

Peace Bond Webinar: Questions from the Legal Board

- 1. Question:** Peace Bond has been filed in this court and the constable is unable to serve the defendant to get him summoned to court. We are unsure of what options we have or next steps we can legally take. The girlfriend answers the door but always states he's not home; after trying numerous times he has been unsuccessful. Can you tell us what would be our next step?

Answer: Your next step would be to issue a warrant for the person's arrest. See p. 57-58 of our Magistration Deskbook, which may be found here: <http://www.tjctc.org/tjctc-resources/Desktops.html>. The relevant statute is cited in the deskbook.

- 2. Question:** Please assist me with correcting the flow. Should a Peace Bond Hearing be scheduled for 2(a.) or is this incorrect?

1. The Application for a Peace Bond is filed by the applicant and issued a Case Number.
2. The Judge reviews the Application.
 - A. The Judge "Denies" the applicant's request for a Peace Bond Hearing; Case Closed.
 - B. The Judge "Approves" the applicant's request for a Peace Bond Hearing; Peace Bond Hearing is scheduled.
3. Both parties appear at the hearing.
 - A. The Judge "Denies" an order for a Peace Bond; Case Closed.
 - B. The Judge "Approves" a Peace Bond; Respondent Ordered to pay Bond.

Answer: The judge can reject a peace bond application without a hearing if they feel the application doesn't support that there is probable cause that there has been an imminent threat to the applicant's person or property.

3. Question: This is in reference to the answer for the Peace Bond question submitted on 11/02/2017. Your answer being: "The Judge can reject a peace bond application without a hearing if they feel the application doesn't support that there is probable cause that there has been an imminent threat to the applicant's person or property," which in my understanding would be that the application would be rejected without any documentation or a case number/cause number/docket number being issued. Is this correct?

Answer: Correct, there is no reason to give the application itself a docket number or other case/cause number if it is not supported by probable cause. It isn't necessarily wrong to make a file with the application and give it a number, but it is certainly not necessary.

4. Question: On a peace bond when a complainant files an application and is filing on 3 people, all live in the same house, do we have to have an application on each individually or can they all be on the same application?

Answer: Chapter 7 of the Code of Criminal Procedure does not specifically prohibit a single complaint against multiple respondents but the best practice would be for the complainant to file a separate complaint against each respondent since the complainant must allege that an offense was about to be committed or was threatened by each respondent and each respondent has a right to a hearing. See Arts. 7.01 – 7.03, Code of Criminal Procedure; *In re Jones*, 55 S.W.3d 243, 247-249 (Tex. Spec. Ct. Rev. 2000); *Ex parte McCain*, 153 Tex. Crim. 517, 519, 221 S.W.2d 781, 782 (Tex. Crim. App. 1949).

5. Question: PEACE BOND INQUIRY Our court holds a hearing for every peace bond case and/or violation of peace bond filed. 21 cases filed for 2017 so far. Some questions we have: 1. Why is there no fee assessed on these cases? Is it State or County mandated? 2. Is there a sample form for a Warning Letter?

Answer: 1. Since peace bonds come under the Code of Criminal Procedure, these are not civil cases and so there is no civil filing fee. There is also no specific authorization for a fee for a peace bond in the Code of Criminal

Procedure, the Government Code, or the Local Government Code. As such, a county does not have the authority to assess a fee here.

2. We are not familiar with the use of a “Warning Letter” in a peace bond proceeding.

6. Question: GOOD AFTERNOON!!! I HAVE A QUESTION ON A PEACE BOND. IF SOMEONE THREATENS A PERSON IN A DIFFERENT COUNTY CAN THEY FILE ANYWHERE THEY WANT OR DOES IT HAVE TO BE WHERE THE THREAT OCCURRED? IT HAPPENED IN COTULLA TX AND WE ARE IN WEBB COUNTY!

Answer: A request for a peace bond can be made anywhere in the state. It does not have to be in the county where the threat occurred.

7. Question: Peace Bonds - Does the county appoint counsel to determine if the defendant is financially able to post the required security? CCP Art. 8 does not say anything about it.

Answer: Peace bonds are covered by Chapter 7 of the Code of Criminal Procedure. There is nothing in this chapter that would require counsel to be appointed to determine if the defendant is financially able to post the required bond. Article 7.06, Code of Criminal Procedure, states: “the magistrate, in fixing the amount of such bonds, shall be governed by the pecuniary circumstances of the accused and the nature of the offense threatened or about to be committed.” So the magistrate should consider the defendant’s financial resources in determining the amount of the bond.

