TEXAS JUSTICE COURT TRAINING CENTER

DWI Magistration & Inquest

Field Guide
2018 Edition

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DWI MAGISTRATION & INQUEST

Field Guide
2018 Edition

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INTRODUCTION

This booklet was designed pursuant to a traffic safety grant from the Texas Department of Transportation. TJCTC and TXDOT are committed to reducing alcohol-related injury and fatality throughout the Lone Star State. We hope this guide will serve as a valuable resource for justices of the peace who perform magistrate and inquest duties and who wish to ensure that they fulfill all of the duties and obligations placed upon them by the law.

If you have suggestions for the next edition of the guide, please contact the Training Center.

MAGISTRATION

Who Is A Magistrate And What Do They Do?

A magistrate is a government official authorized by the Texas legislature to perform duties relating to preserving the peace within his or her jurisdiction. All Texas justices of the peace are magistrates *(see Article 2.09, Code of Criminal Procedure)*. Please keep in mind that the clerk of a justice court is not a magistrate and cannot perform any of the duties described in this guide. Other government officials classified as magistrates under Texas law include district judges, county judges, county court at law judges, municipal judges, and mayors.

Article 2.10 of the Code of Criminal Procedure states:

> *"It is the duty of every magistrate to preserve the peace within his jurisdiction by the use of all lawful means; to issue all process intended to aid in preventing and suppressing crime; to cause the arrest of offenders by the use of lawful means in order that they may be brought to punishment."*

Magistrates fulfill this duty by performing several tasks authorized by Texas law, including:

1. determining whether probable cause exists to keep a defendant in state custody;
2. administering legal warnings to those accused of crimes;
3. setting bail;
4. setting bond conditions;
5. issuing search warrants; and
6. issuing orders for emergency protection.

This handbook will guide you through the process of performing each of these tasks. The handbook also provides a framework for properly accepting pleas of guilty or no contest at the county jail following an Article 15.17 hearing.

Which Magistrates Must Conduct Article 15.17 Hearings At The County Jail?

None!

In many Texas counties, it is customary for justices of the peace—and not district judges—to conduct the majority of Article 15.17 hearings, but no statute states that district judges have the weekend off, while justices of the peace must spend Saturday nights setting bail. Furthermore, no statute dictates where an Article 15.17 hearing must occur. In fact, the Code of Criminal Procedure states that a peace officer shall bring the accused before a magistrate, not vice versa.

Although magistrates in several Texas counties have created schedules which provide an "on-duty magistrate" at the county jail twenty-four hours a day, such a policy is not mandated by statute. We encourage all justices of the peace to work with their fellow county officials to develop policies which are acceptable to all parties in order to facilitate a smoothly operating criminal justice system.

Determining Probable Cause Following a Warrantless Arrest

Many Article 15.17 hearings occur following an arrest which is not supported by a warrant. Such arrests often occur after the accused has committed an offense in the presence of a peace officer. For example, the majority of driving while intoxicated (DWI) arrests occur after a peace officer observes the accused operating a motor vehicle in a public place while intoxicated.

When a peace officer presents a defendant to a magistrate following a warrantless arrest, the magistrate must determine whether probable cause exists to continue to hold the defendant in state custody. Although this requirement is not listed in the Code of Criminal Procedure, the Supreme Court of the United States has consistently stated that constitutional due process rights require that, "persons arrested without a warrant must promptly be brought before a neutral magistrate for a determination of probable cause." *County of Riverside v. McLaughlin,* 500 U.S. 44, 56 (1991).

How Is Probable Cause Determined?

Typically, the peace officer who presents the accused to the magistrate will also submit an **affidavit**, describing the facts of the offense, which purports to establish probable cause to believe the accused committed the charged offense. In some counties, this document is referred to as a **probable cause affidavit.** In others, it is referred to as a **complaint**, and in some counties the magistrate receives both a complaint and a probable cause affidavit.

> The United States Court of Appeals, Fifth Circuit, recently examined whether these terms are interchangeable, and determined that "the answer is…uncertain." *Rothgery v. Gillespie County,* 491 F.3d 293, 298 (5th Cir. 2007), *overruled on other grounds by* 554 U.S. 191, 128 S.Ct. 2578 (2008).

Regardless of what the document submitted by the presenting officer is titled, you should examine the document to determine whether it contains facts which establish probable cause. *(This guide refers to such documents as probable cause affidavits.)* When reviewing a probable cause affidavit submitted following a DWI arrest, you will probably encounter several references to standardized field sobriety tests, including the **horizontal gaze nystagmus test**, the **walk and turn test**, and the **one leg stand test**. We highly recommend familiarizing yourself with standardized field sobriety tests and the clues that the officer is looking for in order to make an appropriate determination of probable cause.

Older National Highway Traffic Safety Administration (NHTSA) Standardized Field Sobriety Test Manuals may be found at the following link:

http://oag.dc.gov/page/sfst-training-manuals

Standardized Field Sobriety Test	*Total Possible # of Clues*	*# of Clues to Fail*
Horizontal Gaze Nystagmus (HGN)	6	4
Walk & Turn	8	2
One Leg Stand	4	2

When determining whether probable cause exists following an arrest without warrant, a justice of the peace should not ask the officer who presents the accused to provide additional facts regarding the arrest. Instead, the magistrate should determine whether probable cause exists based only on the information found within the "four corners" of the affidavit submitted by the presenting officer.

If the affidavit fails to establish probable cause, the accused must be immediately released without bond. If the affidavit establishes probable cause, an Article 15.17 hearing must be conducted.

Timely Presentation of the Accused

The accused must be brought before a magistrate (either in person or through videoconference) "without delay", but not later than 48 hours after the person is arrested. The magistrate can be any magistrate in the county where the person is arrested, or, to provide the required warnings more expeditiously, any magistrate in the state.

If a person has been arrested without a warrant, a magistrate must determine that probable cause exists to believe that the person committed the offense within 24 hours for a misdemeanor arrest and within 48 hours for a felony arrest.

If this requirement is not met, the accused must be released on a bail bond not to exceed $5,000.00 for a misdemeanor arrest and not to exceed $10,000 for a felony arrest. If the accused is unable to post bail, he or she must be released on a personal bond. *Id*.

Because of this law, the best practice is to have any people arrested without a warrant brought before a magistrate within 24 hours of the time of arrest *(see Articles 15.17 and 17.033, Code of Criminal Procedure)*.

