

# Bail Setting & Timelines

## Damon Allen Act (SB6)

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TEXAS JUDICIAL ACADEMY

# The Damon Allen Act

What is it?

Who is Eligible to Release a Defendant on Bail?

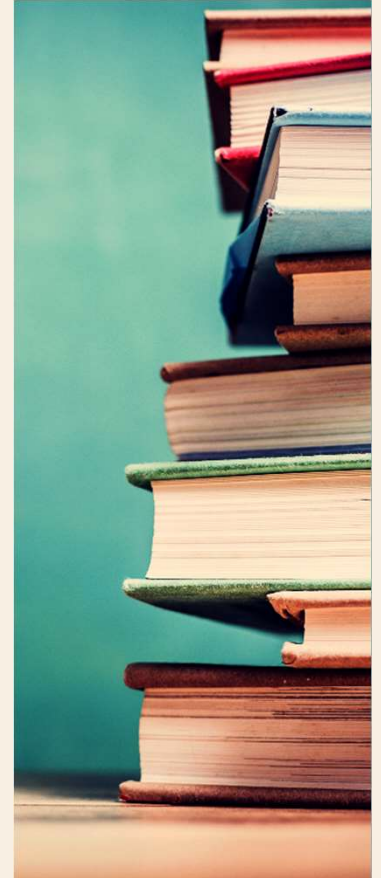
The Public Safety Report System (PSRS)

The Public Safety Report

Rules for Setting Bail

Reporting Requirements

Emergency Protective Orders



# What is the Damon Allen Act?

Reforms the bail system in Texas by giving magistrates more information about a defendant, including their criminal record history, in order to be able to distinguish between those defendants: who may be released on a personal bond, with or without bond conditions, and those who may not be released on a personal bond due to a violent offense or a new offense while released on bail for a previous violent offense.



