

Bond conditions are specific obligations included as terms of the bond the defendant signs and that the defendant must meet as a condition of their release from custody.

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What are Bond Conditions?

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

-- Art. 17.40(a), CCP

For example:

- Ignition Interlock Device
- No contact with the victim
- Drug testing

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Poll

- Which of the following are NOT proper objectives of bail:
 - A. Ensuring that the defendant shows up for court hearings and trial.
 - B. Releasing the defendant from custody.
 - C. Imposing an additional punishment on the defendant.
 - D. Protecting the victim, law enforcement and the community.
 - E. Sending a message to the public.

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Poll

- A "PR Bond" is:
 - A. The same thing as a Personal Bond.
 - B. Any bond that is not a Bail Bond.
 - C. A Personal Bond in which no bail is required.

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Poll

- Bond conditions may only be used with a Bail Bond; they cannot be included in a Personal Bond.
A. True
B. False

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THE DAMON ALLEN ACT

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What is the Damon Allen Act?

- Reforms the bail system in Texas by giving magistrates better information about a defendant, including their criminal record history, in order to be able to distinguish between those defendants:

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What is the Damon Allen Act?

- who may be released on a personal bond, with or without bond conditions, and those
- who may not be released on a personal bond due to a violent offense or a new offense while released on bail for a previous violent offense.

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Release a Defendant on Bail?

- A defendant charged with a felony or misdemeanor punishable by confinement may only be released on bail by a magistrate who is in compliance with the training requirements in Arts. 17.024 and 17.0501 (discussed on next two slides).

-- Art. 17.023, CCP

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What are the Training Requirements

- OCA must develop training courses concerning a magistrate's duties with respect to setting bail in criminal cases, including:
 - An 8-hour initial training course that includes training by DPS on the use of CJIS/CCH in order to obtain criminal history record information; and
 - A 2-hour continuing education course every two years.

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What are the Training Requirements

- OCA must provide a method of certifying that a magistrate has successfully completed the training course and demonstrated competency of the course content.
- A magistrate must complete the 8-hour course within 90 days of taking office.
 - But a magistrate who is serving on 4/1/22 has until 12/1/22 to complete the course.
 - Art. 17.024, CCP

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The Public Safety Report System

- OCA must develop and maintain a Public Safety Report System which must provide:
 - Information on the eligibility of the defendant for a personal bond.
 - Information on the applicability of any required or discretionary bond conditions.
 - The criminal history of the defendant in summary form, including:

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The Public Safety Report System

- Previous misdemeanor or felony convictions.
- Pending charges.
- Previous sentences imposing confinement.
- Previous convictions or pending charges for violent offenses (including violence directed to a peace officer).
- Previous failures of the defendant to appear in court following release on bail.

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The Public Safety Report System

OCA must provide access to the System to the appropriate county officials at no cost.

The System may not:

- Be the only item relied upon by a magistrate in making a bail decision.
- Include a score, rating or assessment of a defendant's risk.
- Make any recommendation for the appropriate bail for the defendant.
- Include information not in the statute.
-- Art. 17.021, CCP

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The Public Safety Report

A public safety report must be prepared for a defendant charged with a Class B misdemeanor or higher level offense using the Public Safety Report System.

The magistrate must consider the report before setting bail.

And submit a bail form to OCA no later than 72 hours after bail is set (see Handout 1).

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The Public Safety Report

A magistrate may, but is not required to, prepare or consider a report for a defendant charged with a fine only offense or who receives a citation under Art. 14.06(c).

A magistrate may set bail for a defendant charged only with a misdemeanor without preparing or considering a report if the Public Safety Report System is unavailable for more than 12 hours due to a technical failure at OCA.

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Who Prepares the Report?

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

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Who Prepares the Report?

- 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

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- The purpose of the Damon Allen Act is:
 - To keep more people incarcerated in jail while awaiting trial.
 - To give magistrates better information, including the defendant's criminal record history, so they can make an informed decision about which defendants may be released on a personal bond with appropriate bond conditions and which defendants may not be released on a personal bond.

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- Under the Damon Allen Act, a magistrate who is in office on April 1, 2022 must obtain 8 hours of training on magistration:
 - A. Before April 1, 2022.
 - B. No more than 90 days after April 1, 2022.
 - C. By December 1, 2022.

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- Before setting bail a magistrate must consider a Public Safety Report:
 - A. For every defendant.
 - B. For a defendant charged with a Class B misdemeanor or higher offense.