Conducting the Article 15.17 Hearing

When Must An Article 15.17 Hearing Be Conducted?

An Article 15.17 hearing must be conducted when the accused is presented to a magistrate if:

1. the arrest is based on a warrant; or
2. the arrest is not based on a warrant and the magistrate has determined that probable cause exists to believe the accused committed the charged offense.

The steps for conducting an Article 15.17 hearing vary slightly depending on whether the arrest was based on a warrant.

Criminal magistrates may conduct an Article 15.17 hearing and set bail when a person is arrested for an administrative parole violation, but only if the parole division of the Texas Department of Criminal Justice has authorized the person's release on bond, and the magistrate determines the person is not a threat to public safety *(see Section 508.254, Government Code).*

If the arrest is based on a capias issued following a district court indictment, Texas law requires that the defendant be presented to the judge of the court which issued the capias. TJCTC recommends that the judge of the court which issued the capias conduct the Article 15.17 hearing.

If the arrest is based on a capias pro fine, the defendant must generally be presented to the judge of the court which issued the capias pro fine. However, if the capias pro fine was issued by a justice of the peace, the defendant may be presented to any other justice of the peace located in the same county as the court that issued the capias pro fine. The defendant may also be presented to a "county criminal law magistrate court with jurisdiction over Class C misdemeanors" located in the same county as the justice court that issued the capias pro fine *(see Article 45.045, Code of Criminal Procedure).*

Depending on the circumstances, a magistrate may be required to conduct an Article 15.17 hearing following an arrest based on a warrant issued by a trial court under Article 42A of the Code of Criminal Procedure (issued when the State alleges that a defendant has violated the terms and conditions of community supervision set by the trial court). Article 42A.751 requires that the defendant be brought before a magistrate of the county in which he or she was arrested if the trial court judge is unavailable at the time of the defendant's arrest.

Once the defendant is brought before the magistrate, the magistrate shall perform all appropriate duties and may exercise all appropriate powers as provided by Article 15.17 with respect to an arrest for a new criminal offense, except that only the judge who ordered the

arrest for the alleged violation may authorize the person's release on bail.

Therefore, a magistrate has no jurisdiction to set a bond when a defendant is arrested on a warrant issued under Article 42.12; only the trial court judge does. However, the magistrate may accept a bond in the amount set by the trial court. The judge of the trial court may also order the defendant to be held in the custody of the State until a hearing to determine whether the defendant violated the terms and conditions of his community supervision. Additionally, keep in mind that Article 42.12 authorizes a magistrate to perform all *appropriate* duties. A defendant arrested on a warrant issued under Article 42.12 will not have the full range of rights afforded someone in a full Article 15.17 hearing. (For example, such defendants have no right to an examining trial.) Be careful not to exceed the authority granted to you in these cases, as doing so may open your county up to liability.

If an Article 15.17 hearing is required, a magistrate may conduct the hearing by means of a videoconference. If you are interested in obtaining a videoconference system, keep in mind that this expense may be paid for using your county's justice court technology fund (or other court technology funds if other judges will also be using the videoconferencing).

A record (written forms, electronic recordings, etc.) of the communication between the arrested person and the magistrate shall be made and preserved until whichever is earlier — the date that the pretrial hearing ends, or the 91st day after the record is made for a misdemeanor or the 120th day after for a felony.

The section below describes the steps for conducting an Article 15.17 hearing in chronological order.

Step One: Administering Oral Admonishments

Article 15.17 provides that a person accused of a criminal offense must receive the following admonishments pertaining to his or her constitutional and statutory rights.

1. The accused must be informed "of the accusations against him and of any affidavit filed therewith" *(see Article 15.17, Code of Criminal Procedure)*. State the offense with which the defendant has been charged and provide him or her with a copy of the probable cause affidavit submitted by the presenting officer.
2. The accused must be informed "of his right to obtain counsel." *Id*. Please keep in mind that the right to retain counsel differs from the right to have counsel appointed if the accused cannot afford to hire an attorney. Every person accused of a crime has the right to retain an attorney.
3. The accused must be informed "of his right to remain silent." *Id*.
4. The accused must be informed "of his right to have an attorney present during any

interview with peace officers or attorneys representing the state." *Id*.

5. The accused must be informed "of his right to terminate the interview [with peace officers or prosecutors] at any time." *Id*.
6. The accused must be informed "of his right to have an examining trial." *Id*. The right to have an examining trial applies only when the accused has been charged with a felony. If the defendant has been charged with a misdemeanor or arrested on administrative warrant, we recommend explaining that the right to an examining trial does not apply.
7. The accused must be informed "of his right to request the appointment of counsel if the person cannot afford counsel." *Id*. This right applies only when the accused has been charged with an offense which is potentially punishable by confinement or imprisonment. If the accused has been charged with a misdemeanor punishable by fine only, we recommend explaining that the accused is not entitled to a court appointed attorney.
8. The accused must be informed "that he is not required to make a statement and that any statement made by him may be used against him." *Id*.
9. The accused must be informed "of the procedures for requesting appointment of counsel." *Id*. Every county must have specific procedures in place for this process. Additionally, a magistrate must "ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time [the Article 15.17 warnings are administered]." *Id*.

If the person does not speak and understand the English language or is deaf, the magistrate "shall inform the person of the rights listed in Article 15.17 in a manner consistent with Articles 38.30 and 38.31, as appropriate." *Id*. Article 38.30 deals with the appointment of an interpreter when the English language is not understood. Article 38.31 deals with interpreters for deaf persons. Please note the use of the term "shall" in this portion of Article 15.17. Due to the use of this term, a magistrate who is fluent in the Spanish language must nevertheless offer to provide an interpreter to an accused who speaks only Spanish. The magistrate may administer the Article 15.17 admonishments in Spanish only if the defendant freely and voluntarily waives his statutory right to an interpreter.

The Attorney General's Office has indicated that a person accused of a criminal offense may waive his or her right to receive the oral admonishments required by Article 15.17 *(see Att'y Gen. Op. GA-0993 (2013))*. Some counties have interpreted this opinion as a green light to ask an accused to waive the entire Article 15.17 hearing. However, the Attorney General's opinion took pains to note that the Article 15.17 hearing includes several components, such as the administration of oral admonishments, setting bail, and providing consular notification when appropriate.

