**Answer Key to Scenarios**

**Scenario 1**

(1) 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. Art. 17.028(b)

(2) Defendant is not prohibited from being released on a personal bond because the offense is not defined as an offense involving violence under Art. 17.03. Whether or not the defendant should be released on a personal bond or bail bond is a matter for discussion and within the discretion of the magistrate. See Magistration Bench Card 6 and the Magistration Deskbook at pages 20 – 24.

(3) Appropriate bond conditions could include: (1) no further offenses; (2) report to CSCD once a week and following all instructions from them; (3) appear for all court hearings; and (4) attend a firearm safety training course. See Magistration Bench Card 8 and the Magistration Deskbook at pages 28 – 30.

**Scenario 2**

1. Yes, you must make a finding of probable cause since this was an arrest without a warrant. Magistration Bench Card 1; Magistration Deskbook at page 6.
2. Art. 17.03(b)(1) states that 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). Since an indictment has not yet been filed in this case, the case is pending before the magistrate under Ex Parte Clear, 573 S.W.2d 224 (Tex. Crim. App. 1978). So it is the magistrate’s decision at this time; once an indictment is filed, the trial court may modify the bail decision. See Magistration Bench Card 6; Magistration Deskbook at page 22.
3. This is a matter for discussion and within the discretion of the magistrate after considering all the factors in Art. 17.15.
4. No further offenses; report weekly to CSCD and follow their instructions; appear for all court hearings. See Magistration Bench Card 8 and the Magistration Deskbook at pages 28 – 30.

**Scenario 3**

1. No. Art. 17.027 provides that a defendant who is charged with committing a felony while released on bail for another felony in the same county may be released on bail only by the court before whom the first offense is pending or another court designated in writing by that court. See Magistration Bench Card 5; Magistration Deskbook at page 28.
2. No. The district judge will set the bail and bond conditions after considering the factors in Art. 17.15.
3. Yes. The district judge may designate a Justice of the Peace to set bail for the second offense.
4. If an indictment has not yet been filed for the first offense, then the judge who magistrated the defendant on the first offense is the “court before whom the first offense is pending.”

**Scenario 4**

(1) You may not set bail on the defendant unless the district judge designates you in writing.

(2) No. If the defendant was arrested without a warrant and a magistrate has not determined whether or not probable cause exists to believe the person committed the offense, then:

(a) if the person is charged with a misdemeanor they must be released within 24 hours on a bond with bail not to exceed $5,000, and if they cannot post a bail bond or cash, then they must be released on a personal bond; and

(b) if the person is charged with a felony they must be released within 48 hours on a bond with bail not to exceed $10,000, and if they cannot post a bail bond or cash, then they must be released on a personal bond.

See Magistration Bench Card 6; Magistration Deskbook at page 6 and 24. But a magistrate could potentially make a determination of probable cause without setting bail which would at least address that issue (although that seems cumbersome).

 (3) The best way to avoid this problem is to establish a procedure (possibly through a standing order or local rule) so that a written designation has been made with respect to who is authorized to designate a defendant in this situation if the district judge is unavailable. If that has not occurred in advance, then another solution is to try to reach the district judge and ask him to designate someone in writing to set bail for the defendant.

**Scenario 5**

1. Yes. See Art. 17.027; Magistration Bench Card 5; Magistration Deskbook at page 28.
2. Yes. Electronic notice of the new offense must be promptly given to the court before whom the first offense is pending (or a court designated in writing by that court) in order to allow that court to re-evaluate the bond decision, determine if bond conditions were violated or take any other applicable action. See Art. 17.027; Magistration Deskbook at page 28.

**Scenario 6**

1. No. The defendant has been indicted.

 (2) No. You do not set bail in this case because it is set by the judge with jurisdiction over the criminal offense. See Magistration Bench Card 5; Magistration Deskbook at page 19 and 51.

 (3) You may not set a different bail amount but you could bring this to the attention of the district judge who set bail following the defendant’s indictment.

 (4) No. The district judge has ordered him released only on a bail bond and since this is post-indictment only that judge has jurisdiction to set bail and bond conditions.

**Scenario 7**

 (1) Ignition Interlock Device. See Magistration Bench Card 9; Magistration Deskbook at pages 28 – 30.

 (2) The mandatory IID requirement may be waived only if the magistrate finds that to require an IID would not be in the best interest of justice. That typically applies only where the defendant is required to use an alternative to IID such as a portable device.

 (3) To ensure compliance with the bond conditions you should designate a monitoring agency such as CSCD which reviews the monthly reports received from the IID provider and reports any violations to the magistrate or court so that appropriate action may be taken. See Magistration Bench Card 9; Magistration Deskbook at page 29.

**Scenario 8**

 (1) There are no mandatory bond conditions for a defendant charged with family violence. See Magistration Bench Card 10. But if the defendant is charged with certain specified offenses where the victim was under 18 years of age, then mandatory bond conditions include no communication with the victim and not to go to or near certain locations where the victim may be present. See Magistration Bench Card 8.

 (2) Bond conditions that may be appropriate include not to have any contact with the victim; to undergo counseling, including attending an anger management course; or not to consume alcohol if the defendant was alleged to be intoxicated. See Magistration Bench Card 10.