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Poll

- If a magistrate doesn't want to prepare a Public Safety Report themselves, they can always order the Sheriff to prepare it for them:
 - A. True
 - B. False

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Rules for Setting Bail

- 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.

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for Setting Bail

- 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 (not required until 4/1/22).
 - 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.

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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.

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The Bail Decision

- 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.

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The Bail Decision

The rules for setting bail do not require a magistrate to conduct an evidentiary hearing unless required by some other law.

-- Art. 17.028, CCP

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The Bail Decision

A magistrate may make a bail decision for a defendant charged with a fine only offense without considering the criminal history record information of the defendant.

- -- Art. 17.028, CCP

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Bail Schedules and Standing Orders

- A judge may not adopt a bail schedule or a standing order that is inconsistent with these requirements or authorizes a magistrate to make a bail decision without considering each factor listed in Art. 17.15(a).

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Bail Schedules and Standing Orders

- A defendant charged with a Class B or higher offense who is unable to give bail in the amount required by a bail schedule or standing order must be provided with an opportunity to file an affidavit stating that they do not have the means to pay \$___ and requesting that an appropriate bail be set.

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Affidavit Concerning Bail Amount

A defendant who files an affidavit must complete a financial information form.

- Same form for appointment of counsel or a form created by OCA.

The magistrate must inform the defendant of their right to file an affidavit and ensure the defendant receives reasonable assistance in completing it and the financial information form.

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Review of Affidavit

A defendant may file an affidavit at any time during the bail proceeding.

The defendant is entitled to a prompt review by the magistrate on the bail amount.

The review may be conducted by the magistrate making the bail decision or may occur as a separate pretrial proceeding.

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Review of Affidavit

The magistrate must consider the facts presented and the factors in Art. 17.15(a) and must set the bail.

If the magistrate does not set the defendant's bail below the amount required by a bail schedule or standing order the magistrate must issue written findings of fact supporting the bail decision.

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Failure to Conduct Review within 48 Hours

If a magistrate or criminal trial judge does not conduct a review within 48 hours after the defendant's arrest, they must report that to OCA.

If a delay occurs that will cause the review to be held more than 48 hours after the defendant's arrest, notice of the delay must be given to the defendant's counsel or to the defendant if he does not have counsel.

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If Defendant is Not Capable of Executing an Affidavit

• A magistrate may enter an order or take other action under Art. 16.22 for a defendant who does not appear capable of executing an affidavit.

-- Art. 17.028, CCP

Seven horizontal lines for notes.

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Poll

• In setting bail and bond conditions, a magistrate should:

- A. Set the most restrictive conditions possible to make sure the defendant shows up for court hearings and trial.
- B. Set 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.

Seven horizontal lines for notes.

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Poll

• A magistrate is required to give a defendant an evidentiary hearing on the bail decision if the defendant or defense counsel request one:

- A. True
- B. False

Seven horizontal lines for notes.

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Poll

- If bail is set using a bail schedule or a standing order, the defendant has a right to file an affidavit stating that they cannot pay the amount necessary to make bail and asking for a new bail amount to be set:
 A. True
 B. False

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Denial of Bail

- In most cases, a defendant may be denied bail **only by a district judge**, and only in specified situations.
- Bail may also be denied by a judge or magistrate where a defendant charged with family violence violates a bond condition relating to the safety of the victim or the community.

-- See Handout 2

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Denial of Bail

- Bail may also be denied by a judge or magistrate where a defendant charged with certain felony offenses against a child younger than 14 violates a bond condition relating to the safety of the victim or the community.

-- See Handout 2

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Denial of Bail

- Defendants who are already on probation or parole and are being arrested for violations of those **may be denied bail** on request from the **trial judge** until they are brought before that judge.
- Defendants who are wanted for parole violations from another state are subject to the **Interstate Compact on Adult Offender Supervision** and may be denied bail as well.
- See Magistration Deskbook; Self-paced Module on Extradition and Fugitives from Justice

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Relent on a Personal Bond

- Only the court before whom the case is pending may release a defendant on a personal bond if charged with:
 - Burglary (Section 30.02, Penal Code);
 - Engaging in organized criminal activity (Section 71.02, Penal Code); or
 - Certain felonies under the Controlled Substances Act or under Section 485.033, Health and Safety Act (inhalant paraphernalia).