Furthermore, the opinion expressly takes no position on whether other aspects of the Article

15.17 hearing (such as setting bail or providing consular notification) may be waived. Therefore, it is TJCTC's position that Opinion GA-0993 does not indicate that waiver of the entire Article 15.17 hearing is authorized under Texas law. TJCTC believes the best practice is to conduct the Article 15.17 hearing whenever such a hearing is necessary rather than soliciting a waiver of the hearing.

Step Two: Appointing Counsel or Transmitting Appropriate Paperwork

A magistrate who conducts an Article 15.17 hearing and is authorized to appoint counsel pursuant to Article 26.04 of the Code of Criminal Procedure shall appoint an attorney for the defendant *(see Article 15.17, Code of Criminal Procedure)*.

However, most justices of the peace are not authorized to appoint counsel. If a magistrate who conducts an Article 15.17 hearing is not authorized to appoint counsel, the magistrate "shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel." This means that if a justice of the peace conducts an Article 15.17 hearing following a DWI arrest on Saturday at 2:00 AM and the defendant requests appointed counsel, all appropriate paperwork **must be transmitted (by fax, mail, or hand delivery) to the judge who appoints counsel within 24 hours**, even though the judge who appoints counsel is unlikely to review the paperwork until Monday morning.

Please keep in mind that the right to counsel attaches at the time of the "first adversarial proceeding." In Texas, the Article 15.17 hearing is the first adversarial proceeding. *Rothgery v. Gillespie County,* 554 U.S. 191 (2008).

Unfortunately, many counties in Texas continue to wait until the date of arraignment in the county or district court to appoint counsel. This practice is procedurally incorrect and exposes such counties to liability.

Step Three: Setting Bail and Bond Conditions

Bail is defined as the security given by a defendant that he or she will appear before the court and answer the accusation brought against the defendant *(see Article 17.01, Code of Criminal Procedure)*. The purpose of bail is to obtain the release of the defendant from custody and to secure the defendant's presence in court at the time of trial. *Ex parte Milburn, 8 S.W. 3d 422, 424 (Tex. App. – Amarillo 1999, no pet).*

When setting the amount of bail, a magistrate must consider the following factors:

1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.
2. The power to require bail is not to be so used as to make it an instrument of oppression.
3. The nature of the offense and the circumstances under which it was committed are to be considered.
4. The ability to make bail is to be regarded, and proof may be taken upon this point.
5. The future safety of a victim of the alleged offense and the community shall be considered. (See Article 17.15, Code of Criminal Procedure.)

After setting an appropriate amount of bail, the magistrate shall determine whether the accused must post a bail bond or a personal bond to secure his or her release from custody.

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 . . . ." (Article 17.02, Code of Criminal Procedure). A bail bond is often referred to as a surety bond because the defendant's agreement to show up for trial is guaranteed by the surety, who is liable for payment of the amount of bail if the defendant fails to appear. A bail bond could also be a cash bond instead of a surety bond. Article 17.02 expressly allows a defendant to deposit cash "in the amount of the bond in lieu of having sureties sign the same." Whether the defendant posts a cash bond or a surety bond is usually up to the defendant, not the magistrate or court. A defendant may be required to post a cash bond only in a bail forfeiture or surety surrender proceeding.

A **personal bond** does not require sureties or other security and is simply a sworn oath to pay the bail amount if the defendant does not appear as required *(see Article 17.04, Code of Criminal Procedure).* A personal bond may be enforced through a bail forfeiture proceeding under Chapter 22 of the Code of Criminal Procedure just like a bail bond would be *(see Article 22.02, Code of Criminal Procedure)*.

There is also the less common option of a **personal recognizance bond**, which is a personal bond in which the defendant simply agrees to appear for any future hearings or for trial without having to swear to pay any amount in the event he fails to do so.

Generally, a justice of the peace may, at their discretion, release a defendant on a personal bond. There are, however, some exceptions to this. A justice of the peace may be prohibited from allowing a personal bond depending on the type and circumstances of the offense, whether the warrant originates from a different county, and if the defendant is civilly committed as a sexually violent predator under Chapter 841 of the Health and Safety Code at the time of the alleged offense *(see Articles 17.03 and 17.031, Code of Criminal Procedure)*.

There are also situations in which a justice of the peace is *required* to release the defendant on a personal bond. These include the following, which were added/amended in the 2017 Regular Legislative Session:

1. If a defendant is arrested on an out-of-county warrant and fails or refuses to give bail; and the county that issued the warrant does not take charge of the arrested person before the 11th day after the person is committed to the jail in the county where they were arrested, then a magistrate of the county where the person was arrested shall release the arrested person on personal bond without sureties or other security. The personal bond shall then be forwarded to the sheriff of the county where the offense is alleged to have been committed or to the court that issued the arrest warrant *(see Article 15.21, Code of Criminal Procedure).*

2. If a magistrate is provided written or electronic notice of credible information that may establish reasonable cause to believe that the defendant has a mental illness or an intellectual disability, the magistrate shall conduct the proceedings described by Article 17.032, Code of Criminal Procedure. If each of the five conditions listed under Article 17.032(b) apply, then the magistrate shall release the defendant on personal bond (pursuant to the requirements of Article 17.032) unless good cause is shown otherwise. (Upon receiving the above described notice, proceedings relating to competency and treatment/services under Article 16.22, Code of Criminal Procedure, will also be required and are discussed on page 21).

Regardless of whether the accused is released on a bail bond or a personal bond, Texas law authorizes a magistrate to condition the defendant's release in order to ensure community safety. Additionally, in some instances Texas law requires the magistrate who conducts the Article 15.17 hearing to set certain bond conditions.

If the accused is alleged to have committed a subsequent offense listed in 49.04-49.06, or an offense under 49.07 or 49.08 of the Penal Code, the magistrate shall order the defendant, as a condition of bond, to:

1. have installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant, [an ignition interlock device] and
2. not operate any motor vehicle unless the vehicle is equipped with that device" *(see Article 17.441, Code of Criminal Procedure).*

In addition to these conditions, the magistrate may also require the defendant to abstain from alcohol or controlled substances as a condition of bond.