8. Question: We have a Defendant on a Peace Bond Case that was filed 5/24/17 with a Statement of Inability to Afford payment of Court Costs or an Appeal Bond which was approved and signed by Judge. A summons was issued to the Defendant on 5/24/17 and due to the peace bond violation a warrant was issued for Defendant. The summons and the warrant were served 5-24-17. The Peace Bond Hearing was held 5/26/17 and the finding was to leave Peace Bond pending for one year. Complainant came in 6-8-17 and a new summons was issued for the Defendant with the hearing set for 6/12/17 and

a warrant was once again issued for the Defendant for violation of Peace Bond. Bond was set at \$30,000.00. Bail Bond received 6/30/17 dated 6/23/17 by Bail Bonds Company. 10 10/3/17 warrant issued for Defendant for violation of Peace Bond and bond was set at \$75,000.00. How does the court call in the bond so that the bonding company will have to pay the bond?

Answer: Art. 7.16 of the Code of Criminal Procedure states: "A suit to forfeit any bond taken under the provisions of this Chapter shall be brought in the name of the State by the district or county attorney in the county where the bond was taken." So the bond forfeiture proceeding must be brought by your district or county attorney.

9. Question: Can A Justice of the Peace sentence a defendant to any jail time at county jail for a repeated violation of a Peace Bond order (contempt)?

Answer: Yes. Art. 7.18 of the Code of Criminal Procedure states that a violation of a condition of a peace bond imposed under Chapter 7 may be punished by contempt under Section 21.002(c), Government Code. Section 21.002(c) permits a justice court to impose a fine of \$100 and/or confinement in jail for up to three days for contempt of a court order.

10. Question: Can you please clarify the difference between a contempt of a peace bond that a justice court can hear (response dated 02-29-2016) and a forfeiture of a peace bond that in our class handout states that only a District Court can try a suit for forfeiture of a peace bond regardless of the amount of the bond. It further states that a suit must be brought by the district or county attorney. I had a peace bond hearing in December and I signed an order requiring a peace bond. Now the complaining witness, victim, petitioner for the peace bond is saying the defendant violated the peace bond. Who has the hearing the JP court or the District court?

Answer: Section 7.18, Code of Criminal Procedure, states that the violation of a condition of a peace bond is punishable by "(1) forfeiture of the bond; (2) imposition of the fine and confinement for contempt under Section

21.002(c), Government Code; or (3) both forfeiture of the bond and imposition of the fine and confinement." A justice court has authority under Section 21.002(c), Government Code, to hold a person in contempt. But a justice court does not have jurisdiction to conduct a forfeiture proceeding on a peace bond; only a district court has jurisdiction to try a forfeiture proceeding and the suit for forfeiture must be brought by the district or county attorney within two years from the date of the violation of the bond. See Art. 7.16, Code of Criminal Procedure; Tex. Const. Art. V, § 8; Section 27.031(b), Government Code. So a justice court has jurisdiction of a contempt proceeding but not a forfeiture proceeding for a peace bond.

11. Question: Court hearing held today on a Peace Bond Violation. The judge ordered a \$100 cash fine on both parties. It is the first time the court issues this type of fine and our Audit Dept is requesting copy of the written Rule that indicates the judge has the authority and/or can apply this fine. Please advise as soon as possible. Thank you in advance.

Answer: Art. 7.18 of the Code of Criminal Procedure states that a violation of a condition of a peace bond imposed under Chapter 7 may be punished by contempt under Section 21.002(c), Government Code. Section 21.002(c) permits a justice court to impose a fine of \$100 (and/or confinement in jail for up to three days) for contempt of a court order. So the judge acting as a magistrate under Art. 7.18 clearly could impose the fine of \$100 on the defendant if the court found him to be in violation of a condition of the peace bond. The defendant could pay the fine in any manner normally permitted by the court so, for example, if the court accepts payment of fines by credit card the defendant should be able to pay the fine in that manner rather than cash.

There is no provision in Chapter 7 for imposing a fine on the party making the complaint for a peace bond, although Art. 7.10 does state that if the magistrate discharges the accused he may tax the cost of the proceeding against the party making the complaint. However, if there was a hearing and the party making the complaint was held in direct contempt for some

statement or action directed to the court, then the judge would have authority under Section 21.002(c) to punish that contempt by a fine of \$100. Again, the party held in contempt should be able to pay that fine in any manner normally permitted by the court.

12.Question: In a peace bond case the judge ordered the defendant to pay a bond fee. The bond time has now expired and defendant is requesting his money. Is there any procedure or documentation the defendant needs to submit in order to get is bond money back?