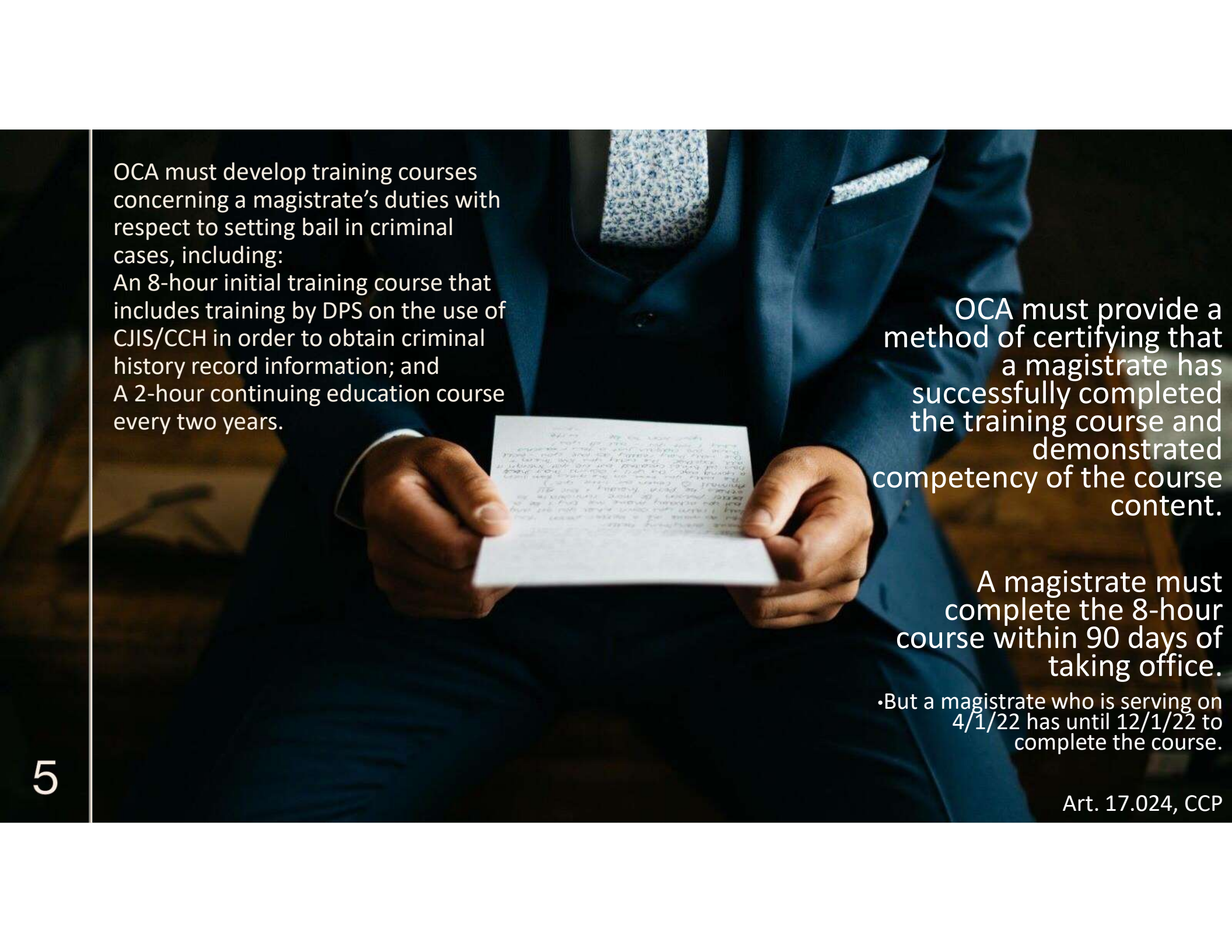


# Who is Eligible to Release a Defendant on Bail?

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

-- Art. 17.023, CCP



A person wearing a blue suit and a patterned tie is holding a white document with both hands. The document contains some text, but it is mostly illegible due to blurring. The background is dark and out of focus.

OCA must develop training courses concerning a magistrate's duties with respect to setting bail in criminal cases, including:

An 8-hour initial training course that includes training by DPS on the use of CJIS/CCH in order to obtain criminal history record information; and  
A 2-hour continuing education course every two years.

OCA must provide a method of certifying that a magistrate has successfully completed the training course and demonstrated competency of the course content.

A magistrate must complete the 8-hour course within 90 days of taking office.

•But a magistrate who is serving on 4/1/22 has until 12/1/22 to complete the course.

# Public Safety Reporting System

(Developed & maintained by OCA, provided to county officials at no cost by April 1st.)

## MUST PROVIDE:

- Information on the eligibility of the defendant for a personal bond.
- Information on the applicability of any required or discretionary bond conditions.
- The criminal history of the defendant in a summary form including:
  - Previous misdemeanor or felony convictions
  - Pending charges
  - Previous sentences imposing confinement
  - Previous convictions or pending violent offenses (including violence directed to a peace officer)
  - Previous failures of the defendant to appear in court following release on bail.

## MAY NOT:

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



# The Public Safety Report



- MUST be prepared for a defendant charged with a Class B misdemeanor or higher level offense using the Public Safety Report System.
  - MUST consider the report before setting bail
  - MUST submit bail form to OCA no later than 72 hours after bail is set.
- Magistrate MAY prepare or consider a report for a defendant charged with a fine only offense who receives a citation under Art.(c).
  - Magistrate MAY set bail for a defendant charged with a misdemeanor w/o preparing or considering a report if the PSRS is unavailable more than 12 hours due to technical failure at OCA

# Who prepares the report?

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

Otherwise, the magistrate must order a personal bond office or suitably trained personnel (including judicial personnel or sheriff's office personnel) to prepare the report and provide it to the magistrate no more than 48 hours after the defendant's arrest.

The magistrate may not order the sheriff's office to prepare the report without their consent.