Additionally, the magistrate may, but is not required to, designate an appropriate agency to

verify the installation of the ignition interlock device and to monitor the device. The magistrate may also authorize the designated monitoring agency to collect a monthly monitoring fee. The monitoring fee must be set by the county auditor in an amount "to be sufficient to cover the cost incurred by the designated agency in conducting the verification or providing the monitoring service." The fee may not exceed $10.00. The magistrate has broad discretion to determine what constitutes an "appropriate agency." Examples include a local Community Supervision and Corrections Department, a local District Attorney's Office, or the magistrate's own court staff.

An ignition interlock device order form can be found on the TJCTC website.

The mandatory interlock ignition device requirement found in Article 17.441 may be waived only if the magistrate finds that to require the device would not be in the best interest of justice.

Article 17.40 of the Code of Criminal Procedure authorizes a magistrate to "impose any reasonable condition of bond related to the safety of a victim of the alleged offense or to the safety of the community." Therefore, a magistrate may also order the accused to install an ignition interlock device following the commission of any first-time driving while intoxicated offense if the magistrate believes the condition is reasonable and related to community safety.

When a magistrate restricts a defendant to the use of a motor vehicle equipped with an Ignition Interlock Device, the magistrate should notify DPS of the order. When DPS receives a notice, it notifies the defendant that their driver's license expires on the 30th day after the date of the notice. If the defendant's license is not suspended, DPS will issue a special restricted license authorizing the person to operate only a motor vehicle equipped with an ignition interlock device when the person applies for one and pays a $10 fee. *(See Section 521.2465, Transportation Code).*

Several other statutes also authorize or require Texas magistrates to set specific conditions of bond, including:

1. Article 17.41: Conditions in certain offenses when the victim is a child
2. Articles 17.43 & 17.44: Conditions relating to home curfew/confinement, electronic monitoring, and drug testing
3. Article 17.441: Conditions relating to ignition interlock devices
4. Article 17.46: Conditions in stalking cases
5. Article 17.49: Conditions in cases involving family violence

If a defendant is ordered to report to a probation department/Community Supervision and Corrections Department (CSCD) for monitoring of their bond conditions, then that department may impose a fee of $25-60 per month for the monitoring.

Step Four: Consular Notification

When conducting an Article 15.17 hearing, we recommend asking whether the accused is a citizen of a foreign country. When foreign nationals from most countries are arrested or detained, they may, upon request, have their consular officers notified without delay of their arrest or detention, and may have their communications to their consular officers forwarded without delay. In addition, foreign nationals must be advised of these rights without delay.

Additionally, if the accused is a citizen of a foreign country identified by international law as a "mandatory reporting country," consular officers must be notified of the arrest or detention even if the accused foreign national does not request or want notification. A full list of mandatory reporting countries may be found in the U.S. State Department's guide to "Consular Notification and Access." This guide, which we highly recommend reading thoroughly, can be accessed at the web address found below.

http://travel.state.gov/content/dam/travel/CNAtrainingresources/CNAManual_Feb2014.pdf

If you find yourself with a question regarding consular notification, you may contact the Law Enforcement Liaison at the Office of the Attorney General, Criminal Investigations Division, at (512) 463-9570.

Step Five: Issue an Emergency Protective Order (EPO) If Appropriate

A Magistrate's Order for Emergency Protection (commonly referred to as an EPO or emergency protective order) is a separate order—as opposed to a bond condition—which may be issued "at a defendant's appearance before a magistrate after arrest for an offense involving family violence or an offense under Section 22.011 (sexual assault), 22.021 (aggravated sexual assault), or 42.072 (stalking), Penal Code" *(see Article 17.292, Code of Criminal Procedure).*

Issuance of an emergency protective order is mandatory in some circumstances. The magistrate shall issue an EPO if the arrest is for a family violence offense that involves:

1. serious bodily injury to the victim; or
2. the use or exhibition of a deadly weapon during the commission of an assault. *Id*.

If issuance of the EPO is mandatory and the defendant exhibited a deadly weapon during the commission of the offense, the EPO must remain in effect for at least 61 days but no later than 91 days. *Id*. If issuance of the EPO is mandatory but the defendant did not exhibit a deadly weapon during the commission of the offense, the EPO must remain in effect for at least 31 days but no later than 61 days.

If the accused is charged with an offense which authorizes a magistrate to issue an emergency protective order but the offense does not involve serious bodily injury or the use or exhibition of a deadly weapon, issuance of the EPO is discretionary. *Id*. Discretionary EPOs must remain in effect for at least 31 days but no later than 61 days. *Id*.

An EPO may prohibit the accused from:

1. committing family violence or an assault on the person protected under the order;
2. committing an act in furtherance of an offense under Section 42.072, Penal Code (stalking);
3. communicating directly with a member of the family or household or with the person protected under the order in a threatening or harassing manner;
4. communicating a threat through any person to a member of the family or household or to the person protected under the order;
5. communicating in any manner with the person protected under the order or a member of the family or household of a person protected under the order (except through the party 's attorney or a person appointed by the court), but only if the magistrate finds good cause;
6. going to or near the residence, place of employment, or business of a member of the family or household or of the person protected under the order;
7. possessing a firearm (unless the person is a peace officer, as 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); and
8. going to or near the residence, child care facility, or school where a child protected under the order resides or attends.

Please keep in mind that the issuance of an EPO can provide the time and safety that victims trapped in a cycle of violence need to receive appropriate help and counseling. In extreme cases, issuance of an EPO can mean the difference between life and death for a victim.

Emergency protective order forms may be found on the TJCTC Website.

Step Six: If the Arrest Is Based On a Warrant That Your Court Did Not Issue, Take Appropriate Action

Warrant Issued From another County

A court which issues an arrest warrant is the "court before which the case is pending," and has jurisdiction over all matters relating to the bond until formal charges are filed. *Ex Parte Clear*, 573 S.W.2d 224 (Tex. Crim. App. 1978). Therefore, if you conduct an Article 15.17 hearing following an arrest pursuant to a warrant that you did not issue, you will have additional

responsibilities.

If the arrest warrant was issued by a judge in another county, and the offense is punishable by fine only, the magistrate, after conducting the Article 15.17 hearing, shall accept a plea if the defendant desires, set a fine, determine costs, accept payment, give credit for time served, determine indigency, or discharge the defendant as the case may indicate *(see Article 15.18, Code of Criminal Procedure).* The magistrate who conducts the Article 15.17 hearing shall transmit the defendant's written plea, any orders entered in the case, and any fine or costs collected in the case to the court that issued the arrest warrant within 11 days.