Answer: If the defendant has fulfilled the conditions of the bond for the time stated in the bond under Art. 7.03, Code of Criminal Procedure, then the judge (acting as a magistrate) may discharge the defendant under Art. 7.10 and release him from the conditions of the bond and return the bond amount to him. Chapter 7 of the Code of Criminal Procedure does not identify any specific documentation the defendant must submit. Presumably, it is sufficient that the evidence shows that he has not committed the offense or made any further threats within the time that the bond was in effect.

PEACE BOND COMPLAINT

CASE NO.: _____

THE STATE OF TEXAS
COUNTY OF COLLIN

I, _____, DO SOLEMNLY SWEAR THAT I HAVE GOOD
REASON TO BELIEVE, AND DO BELIEVE, THAT

DEFENDANT, HAS THREATENED TO COMMIT AND IS ABOUT TO COMMIT AN
OFFENSE AGAINST MY PERSON OR PROPERTY, TO-WIT, THE SAID _____,
DEFENDANT, HAS THREATENED TO COMMIT AND IS ABOUT TO COMMIT, IN
_____ COUNTY, TEXAS, AND ASSAULT UPON ME OR DAMAGE TO MY
PROPERTY AND TO INTENTIONALLY AND KNOWINGLY CAUSE BODILY INJURY TO
ME OR TO DAMAGE MY PROPERTY, TO WIT:

AGAINST THE PEACE AND DIGNITY OF THE STATE.

INFORMANT

SWORN TO AND SUBSCRIBED BEFORE ME ON THE _____ DAY OF _____,
20 ____.

JUSTICE COURT, PCT. _____
CLERK OF THE COURT
NOTARY PUBLIC

COUNTY, TEXAS

CAUSE NO: _____

STATEMENT OF OFFENSE BY COMPLAINING PARTY OR BY WITNESS

PERSON FILING COMPLAINT:

NAME:	RACE/SEX:	AGE:	DOB:
ADDRESS:			
EMPLOYMENT:			
ADDRESS:			

NAME/ADDRESS/PHONE #/ RELATIONSHIP OF PARTY THAT WOULD GET IN TOUCH WITH YOU IN CASE OF EMERGENCY:

PERSON ON WHOM COMPLAINT IS BEING FILED:

NAME:	RACE/SEX:	AGE:	DOB:
ADDRESS:			
EMPLOYMENT:			
ADDRESS:			

WITNESSES: (NAMES & ADDRESSES & TELEPHONE NOS.)

AFFIDAVIT FOR PROBABLE CAUSE

STATEMENT OF OFFENSE(S) ABOUT TO BE COMMITTED:

I, _____ HERE NOW AGREE TO APPEAR IN COURT AS A WITNESS FOR THE PROSECUTION ON THE DATE AND HOUR SCHEDULE, WHEN AND IF THIS CASE IS SET FOR A HEARING. IN THE EVENT I DECIDE AT A LATER DATE TO REQUEST THE COURT TO DISMISS THE CASE, I SHALL PERSONALLY APPEAR AT THE OFFICE OF THE PROPER COURT AND MAKE A WRITTEN REQUEST FOR SUCH DISMISSAL.

SIGNATURE OF AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME BY THE SAID AFFIANT ON THIS THE ____ DAY OF _____, 20 ____.

CLERK OF THE COURT/NOTARY PUBLIC

PROBABLE CAUSE APPROVAL

ON THIS THE ____ DAY OF _____, 20 ___, I HEREBY ACKNOWLEDGE THAT I HAVE EXAMINED THE ABOVE AFFIDAVIT AND HAVE DETERMINED THAT PROBABLE CAUSE EXISTS FOR THE ISSUANCE OF AN ARREST WARRANT FOR THE INDIVIDUAL ACCUSED THEREIN.

JUSTICE COURT, PCT. ___, COLLIN COUNTY, TEXAS

**COMPLAINT INFORMATION
PRECINCT TWO**

1. MY NAME IS: _____
2. MY TELEPHONE IS: (H) _____
(W) _____
3. MY ADDRESS IS: _____
4. EMPLOYMENT : _____
5. I AM FILING ON: _____
6. WHOSE ADDRESS IS: _____
7. THE PERSON I AM FILING ON IS:
- A. ABOUT _____ YEARS OLD
- B. ABOUT _____ FT. _____ IN. TALL
- C. BLACK _____ WHITE _____ HISPANIC _____
- D. HAIR IS: BLACK-BLOND-GRAY-RED-BROWN
8. TELEPHONE IS: (H) _____
(W) _____
9. EMPLOYMENT _____
10. HOW DID THE PERSON ABUSE YOU? _____