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Release of Defendant on a Personal Bond

- A defendant may not be released on a personal bond if the defendant:
 - Is charged with an offense involving violence (see Handout 3); or
 - While released on bail or community supervision for an offense involving violence is charged with committing a felony or an offense alleging assault, deadly conduct, terroristic threat or disorderly conduct involving a firearm (see Handout 4).
 - Art. 17.03, CCP

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Defendant Charged with Committing an Offense While on Bail

- If a defendant is charged with committing a felony while released on bail for another felony, special rules apply (see next two Slides).

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Defendant Charged with Committing an Offense While on Bail

- If the new offense was committed in the **same** county as the previous offense, then the defendant may be released on bail only by:
 - The court before whom the previous offense is pending; or
 - Another court designated in writing by the court where the offense is pending.

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Defendant Charged with Committing an Offense While on Bail

- If the new offense was committed in a **different** county as the previous offense, then:
 - electronic notice of the charge must be promptly given to the court before whom the previous offense is pending or another court designated by that court
 - for purposes of re-evaluating the bail decision, determining whether any bail conditions were violated or taking any other applicable action.
 - Art. 17.027, CCP

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- A defendant is charged with indecency with a child under Section 21.11, Penal Code. May this person be released on a personal bond?
 - A. No. This is an "offense involving violence" under Art. 17.03.
 - B. Yes, as long as appropriate bond conditions and an EPO are placed on the defendant.

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- While released on bail for aggravated robbery defendant is arrested on a charge of burglary. Both offenses are felonies; the second offense was allegedly committed in the same county as the first offense. The magistrate should:
 - A. Release the defendant on a bail bond with appropriate bond conditions.
 - B. Have the defendant held in custody until the court in which the first case is pending may make a bail decision on the second offense.

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Role of the Sheriff or Jailer

A sheriff, peace officer or jailer may "take the defendant's bail" in a misdemeanor case when the defendant is in custody.

-- See Handout 5; Art. 17.20 and 17.22, CCP

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Role of the Sheriff or Jailer

A sheriff, peace officer or jailer may take bail in a felony case when the defendant is in custody and the court is not in session, in the amount set by the court or magistrate, or if no amount has been set, then in any amount that the officer considers reasonable and that is in compliance with Art. 17.15.

- -- See Handout 5; Art. 17.20 and 17.22, CCP

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Notice of Bond Conditions (Clerk)

- The clerk of the court must send a copy of an order imposing a bond condition, or modifying or removing a bond condition, to the prosecutor and the sheriff of the county where the defendant resides.

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Notice of Bond Conditions (Clerk)

- 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.

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Notice of Bond Conditions (Clerk)

- 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.
 - Art. 17.51, CCP

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Notice of Bond Conditions (Magistrate)

The magistrate or their designee must provide a written notice to the defendant of the bond conditions and the penalties for violating a bond condition.

The 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.

• Art. 17.51, CCP

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Notice of Bond Conditions for Violent Offenses (Magistrate)

A magistrate who imposes a bond condition on a defendant for a violent offense (listed in Art. 17.50(a)(3)) must notify the sheriff of the condition no later than the next day.

The magistrate must also notify the sheriff of any bond modification or revocation for a violent offense or disposition of the underlying charges (if aware).

-- Art. 17.50, CCP (HB 766)

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Reporting of Bond Conditions (Sheriff)

- 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.
 - Art. 17.52, CCP

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Reporting of Bond Conditions (Sheriff)

- 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.
 - Art. 17.50, CCP (HB 766)

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Reporting Requirements (Clerk)

- As part of the OCA monthly report the clerk of each court setting bail must report:
 - 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.
- Section 71.0351, Government Code

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Effective Dates

Changes apply to a person arrested on or after the effective date of the Act.

The effective date is January 1, 2022, except as otherwise provided. See Handout 6.

But OCA has until April 1, 2022, to create the Public Safety Report System and any related forms and materials.

And judges in office as of April 1, 2022 have until December 1, 2022 to meet the training requirements.

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Training and Resources

- Magistration Workshops
 - May 10 – 11 (Austin)
 - July 12 – 13 (Lubbock)
 - Sept. or Oct. (tbd)
- DPS Criminal Justice Practitioner Course (CJP); requires a TLETS User ID and pw and then you can access nexTest to complete a one-hour course on TCIC.
- Revised Magistration Bench Cards (Jan. 2022)
- Revised Magistration Deskbook (Jan. 2022)
- Self-paced Module (Feb. 2022)

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QUESTIONS?

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