If the arrest warrant was issued by a judge in another county, and the offense is punishable by confinement or imprisonment, the magistrate who conducts the Article 15.17 hearing shall "immediately transmit the bond taken to the court having jurisdiction of the offense." This procedure should also be followed when the arrest warrant was issued by a judge in the county where the Article 15.17 hearing was conducted but a different judge conducted the Article 15.17 hearing.

The magistrate who conducts the Article 15.17 must still perform all required tasks, including consular notification. The magistrate who conducts the Article 15.17 hearing must also transmit—within 24 hours— all forms for requesting appointment of counsel to the judge responsible for appointing counsel in the county in which the warrant was issued. A list of judges responsible for appointing counsel to indigent defendants in each county may be obtained by contacting the Texas Indigent Defense Commission at 512-936-6994.

Warrant Issued From another State

If a warrant is issued under the retaking procedures of the Interstate Compact for Adult Offender Supervision (ICAOS), the offender *may not* be released on bond* *(see ICAOS Rule 1.101, Rule 5.111 of the Commission's rules implementing the Compact, and the ICAOS 2017 Bench Book).* The ICAOS applies to a person who is on probation or parole and subject to supervision as the result of the commission of a criminal offense and required to request transfer of supervision under the ICAOS because of travel to a different state.

This is different from an arrest under the Uniform Criminal Extradition Act, which is codified in Article 51.13, Code of Criminal Procedure, and which *does* allow a defendant to be released on bail *(see Article 51.13, Section 16)*. The warrant should indicate if the person was arrested under the ICAOS, and if so, it should state that the defendant is to be held without bond.

When dealing with a warrant under the ICAOS, the court should also follow the other procedures that are set out in the ICAOS 2017 Bench Book for returning an offender to the appropriate state. The Bench Book can be found at the following link:

http://www.interstatecompact.org/sites/interstatecompact.org/files/pdf/legal/ICAOS-2017-Bench-Book.pdf

*Note that there could be a challenge at some point to the prohibition of bail for an arrest under the ICAOS. Section 510.016, Government Code, which adopted the ICAOS in Texas, states that "in the event of a conflict between the compact and the Texas Constitution, as determined by the courts of this state, the Texas Constitution controls." And Article 1, Section 11 of the Texas Constitution requires that a prisoner be permitted bail in most cases. We are not aware of any case that addresses or resolves this issue at this time. Pending such a decision by a Texas court, we suggest following the ICAOS if you receive notice that the defendant is subject to the retaking procedures under it.

Step Seven: Conduct Article 16.22 Proceedings if Necessary

If a magistrate is provided written or electronic notice of credible information that may establish reasonable cause to believe that a person brought before the magistrate has a mental illness or is a person with an intellectual disability, the magistrate shall conduct the proceedings described by Article 16.22, Code of Criminal Procedure, which is entitled *Early Identification of Defendant Suspected of Having Mental Illness or Intellectual Disability (see Article 15.17(a-1), Code of Criminal Procedure)*. Article 16.22, which was amended during the 2017 Regular Legislative Session, describes the obligations and procedures for having a defendant evaluated for competency and potential treatment/service needs. (Upon receiving the above described notice, proceedings to determine if the defendant must be released on personal bond under Article 17.032, Code of Criminal Procedure, will also be required and are discussed on page 16).

Accepting Pleas at the County Jail

Although the Texas Justice Court Training Center generally discourages the practice of accepting pleas of guilty or no contest at a county jail (except in the case of a warrant on an out-of-county offense punishable by fine only as discussed below in paragraph 3a), several Texas counties encourage justices of the peace to solicit and accept such pleas. In this section, we provide a step-by-step guide to properly accepting pleas at the jail and discuss the potential pitfalls of accepting pleas in a jail environment.

Please note that a justice of the peace has two separate roles in the criminal justice system. A justice of the peace may perform duties associated with his or her status as a magistrate, and a justice of the peace may also perform duties associated with his or her role as the judge of a trial court *(see Articles 2.09 and 4.11, Code of Criminal Procedure).* These two roles are separate and distinct, but both are involved in the process of accepting a guilty plea from a criminal defendant confined in a county jail. After a defendant is presented to a justice of the peace following an arrest, the justice of the peace initially acts as a magistrate *(see Article 15.17, Code of Criminal Procedure).* At the time that a justice of the peace accepts a plea of guilty or no contest, the justice of the peace acts as the judge of a trial court (unless accepting a plea under Article 15.18 of the Code of Criminal Procedure) *(see Article 45.023, Code of Criminal Procedure)*.

Both the role of the magistrate and the role of the trial court judge are often played by a single justice of the peace when a plea of guilty or no contest is taken at a county jail.

Before the judge of a trial court may convict a criminal defendant based on a plea of guilty or no contest given in a county jail, the following steps must occur:

1. A magistrate performs an Article 15.17 hearing *(see Article 45.023, Code of Criminal Procedure).*
2. If the arrest was not based on a warrant, a magistrate determines whether probable cause exists to believe the person arrested committed the offense of which he or she is accused, unless the individual freely and voluntarily waives such a finding (*County of Riverside v. McLaughlin*, 500 U.S. 44, 56, 111 S.Ct. 1661, 114 (1991)).
3. (a) If a defendant is arrested under a warrant for an out-of-county offense punishable by fine only, the magistrate who conducts the Article 15.17 hearing "shall…accept a written plea of guilty or nolo contendere, set a fine, determine costs, accept payment of the fine and costs, give credit for time served, determine indigency, or, on satisfaction of the judgment, discharge the defendant" in accordance with Article 15.18 of the Code of Criminal Procedure. If the defendant has not been arrested for such an offense, proceed to Step 3b below.
3. (b) A prosecutor or peace officer files a valid charging instrument, which vests the

trial court in which the charging instrument is filed with personal jurisdiction over the defendant (*Trejo v. State*, 280 S.W.3d 258), (Tex. Crim. App. 2009), (Keller, P.J., concurring).