-- Art. 17.022, CCP





# Rules for Setting Bail:



- Bail and bond conditions must be set under the following rules in Art. 17.15(a):  
The nature of the offense must be considered, including whether it involved violence under Art. 17.03 or violence against a peace officer.
- The ability to make bail must be considered and proof may be taken on this point.
- The future safety of the community, law enforcement and a victim are to be considered.
- The criminal history record information for the defendant must be considered, including:
  - Information maintained by DPS in CJIS/CCH and in the Public Safety Report System
  - Any acts of family violence.
  - Other pending criminal charges.
  - Any instances in which the defendant failed to appear in court after release on bail.
- The citizenship status of the defendant.

# The Bail Decision

- After individualized consideration of all the factors listed in Art. 17.15(a), the magistrate must order that the defendant be:
  - Granted a personal bond with or without conditions;
  - Granted a bail bond with or without conditions; or
  - Denied bail under the Texas Constitution and other law.
- This order must be made without unnecessary delay but no later than 48 hours after the defendant is arrested.
- In setting bail the **magistrate must impose the least restrictive conditions**, if any, and the personal bond or bail bond necessary to reasonably ensure the defendant's appearance in court and the safety of the community, law enforcement and the victim.
- The rules do not require a magistrate to conduct an evidentiary hearing unless required by some other law. – Art. 17.025, CCP

May NOT be inconsistent with Article 17 requirements and CANNOT authorize a magistrate to make a bail decision without considering factors under Article 17.15 (a)

Defendant charges with Class B or higher must be provided with an opportunity to file an affidavit requesting a bail reduction if unable to give bail required under a bail schedule or standing order.

## Bail Schedules & Standing Orders



# Inability to give Bail Affidavit

- Affidavit must include financial information.
- Magistrate **MUST** inform defendant of their right to file the affidavit and **MUST** ensure the defendant has reasonable assistant in completing it.
- Defendant is entitled to “**prompt review.**” Failure to review within 48 hours requires reporting to OCA. Defendant must be given notice of delay that will cause review to be held more than 48 hours after arrest.
- Reviewed by magistrate making bail decision or at a separate pretrial hearing.
- Denial of affidavit must include a written finding of fact supporting the bail decision.
- Magistrate may enter order to take other action under Art. 16.22 for a defendant who does not appear capable of executing an affidavit.

# Personal Bond Release

Only the court from whom the case is pending may release a defendant on a personal bond if charged with:

- Burglary (Penal Code, Section 30.02)
- Engaging in Organized Criminal Activity (Penal Code, Section 71.02); or
- Certain felonies under Controlled Substances Act under Section 485.033, Health & Safety Act) ex. Inhalant Paraphernalia

A defendant may not be released on a personal bond if the defendant:

- Is charged with an offense involving violence; or
- While released on bail or community supervision for an offense involving violence is charged with committing a felony or an offense alleging assault, deadly conduct, terroristic threat or disorderly conduct involving a firearm. Art. 17.03, CCP