11. WHY WAS THIS OFFENSIVE TO YOU? _____

12. WHERE DID THIS HAPPEN? _____
- PRIVATE RESIDENCE _____ OR PUBLIC PLACE _____
13. WHEN DID THIS HAPPEN? _____
14. DID YOU DO ANYTHING TO PROVOKE THIS INCIDENT? YES OR NO (IF YES, EXPLAIN)

15. IS THERE ANY RELATIONSHIP BETWEEN YOU AND THE OTHER PARTY? YES OR NO
(EXAMPLE: HUSBAND, BOYFRIEND, NEIGHBOR, ETC.) IF YES, EXPLAIN

16. IS THERE ANYTHING ELSE WE SHOULD KNOW? (EXAMPLE: "THE OTHER PARTY FILED ON ME")

17. HAVE YOU EVER FILED A CASE IN THIS COURT BEFORE? YES OR NO
(IF YES, HOW MANY TIMES _____)

PEACE BOND COMPLAINT
CAUSE #

PEACE BOND COMPLAINT

THE STATE OF TEXAS

COUNTY OF WEBB

I _____, do solemnly swear that I have good reason to believe and do believe that _____

of _____ (ADDRESS)

has threatened to commit and is about to commit an offense against my person, to-wit, the said _____

has threatened to commit and is about to commit in Webb County, Texas, an assault upon me and to intentionally and knowingly cause bodily injury to me.

Against the peace and dignity of the State.

(ADDRESS)

(TELEPHONE)

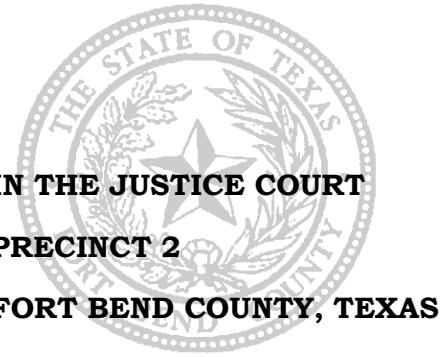
SWORN AND SUBSCRIBED before me by the said _____

this the _____ day of _____, 20____

Ramiro Veliz, Jr.
JUSTICE OF THE PEACE
PRCT. 2 WEBB COUNTY, TEXAS

About Peace Bonds:			
What is a <u>Peace Bond</u> ?	A peace bond is a court order designed to keep the peace by protecting some one who has been threatened, but not harmed. When a judge issues the Peace Bond he is ordering the person who made the threats to deposit money with the court. If the person who made the threats commits the threatened criminal action then the deposited money will be given to the state.		
What can a Peace Bond <u>do</u> ?	A peace bond warns someone not to break the law. If the person breaks the law, then he or she will face criminal charges <i>and</i> lose the money (the bond) deposited with the court.		
Peace Bonds are not bullet proof!	<p>A Peace Bond is only made of paper. It cannot stop fists or weapons. A Peace Bond does not offer 24-hour protection. It can't protect you from some one who doesn't think about consequences or who doesn't care about being arrested or losing the bond money.</p> <p>If you fear for your safety, speak to a domestic violence counselor about making a Safety Plan.</p>		
How can I <u>apply</u> for a Peace Bond?	<p>You can apply for a peace bond if someone has threatened to harm you or your property.</p> <p>You apply for a Peace Bond by filing a Peace Bond Complaint and Statement of Offense by Complaining Party with the Justice of the Peace in your precinct.</p> <p>If the crime has already happened, a criminal complaint should be filed with the police or sheriff, instead of a Peace Bond.</p>		
<u>How long</u> will it last?	<u>Who</u> issues a peace bond?	<u>How</u> is it <u>enforced</u> ?	<u>Do you need to give the other person notice?</u>
Up to 1 year	Justices of the Peace	<ul style="list-style-type: none"> ▪ Loss of bond money. ▪ Possible arrest for criminal action. 	Yes, it is required. The clerk of the court will have to send a notice of the Peace Bond hearing.

A Peace Bond is **not a protective order or a restraining order**. A peace bond is only approved or denied by the Judge. If you are filing a peace bond with our court, the information you provide must be true and correct. If you knowingly provide false information, criminal action will be taken. You must fill out our form completely. We are not attorneys, so we can not assist you in filling out our form. If you do not know how to fill out the form, you must contact an attorney.