4. The defendant freely and voluntarily waives his or her right to trial by jury in the trial court in which the citation or complaint has been filed *(see Article 26.13(b), Code of Criminal Procedure),* (*Brady v. United States,* 397 U.S. 742 (1970)).
5. The defendant freely and voluntarily enters a plea of guilty or no contest in the trial court in which the citation or complaint has been filed (*North Carolina v. Alford*, 400 U.S. 25 (1970)).
6. Note that during or immediately after imposing the sentence, the judge is now required to inquire whether the defendant has sufficient resources or income to immediately pay all or part of the fine and costs. If the judge determines that the defendant does not have sufficient resources or income to immediately pay all or part of the fine and costs, the judge shall determine whether the fine and costs should be: (1) required to be paid at some later date or in a specified portion at designated intervals; (2) discharged by performing community service; (3) waived in full or in part; or (4) satisfied through any combination of these methods *(see Article 45.041(a-1), Code of Criminal Procedure, as added by the 2017 Regular Legislative Session).*

We recommend that judges who accept pleas at the county jail read a recent Court of Criminal Appeals case that questions whether the acceptance of guilty pleas at the county jail violates the defendant's right to a public trial (*Lilly v. State*, 365 S.W.3d 321), (Tex. Crim. App. 2012). In that case, the defendant sought to have his case heard at the Jones County Courthouse. His request was denied and his case was heard at the prison chapel at TDCJ's Robertson Unit, which had been designated as a branch courthouse for Jones County.

The defendant pleaded guilty to assault on a public servant, but appealed his conviction and asserted that his 6th Amendment right to a public trial was violated. The Court of Criminal Appeals held that "Appellant showed that his trial was closed to the public, and because that closure was not justified, we reverse the judgments of the court of appeals and trial court." The fact that the defendant entered a plea of guilty did not impact the court's decision, as "a plea-bargain proceeding is still a trial" under Texas law. *Id*., quoting *Murray v. State*, 302 S.W.3d 874, 880 (Tex. Crim. App. 2009). Nor was the Court swayed by the State's argument that it was likely nobody would have chosen to attend the proceedings anyway. Although the lower court of appeals had held "that Appellant failed to prove that his trial was closed to the public because he offered no evidence that anyone was actually prohibited from attending his trial and because he produced no evidence that members of the public were 'dissuaded from attempting' to attend his trial due to its location, the Court of Criminal Appeals disagreed, writing that "when determining whether a defendant has proved that his trial was closed to the public, the focus is not on whether the defendant can show that someone was actually excluded. Rather, a

reviewing court must look to the totality of the evidence and determine whether the trial court fulfilled its obligation 'to take every reasonable measure to accommodate public attendance at criminal trials.'" *Id*, quoting *Presley v. Georgia*, 558 U.S.209 (2010).

Amendments to Article 45.023 of the Code of Criminal Procedure took effect on September 1, 2013. The amendments provide a new statutory right to any criminal defendant who enters a plea of guilty while detained in a county jail. Specifically, such a defendant may make a motion for new trial within 10 days of the rendition of judgment and sentence, and the justice court shall grant the defendant's motion for new trial.

We have heard that some counties which currently accept pleas at the county jail plan to "get around" this requirement by creating pre-printed plea forms which require a defendant to waive the right to a new trial granted by Article 45.023. TJCTC strongly discourages this practice. Presenting a form which requires a defendant to waive a right as a precursor to entering a guilty plea—without pointing out the waiver or ensuring that the defendant understands the right he or she is waiving— negates the voluntariness of the defendant's plea. Instead, we recommend simply explaining the defendant's right to request a new trial before he or she enters a plea of guilty or no contest. A defendant may also appeal his conviction to a county court in accordance with Article 45.042 of the Code of Criminal Procedure.

Blood Warrants

Non-Attorney Judges

Under the Transportation Code, every driver in Texas gives their implied consent to give a breath or blood sample upon request, by the mere act of driving on Texas roadways. If a driver then attempts to withhold consent, under certain circumstances a peace officer may seek a warrant to forcibly take a sample of the individual's blood for alcohol testing.

It is important to keep in mind that these are considered evidentiary search warrants, and therefore only Justices of the Peace in certain counties may issue these warrants. Use the flowchart available on the TJCTC website to determine if you can issue these warrants. Bear in mind that whether your district judge serves multiple counties is no longer relevant. If you are from Chambers County, a new law passed in 2017 now allows any magistrate in Chambers County to issue these warrants.

Attorney Judges

Additionally, any justice of the peace, in any county, who is a licensed attorney, may issue a search warrant to collect a blood specimen from a person who is arrested for an intoxication-related offense and refuses to provide a sample of his or her breath or blood. However, this authority does not extend to other evidentiary search warrants *(see Article 18.01(j), Code of Criminal Procedure)*.

INQUESTS

Deaths Requiring an Inquest

Chapter 49 of the Code of Criminal Procedure lays out the circumstances and manner in which Justices of the Peace in counties without medical examiners shall conduct inquests. Remember, your job in an inquest is NOT to pronounce someone deceased, but instead to first determine the means and manner of death, then determine if any criminal action occurred necessitating the issuance of a warrant. Article 49.04 of the Code of Criminal Procedure indicates which deaths require an inquest.

Deaths Requiring an Inquest:

1. Person dies in prison (other than natural /execution) or jail
2. Person dies an unnatural death (other than execution)
3. Body or body part found, cause or circumstances of death unknown
4. Circumstances indicate that the death may have been caused unlawfully
5. Suicide or circumstances indicate possible suicide
6. Person dies without having been attended by physician
7. Person dies while attended, but physician cannot certify cause of death
8. Person is a child under six, and an inquest is required by Chapter 264, Family Code

Who Shall Conduct The Inquest?

Article 49.07 of the Code of Criminal Procedure indicates who shall conduct an inquest.

> The inquest shall be performed by the justice of the peace in whose precinct the body was found. If this justice of the peace is unavailable, the nearest justice of the peace in the county shall conduct the inquest. If no justice of the peace is available within the county, the county judge shall initiate the inquest, and then transfer the paperwork within 5 days to the justice of the peace in whose precinct the body or body part was found for final disposition of the matter.

As of the 2017 Regular Legislative Session, if the justice(s) of the peace and the county judge in the county where the body is found are unavailable, they may request assistance from another county. Either the justice of the peace *of the precinct* or the county judge of the county where the body is found can request *any justice of the peace in any county* to conduct the inquest, *as long as that justice of the peace has the authority to conduct inquests in their own county under Chapter 49 of the Code of Criminal Procedure*. The person responsible for notifying the justice of the peace about a body under Article 49.07, Code of Criminal Procedure, may also ask the justice of the peace of the precinct or the county judge to make the request.