 (3) You may order the defendant’s release delayed up to 24 hours if you issue a written order concluding that violence would continue if the person were released. See Magistration Bench Card 10; Magistration Deskbook at page 34. You may extend this period up to 48 hours if during the 10-year period before the date of the current offense the person was arrested more than once for family violence or for any offense where a deadly weapon was used or exhibited. See Magistration Bench Card 10; Magistration Deskbook at page 34. (A sheriff or jailer may

 (4) Require defendant to report on a weekly or regular basis to CSCD and order CSCD to monitor compliance with the bond conditions.

 (5) You must issue an EPO if the defendant is charged with family violence (or other specified offenses) and the defendant inflicted serious bodily injury on the victim or used or exhibited a deadly weapon during an assault. See Magistration Bench Card 11; Magistration Deskbook at page 44.

**Scenario 9**

 (1) No. You do not set bail in this case. The defendant has been arrested on a capias because he failed to appear for a court hearing and the trial judge wants the defendant brought to him, not released.

 (2) This is a bail forfeiture proceeding. Often the warrant will say “Judgment Nisi,” which is a preliminary judgment that will be made final unless the defendant shows good cause for failing to appear. See Magistration Bench Card 13; Magistration Deskbook at page 26.

 (3) No. You are not setting bail so you do not have to review a PSR.

 (4) You should inform the defendant of the reason for his arrest and that the judge with jurisdiction over the case has ordered him held without bond until he is brought before the judge. You should also give the defendant any other applicable admonishments (such as the right to remain silent and the right to be represented by an attorney). But you should not tell him he has rights he does not have (such as a right to an examining trial). See Magistration Bench Card 3; Magistration Deskbook at page 54.

 (5) Defendant may already have counsel but it is best to ask him if he wishes to request the appointment of counsel. See Magistration Bench Card 4; Magistration Deskbook at pages 49 – 50.

**Scenario 10**

 (1) No. This is a violent offense under Art. 17.03(b-3)(K) which defines aggravated assault under Penal Code § 22.02 as a violent offense. The defendant may not be released on a personal bond if charged with this offense.

 (2) This is a matter for discussion but reasonable bond conditions could include no further offenses, report to CSCD and follow their instructions, appear at all court hearings, and possibly psychological counseling.

**Scenario 11**

 (1) Yes. Art. 17.153 expressly provides for denial of bail where a defendant charged with Sexual Performance by a Child committed against a child younger than 14 years of age violates a bond condition.

 (2) A judge or magistrate must hold a hearing and determine by a preponderance of the evidence that the defendant violated a condition of bond related to the safety of the victim of the offense or the safety of the community.

**Scenario 12**

 (1) A motion to proceed or adjudicate occurs when a defendant has been granted a deferred adjudication prior to conviction of an offense but then fails to comply with the conditions of the deferral. Only the trial judge where the criminal case is pending may release the defendant on bail in this situation. See Magistration Bench Card 17; Magistration Deskbook at pages 54 – 55.

 (2) No; only the trial judge has jurisdiction to do this.

 (3) No; you must follow the directions of the trial judge.

 (4) You may perform all applicable Art. 15.17 functions but only the presiding judge of the trial court may authorize release on bail. You should inform the defendant why they were arrested and ask if they wish to request the appointment of counsel but you should not ask if they wish to request an examining trial since they do not have that right after indictment. See the Magistration Deskbook at pages 54 – 55.

**Scenario 13**

 (1) If a defendant arrested on an out of county warrant fails to make bail, the magistrate must immediately notify the sheriff of the county where the offense occurred. If the defendant has not been picked up within 11 days, then the defendant must be released on a personal bond and that personal bond must be forwarded to the sheriff of the county where the offense occurred or to the magistrate who issued the warrant in the neighboring county. See Art. 15.21; Bench Card 19; Magistration Deskbook at pages 51 – 52.

 (2) You must transmit the forms requesting appointment of counsel to the judge responsible for appointment of counsel in the neighboring county. See Art. 15.18(a-1); Magistration Bench Card 19; Magistration Deskbook at page 52.

 (3) If the defendant has not been transferred into the custody of the county that issued the warrant before the 11th day after the defendant’s arrest, and counsel has not otherwise been appointed for the defendant in the arresting county, then the arresting county must appoint counsel for habeas corpus or bail issues. The arresting county may seek reimbursement for the actual costs paid by the arresting county for the appointed counsel. Art. 1.051(c-1); Magistration Deskbook at page 52.

**Scenario 14**

 (1) You should set a fine, determine costs, accept payment, give credit for time served, determine indigency or discharge the defendant as the case may require. You must transmit the plea and any paperwork of money collected to the court that issued the warrant within 11 business days. Art. 15.18(a)(2) and (b); Magistration Bench Card 21; Magistration Deskbook at pages 52 – 53.

 (2) If the arrest warrant was issued by another judge in your county, then you may accept a plea and set a fine and determine court costs only if you have a bench exchange agreement in place with that judge. You may only have a bench exchange agreement with another justice of the peace, not a municipal court judge or district or county judge. See Magistration Bench Card 21; Magistration Deskbook at page 67.

 But if the defendant is arrested on a capias pro fine issued by another justice of the peace in your county, then you have jurisdiction to resolve the defendant’s failure to satisfy the fine and costs. Magistration Bench Card 20; Magistration Deskbook at pages 60 – 61.