# Defendant Charged while out on Bail

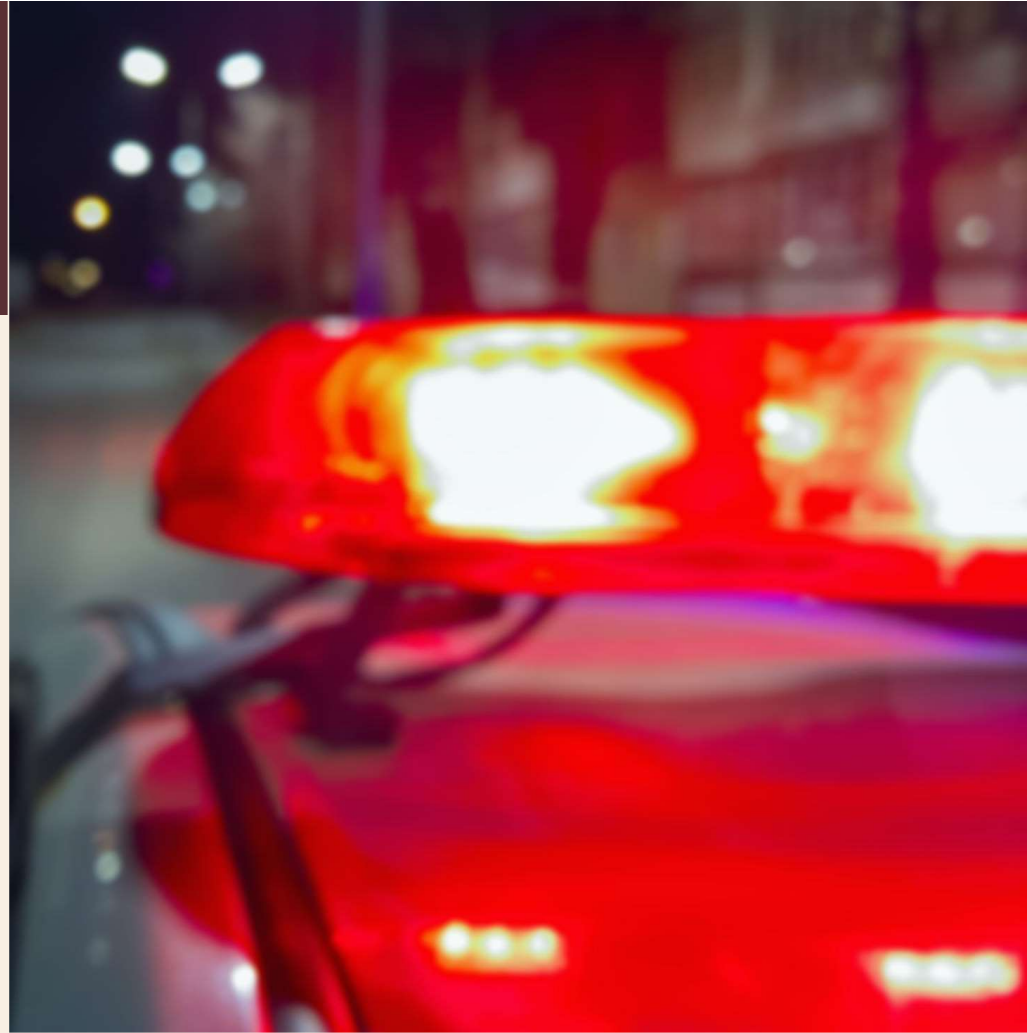
If new offense is in the **SAME** county as the previous offense, defendant may only be release by:

- The Court before whom the previous offense is pending; or
- Another Court designated in writing by the court where the offense is pending.

• If the new offense is in a **DIFFERENT** county,

- Electronic notice of the charge must be promptly given to the court before whom the previous offense is pending or another court designated by that court.
- For purposes of re-evaluating bail, determine whether any bail conditions were violated or take any other applicable action.

Article 17.027, CCP





# Notice & Reporting Requirements

## MAGISTRATE

- Magistrate or designee must provide written notice to the defendant of the bond conditions and penalties for violating a bond condition.
- Magistrate must make a separate record of the notice provided to the defendant.
- OCA must promulgate a form for the magistrate to provide notice to the defendant. (Currently in development.)
- Bond conditions on a defendant or a violent offense under Art. 17.50(a)(3) must be sent to Sheriff no later than the next day.
- Magistrate must also notify Sheriff of any bond modification or revocation for a violent offense or disposition of the underlying charges (if they are aware).

• Art. 17.50, CCP

## CLERK

- Clerk of Court must send a copy of order imposing, modifying or removing bond conditions to the Sheriff of the County where the defendant resides.
- The clerk must do this as soon as practicable but no later than the next business day after a magistrate issues the order.
- The clerk may delay sending a copy of the order only if they lack information necessary to ensure service and enforcement.
- If the bond condition order prohibits a defendant from going near a child-care facility or school, the clerk must send a copy of the order to the facility or school.
- The copy of the order may be sent electronically.