The justice of the peace who conducts the inquest must transfer all information related to the inquest to the justice of the peace *of the precinct where the body was found* within five days from when the inquest is initiated. The justice of the peace in that precinct is then responsible for finally disposing of the matter. The justice of the peace who conducts the inquest may receive reimbursement for mileage, but is not entitled to any other compensation.

A sample form for this inquest bench exchange can be found on the TJCTC website.

Electronic Death Certificates

Chapter 193 of the Health & Safety Code requires justices of the peace who conduct inquests to complete the required medical certification associated with a death certificate. Medical certification must be completed "not less than five days after receiving the death or fetal death certificate" and must meet statutory requirements *(see Section 193.005, Health & Safety Code)*.

Chapter 193 also requires funeral homes and medical certifiers to report medical certifications electronically. The Department of State Health Services maintains an electronic system which may be accessed by justices of the peace. DSHS also offers training to teach justices of the peace how to report online at the Texas Electronic Registrar website. Training may be accessed using the link below.

http://www.dshs.state.tx.us/vs/edeath/medical.shtm

Autopsies/ Toxicology Testing

Once a justice of the peace has determined that Article 49.04 gives him or her authority to conduct an inquest, the justice of the peace has wide latitude to order various testing on all or part of the body of the deceased, from blood work to full-blown autopsies (See Articles 49.10 and 49.11, Code of Criminal Procedure). A justice of the peace should order any testing which will allow him or her to make the most educated decision as to the cause and manner of death. Many justices of the peace face pressure from families who don't want testing done, and from some county commissioners who are uninterested in footing the bill for the tests. However, the duty of the justice of the peace is to utilize all information available to get the correct manner and means on the death certificate.

It is **mandatory** that a justice of the peace order an autopsy in two situations:

1. a child under six whose death is determined under Section 264.514, Family Code, to be unexpected or the result of abuse or neglect;
2. if directed to do so by the district attorney, criminal district attorney, or county attorney (if there is no DA or criminal DA). Please note that a DA or criminal DA from a county where the deceased was injured before dying in your county may request a justice of the peace to order an autopsy, but the requesting county must pay the costs of the autopsy if it is ordered *(see Article 49.10(c), Code of Criminal Procedure).*

If a child is under one year of age, and the death is found to be due to SIDS, the state will reimburse the county $500 for the cost of the autopsy.

When a justice of the peace determines that an autopsy is not necessary to complete an inquest, a deceased's family or a physician may choose to have a private autopsy performed on the body of the deceased. The justice of the peace, in limited circumstances, may become involved in this process in one of two ways. First, if a justice of the peace determines that an autopsy is not required, but a physician wishes to perform an autopsy, the physician may seek the authorization of the justice of the peace if he or she cannot contact a family member or guardian authorized to consent to the autopsy. Second, if a family dispute exists regarding whether an autopsy should be performed, the family members objecting to the autopsy may file an objection with the justice of the peace. If an objection is filed, the autopsy may be authorized only if a majority of the family members who are reasonably available give their consent.

If the results of a private autopsy allow the justice of the peace to determine that reopening the inquest may reveal a different cause or different circumstances of death, the justice of the peace may reopen the inquest. The Code of Criminal Procedure does not describe a specific process for reopening an inquest. TJCTC recommends simply restarting the process from the beginning.

AUTOPSY ORDERS		
Circumstance	*Mandated?*	*Who Pays?*
Your district attorney orders an autopsy	Yes	Your county
A district attorney from another county requests an autopsy	No	The other county
A child under 6 dies and the death is determined under Section 264.514, Family Code, to be unexpected or the result of abuse or neglect	Yes	Your county
A child under 1 dies of SIDS	Yes	Your county, state reimburses $500.00

Special Circumstances

When The Deceased Person Is A Child Under 18 Years of Age

"Wyatt's Law," passed during the 2017 Regular Legislative Session, entitles a parent to view the body of their deceased child (who is under 18) under certain conditions and supervision. The procedures vary depending on who has control of the body and if the death is subject to an inquest (See Article 49.52, Code of Criminal Procedure).

When The Deceased Person's Death Was Related To Pregnancy.

Section 1001.241, Health and Safety Code, requires the Department of State Health Services to post guidelines on its website related to:

- Determining when toxicology screenings should be performed on someone whose death was related to pregnancy.
- Determining when an inquest is needed in maternal mortality cases.
- Completing death certificates related to pregnancy.

Reporting Requirements

Traffic Fatalities

In 2006, Transportation Code Section 550.081 was modified to clarify the reporting requirements for Texas traffic fatalities. All Justices of the Peace in counties without medical examiners must submit a monthly report detailing all traffic fatalities occurring in their jurisdiction. This report must be submitted by the 11th day of the month. The report must include the name of the deceased, and whether they were a driver, passenger, or pedestrian. It must also include when and where the accident occurred, the name of the lab that did testing, if any, and the results of any testing conducted. If the test results are unavailable, the report should so indicate, and then a supplemental report must be filed as soon as practicable when the results become available. TXDOT has generated a form to be used, available on their website and the Training Center website. The form shall be sent to:

Crash Records Bureau
Texas Department of Transportation
P.O. Box 149349
Austin, TX 78714
Phone: (512) 424-7121
Fax: (512) 424-2507

Traumatic Brain Injury, Spinal Cord Injury, or Submersion Fatalities

Chapter 92 of the Health & Safety Code and Chapter 103 of the Texas Administrative Code require all Justices of the Peace who conduct inquests to report to the EMS & Trauma Registries any deaths that resulted from or are suspected to have resulted from a traumatic brain injury, a spinal cord injury, or submersion. Reports must be submitted within three months from the identification of a required reportable death. The EMS & Trauma Registries recommends making monthly reports.

For information regarding the reporting requirements, visit the following webpages:

- http://www.dshs.texas.gov/injury/rules.shtm
- http://www.dshs.texas.gov/injury/registry/Justice-of-the-Peace.doc
- http://www.dshs.texas.gov/injury/contacts.shtm

Reports must be made to the online reporting system, which can be found here:

- https://injury.dshs.texas.gov/injury/login.do

Formal Inquest Hearings

While most inquests are informal investigations, Texas law authorizes a justice of the peace to conduct a formal inquest hearing. A district attorney or criminal district attorney may also direct a justice of the peace to conduct a formal inquest hearing. Formal inquest hearing procedures are described in Article 49.14 of the Code of Criminal Procedure. A formal inquest hearing may be held with or without a jury unless the district attorney or criminal district attorney requests that the hearing be held with a jury. The hearing may be public or private, though any person criminally charged with causing the death is entitled to be present, along with his or her attorney. Testimony shall be sworn and recorded, and only the justice of the peace, a person charged with the death (independently or through his or her attorney), and the state's attorney may question witnesses at the hearing. The justice of the peace has full subpoena and contempt powers when conducting a formal inquest hearing.