THE STATE OF TEXAS §
VS. §
_____ §

IN THE JUSTICE COURT
PRECINCT 2
FORT BEND COUNTY, TEXAS

CAUSE NO. _____-PB21-_____

I, _____ do solemnly swear that I have good
(Complainant's Name)
reason to believe, and do believe, that _____,
(Name or description)
Defendant, has threatened to commit and is about to commit an offense against _____
(state identity of person or property threatened); that
_____, Defendant, has threatened to commit and is
about to commit, in _____ County, Texas, the offense of _____

AGAINST THE LAWS OF THE STATE OF TEXAS.

Affiant

Sworn to and subscribed before me, this _____ day of _____, 20____.

**Joel C. Clouser, Sr. or Court Clerk
Justice of the Peace, Precinct 2
Fort Bend County, Texas**

Plaintiff _____ D.O.B. / / _____
Address _____
City/State/Zip _____
Phone _____

Defendant _____ D.O.B. / / _____
Address _____
City/State/Zip _____
Phone _____
DL# _____

ADDITIONAL INFORMATION:

CHOICES IN THE LEGAL SYSTEM FOR VICTIMS OF CRIME

Peace Bond	Restraining Order	Protective Order	Emergency Protection Order
<p>A Magistrate, including a Justice of the Peace, issues these.</p> <p>A peace bond is a court order designed to keep the peace by protecting a person or property from someone who has threatened to commit an offense against a person or property.</p> <p>Police are <u>not</u> notified.</p> <p>A Bond is set to guarantee good behavior. The money is forfeited to the State if the threat is carried out.</p> <p>Threats that are not deemed serious are:</p> <ul style="list-style-type: none"> ▪ Making a rash statement about a third person during a quarrel or bragging about not being afraid of someone. ▪ Abusive language and bragging by a drunk. ▪ A rash threat resulting from an outburst of temper in the heat of passion. ▪ Making a rash statement provoked by an angry altercation. <p>There needs to be some evidence that a threat will be carried out.</p> <p>This is a piece of paper, it will not physically protect you from harm.</p>	<p>Justice of the Peace <u>does not</u> issue.</p> <p>Private attorney <u>can</u> file.</p> <p>State's Prosecutor <u>cannot</u> file.</p> <p>Person <u>can</u> file on his/her own if they know the process.</p> <p>Police are <u>not</u> notified.</p> <p>An application is filed in District Court, often filed in divorce proceedings. Restraining Orders generally act to protect you from being harassed by telephone calls, having your bank account emptied, having your credit card cancelled, and other similar activities.</p> <p>Temporary Restraining Orders can be in effect for 14 days before the hearing.</p> <p>Last until the Court changes it (usually until the divorce is final).</p> <p>Called a PERMANENT INJUNCTION after the Order is final.</p> <p>Punishment is Contempt of Court (up to \$500 fine and/or 6 months in jail).</p> <p>It is a means of keeping someone away (it cannot evict someone from their home, divide property, or deal with custody of children).</p> <p>Can be obtained against anyone, including neighbors and co-workers, not limited to family members.</p>	<p>State's Prosecutor <u>can</u> file.</p> <p>Private attorney <u>can</u> file.</p> <p>Person <u>can</u> file his/her own if they know the process.</p> <p>An application is filed in District Court.</p> <p>Temporary Order can be in effect for 14 days prior to hearing.</p> <p>Can prevent a person from accessing the victim's home.</p> <p>Final Order lasts for up to two years after date it is issued.</p> <p>Respondent given copy of Order at end of hearing or if not at Court by certified mail.</p> <p>Police are notified when the final Order is granted.</p> <p>Punishment is Class A Misdemeanor or State Jail Felony, if respondent has been convicted 2 times for violation.</p> <p>A Protective Order is intended to prevent family violence by a member of a family household. Protective Orders can prohibit a person from going to or near the victim's residence, work, school, or daycare facility.</p> <p>Only against family members -intimate partners.</p>	<p>Issued by a Magistrate at the initial appearance in front of a Judge when a person is in custody after an arrest for family violence, stalking or dating violence.</p> <p>Can be requested by the victim, the victim's guardian, a police officer, a prosecutor, or by the Magistrate on their own.</p> <p>The Defendant is given a copy of the Order by the Magistrate.</p> <p>Police are notified.</p> <p>Lasts up to 91 days from the date it is issued.</p> <p>Punishment is Class A Misdemeanor or State Jail Felony.</p> <p>A Protective Order is intended to prevent family violence by a member of a family household. Protective Orders can prohibit a person from going to or near the victim's residence, work, school, or daycare facility.</p>

*****The information contained herein is not exhaustive and is not intended to be legal advice*****