• Art. 17.51, CCP

## SHERIFF

- A chief of police or sheriff who receives a copy of a bond condition order must, as soon as practicable but no later than the 10<sup>th</sup> day after receiving it, enter information relating to the bond condition into CJIS/CCH, or modify or remove information as appropriate.

Art. 17.52, CCP

- In the case of a violent offense, the sheriff must enter, modify or remove the information in the TCIC database no later than the next business day after receiving it.
- And make a good faith effort to notify anyone who is protected by a bond condition, or a victim, of the defendant's release.

Art. 17.50, CCP (HB 766)

# Additional Reporting Requirements of the Clerk



As part of the OCA monthly report the clerk of each court setting bail must report:

- The number of defendants for whom bail was set, including the number for each category of offense, the number of personal bonds and the number of bail bonds;
  - The number of defendants released on bail who subsequently failed to appear;
  - The number of defendants released on bail who subsequently violated a bond condition; and
  - The number of defendants who committed an offense while released on bail or community supervision.
- Section 71.0351, Government Code



# Emergency Protective Orders

An Emergency Protective Order or EPO (also referred to as a Magistrate's Order for Emergency Protection or MOEP) is an order a magistrate may issue at a defendant's appearance before the magistrate after being arrested for an offense involving family violence or an offense of human trafficking, continuous human tracking, sexual assault, indecent assault, aggravated sexual assault or stalking.

An EPO is a separate order from an order imposing bond conditions and has different requirements and consequences.

An EPO may only be issued if the defendant has been arrested for an eligible offense and only when the defendant is in custody. Once the defendant has been released from custody an EPO may not be issued.

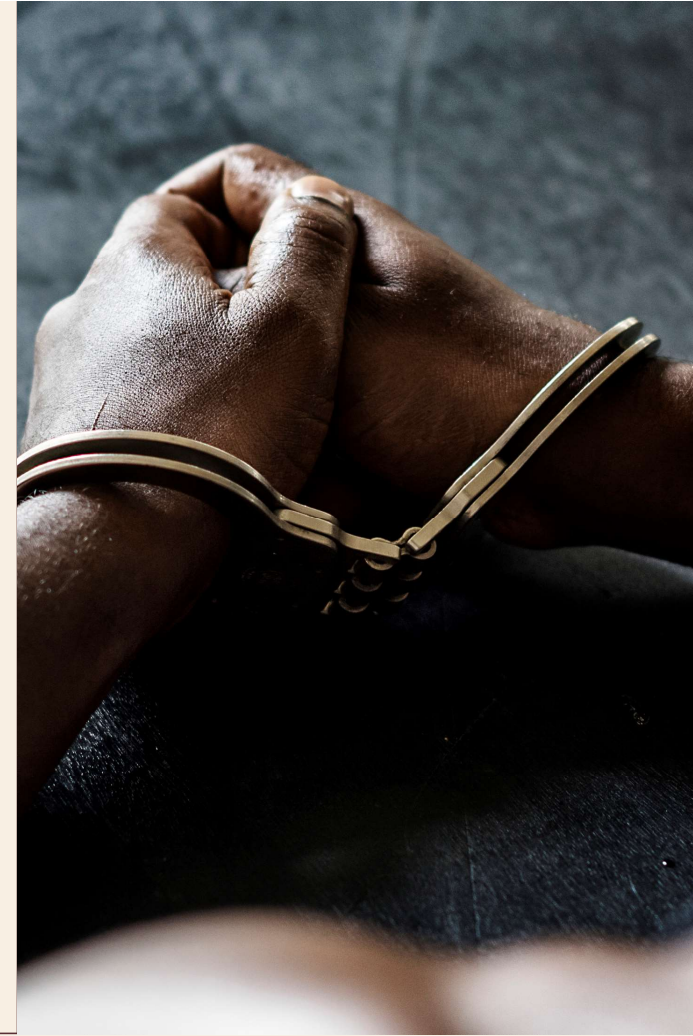


# Eligible Offense

A magistrate may issue an EPO following an arrest for any offense involving family violence if the magistrate believes it is appropriate or an EPO is requested by:

- the victim of the offense;
- the guardian of the victim;
- a peace officer; or
- the attorney representing the state.