RESOURCES

Deskbooks

For more information regarding magistration, see our Magistration Deskbook.

For more information regarding inquests, see our Inquests Deskbook.

Both deskbooks can be found here:
http://www.tjctc.org/tjctc-resources/Deskbooks.html.

Websites

Texas Justice Court Training Center
http://www.tjctc.org

Texas Department of Transportation
http://www.txdot.gov

Consular Notification
http://www.oag.state.tx.us/criminal/consular.shtml

Texas Indigent Defense Commission
http://www.courts.state.tx.us/tfid/tfidhome.asp

Texas Electronic Registrar
http://www.dshs.state.tx.us/vs/edeath/medical.shtm

DPS Accredited Forensic Labs
http://www.txdps.state.tx.us/CrimeLaboratory/LabAccreditatio n.htm

Crash Records Bureau (includes forms for fatality reporting)
http://www.txdot.gov/driver/laws/crash-reports.html

Important Statutes

Magistrate Warnings and Duties – CCP Article 15.17 and 15.18

Mental Health Issues – CCP 16.22 and 17.032

Juvenile Statements – Family Code 51.095

Setting Bond and Bond Conditions – CCP Ch. 17 et seq.

Conditions Requiring Ignition Interlock – CCP 17.441

Notifying DPS of Ignition Interlock Requirement – Transportation Code 521.2465

Magistrate's Emergency Protective Orders – CCP Article 17.292

Search Warrants – CCP Ch. 18 et seq.

Capias Pro Fines – CCP 45.045 and 45.046

Inquests – CCP Ch. 49 et seq.

Toxicology Reporting – Transportation Code 550.081

Traumatic Brain Injury, Spinal Cord Injury, or Submersion Fatality Reporting –Health & Safety Code Chapter 92 and Texas Administrative Code Chapter 103

Electronic Death Certificates – Health & Safety Code 193.005

FAQs

How much should the bond be for a given offense?

Preset bonds are not allowed in Texas. There are several factors that you shall consider every time you are making a bond decision, including ability to pay, nature of the offense, flight risk, and more. It is impossible to assign a dollar amount to a case based only on the offense.

Who can modify the amount of bond set, and how?

The magistrate who set the bond retains jurisdiction until the case is filed in the trial court via complaint, information, or indictment, at which time the trial judge obtains exclusive jurisdiction. The judge or magistrate can modify the bond order if it is defective, excessive, or insufficient, if the sureties are not acceptable, or for any other good and sufficient cause. However, bond cannot be increased due to waiving the right to counsel or requesting the assistance or appointment of counsel.

I am magistrating a defendant, and the warrant says "cash bond only." Do I have to follow that?

Generally speaking, the magistrate may only set the amount of a defendant's bond. Requiring the defendant to post a cash bond, as opposed to a surety bond, is not permitted by Chapter 17 of the Code of Criminal Procedure *(see Tex. Att'y Gen. Op. JM-363 (1985))*. A trial court may require a defendant to post a cash bond in a pending criminal case only when the defendant's original bond has been forfeited by the trial court or the surety on the original bond has surrendered the defendant. In any other scenario, the magistrate should avoid requiring the defendant to post a cash bond. Additionally, a justice of the peace generally cannot order that a defendant is denied bail at the time of the defendant's original arrest. Although bail may be denied in certain capital murder cases, this determination may only be made by a district judge. *Ex parte Moore*, 594 S.W.2d 449, 451 (Tex. Crim. App. 1980). (Additionally, when a defendant violates bond conditions in a family violence case or a case involving a child victim, in some instances a magistrate may have the option to deny subsequent bail following a hearing.)

Can I take a plea during magistration?

Only on fine-only misdemeanor warrants issued by an out-of-county judge, or fine-only misdemeanor warrants from your county, if your county has an agreement in place to share benches and a citation or complaint has been filed in the appropriate court. If no such agreement is in place, the defendant must enter his plea before the judge for the precinct in which he lives or the offense occurred. You may never accept a plea on a jailable offense. Additionally, if the defendant enters a plea of guilty or no contest at the county jail, he or she

has a statutory right to a new trial within 10 days. Never ask for or accept a plea prior to administering the warnings contained in Article 15.17 of the Code of Criminal Procedure. Please see page 22 of this guide for additional information.

I issued an EPO and now the victim wants to drop it. What now?

To modify an EPO, you must hold a hearing and make findings that the order as it exists is unworkable, and that modifying it will not endanger the victim or any person protected under the order. If you cannot make those findings, the EPO must run its course.

Keep in mind that the victim cannot authorize the defendant to violate the EPO. If the protected person invites the subject home and the subject comes back, the subject is in violation.

Where should an inquest occur?

Article 49.05 of the Code of Criminal Procedure provides three answers: where the body is found, where the death occurred, or any other location determined to be reasonable *(see Article 49.05, Code of Criminal Procedure).*

Who is actually in charge of the inquest scene, the officer or the justice of the peace?

Texas law indicates both parties must work together and not hinder the investigation of the other. It is unlawful for the JP to order removal of the body before law enforcement has had a reasonable opportunity to investigate. Similarly, it is unlawful for the officer to move the body before the JP has had a chance to investigate, except that the officer may direct removal in emergency situations.

Must I issue a cremation order for any cremation in my county?

No. Only a death subject to a justice of the peace's inquest jurisdiction under Article 49.04 triggers the requirement for a JP to sign a cremation order. In that case, you must find that an autopsy occurred or none is necessary before the body is cremated. But, if the death is not subject to an inquest, your permission is not needed for cremation. Often, funeral homes err on the side of caution, because they face criminal penalties if they unlawfully cremate.

Are autopsy records open to the public?

Autopsy records that you maintain as part of an inquest record are open to the public, unless they have been sealed by the district attorney to protect an ongoing criminal investigation. While the Public Information Act does not apply to the judiciary, Article 27.04 of the Government Code provides that your records are open to public inspection.