Even if requested, a magistrate is not required to issue an EPO unless it falls within the mandatory category.



# Family Violence

- An act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault.
- Abuse by a member of a family or household toward a child of the family or household; sexual conduct harmful to a child's mental, emotional, or physical welfare; or compelling or encouraging the child to engage in sexual conduct.
- Dating violence, including an act by an individual against another with whom that person has or has had a dating relationship intended to result in physical harm, bodily injury, assault or sexual assault or a threat thereof.

# Mandatory Emergency Protective Orders

A close-up photograph of a hand holding a wooden gavel, poised to strike a surface. The background is blurred, showing what appears to be a courtroom or office setting with warm lighting.

A magistrate must issue an EPO if the arrest is for a family violence offense that involves serious bodily injury to the victim or the use or exhibition of a deadly weapon during the commission of an assault.

If the defendant is charged with an offense which authorizes a magistrate to issue an EPO but the offense does not involve serious bodily injury or the use or exhibition of a deadly weapon, issuance of the EPO is discretionary, meaning the magistrate may issue an EPO but is not required to do so.

If the defendant used or exhibited a deadly weapon during the commission of the offense, then the EPO must remain in effect for at least 61 days but not more than 91 days. Otherwise, the EPO must remain in effect for at least 31 days but not more than 61 days



An EPO must suspend the handgun license, if any, of the accused.

An EPO suspending a handgun license must be sent immediately to DPS so that they may enter the EPO into the Criminal Justice Information System and suspend the license.

Issuance of an EPO also makes it illegal for the defendant to possess a firearm (including a concealed or holstered handgun), whether they have a handgun license or not.

*The victim's mailing address may be kept confidential if requested by the victim or if the magistrate determines it is necessary.*



## An EPO **MAY** prohibit the defendant from:

- committing family violence or an assault on the person protected under the order;
- committing an act in furtherance of an offense under Section 42.072, Penal Code (stalking);
- communicating directly with a member of the family or household or with the person protected under the order in a threatening or harassing manner;
- communicating a threat through any person to a member of the family or household or to the person protected under the order;
- 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;
- 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;
- possessing a firearm (unless the person is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision); and
- going to or near the residence, childcare facility, or school where a child protected under the order resides or attends.

*An EPO **may not** order the defendant to stay a minimum distance from the person protected by the order. Only from specific places identified in the order. Those places and distances to keep away from them must be stated in the order unless the location is omitted to protect the victim (like a battered women's shelter).*





# EPO Service & Notice Requirements

The defendant must be served with a copy of the EPO by the magistrate or their designee in person or electronically. The magistrate must make a separate record of the service in written or electronic form.

The EPO has to include a written warning to the defendant of the consequences of violating the EPO. See the EPO form below.

As soon as possible but not later than the next business day after the date the magistrate issues an EPO, the magistrate must send a copy of the EPO to the chief of police or sheriff. If victim is not present, the magistrate must order a peace officer to try to notify the victim within 24 hours. The clerk must send a copy of the order to the victim at their last known address not later than the next business day.

If the EPO prohibits a person from going to or near a school or childcare facility, the magistrate must also send a copy of the order to the school or childcare facility.

The EPO must also be entered in the Protective Order Registry as soon as possible but not more than 24 hours after issuance. If the EPO is vacated or expired, the clerk must update the status of the order in the registry.



# Sample Form

[Order of Emergency Protection \(EPO\).docx \(live.com\)](#)



- Judicial Academy Handouts & Webpage
- Texas Justice Court Training Center  
Magistration Bench Cards & Desk Book  
(handouts)
- Texas Justice Court Training Center Self-paced  
modules (up to 4 hours will count towards  
Judicial Education requirements).

# Resources

# THANK YOU!

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