

**GENERAL ORDER REGARDING PROCEDURES FOR BAIL HEARINGS AND
PRE-TRIAL RELEASE**

The Fort Bend County Judges hereby Order the following post- arrest policies to be applied to all persons arrested for a criminal offense except defendants who are subject to: (1) formal holds preventing their release from detention; (2) pending mental-health evaluations to determine competency; (3) pre-trial preventive detention orders for violating a condition of release for a crime of family violence; or (4) an arrestee whose bond has previously been set pursuant to a lawful warrant of arrest.

This Order is intended:

- to ensure no arrestee is held in custody prior to trial solely because the arrestee cannot afford to post bail;
- to ensure fairness;
- to eliminate unjustifiable delay in the administration of justice;
- to facilitate the just determination of every criminal proceeding;
- to preserve the public welfare; and
- to secure fundamental human rights of individuals accused of committing criminal acts.

This Order is further intended comply with constitutional due process and equal protection rights of criminal defendants identified by the Fifth Circuit Court of Appeals in *ODonnell v. Harris County*, 892 F.3d 147 (5th Cir. 2018).

In hearings to determine pretrial detention, Due Process requires:

1. An inquiry into the arrestee's ability to pay, including notice of the importance of this issue and the ability to be heard on this issue;

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Brendy McLean Walker
CLERK DISTRICT COURT
FORT BEND CO., TX

2. Consideration of alternative conditions of release, including findings on the record applying the preponderance of the evidence standard and explaining why an arrestee does not qualify for alternative conditions of release; and

3. Representation by counsel.

OVERVIEW OF REQUIRED COURT PERSONNEL AND PROCEDURES

In addition to the Judicial Officer and the Bailiffs, it shall be required that counsel from the Fort Bend County Public Defender's Office, Fort Bend County Pretrial Services Indigent Defense Coordinator (IDC) and counsel from the Fort Bend County District Attorney's Office be present at the bail and pretrial release hearing.

Indigent Defense Coordinator (IDC)

The role of the IDC is to determine whether the arrestee is financially able to retain counsel and to determine the maximum amount of money the arrestee would be able to pay as bond within 24 hours of arrest. The IDC interviews each arrestee regarding the arrestee's income, assets, and debts. Then the IDC fills out and has the arrestee sign an affidavit swearing that the arrestee has been advised of their right to counsel, and indicating whether the arrestee already has or is requesting a court-appointed attorney. This affidavit is included in the court file.

District Attorney's Office

The role of the counsel from the District Attorney's Office is to review the probable cause affidavits to ensure that each arrest was made based upon sufficient probable cause and to make a bond recommendation.

Public Defender's Office

The role of the counsel from the Public Defender's Office is to represent the arrestee throughout the bail and pre-trial release hearing, *unless* the arrestee already has retained counsel *and* that counsel is present at the hearing.

The arrestee shall be notified in writing that upon receiving written consent the Public Defender's Office will represent him or her solely for the purposes of the initial bail hearing unless otherwise stipulated. The Public Defender shall interview the arrestee about factors that might serve to mitigate the bail amount, such as level of employment, ties to the community, number of children, etc.

These factors are then presented to the judicial officer during the arrestee's bail and pre-trial release hearing. It is essential that the Public Defender's Office be provided the funding and staffing necessary to adequately represent arrestees at bail hearings, as well as early and effective support staff to assist in gathering and presenting information relevant to the bail decision.

GENERAL PROVISIONS

1. All arrestees shall be entitled to an individualized initial pre-trial release and bail hearing as soon as practical (generally within 24 hours) but *no later than* 48 hours after arrest. The hearing shall be presided over by a Judicial Officer (Magistrate) pursuant to Texas Code of Criminal Procedure Article 2.09.
2. A record of the initial pre-trial release and bail hearing shall be made by electronic audio or audio-visual recording.
3. The record of the initial pre-trial release and bail hearing shall be stored to ensure it is preserved. The judicial officer shall ensure that the recording system is functioning properly throughout the proceeding. The judicial officer shall also ensure that a complete, distinct, clear and transcribable recording of the proceeding is made. A detailed and legible log of the proceedings shall be kept, indexed by date and identifiers of arrestee.
4. The Court shall provide interpreters for deaf or Limited English Proficient arrestees in accordance with Texas Code of Criminal Procedure Article 38.31

5. Counsel from the Public Defender's Office that are staffing the individualized initial probable cause and individualized bail hearings must provide representation to all arrestees at the hearing to determine conditions of release, unless the arrestee executes a knowing and voluntary waiver of representation. Arrestees may retain an attorney of their choosing to represent them at the hearing.
6. Prior to the initial bail hearing and at such other times as the Judicial Officer may direct, IDC shall request information from the arrestee regarding the arrestee's ability to post monetary bond. All information gathered by IDC from the arrestee regarding the ability to pay shall be provided to the Court.
7. Secured money bail must not be required as a condition of pre-trial release prior to an individualized determination of ability to pay. Further, if the person cannot pay:
 - a. A consideration of alternatives must be made, and
 - b. A finding that detention is necessary to meet a compelling government interest in either promoting public safety or preventing flight from prosecution must be made.
 - c. In determining whether to release arrestees on a personal bond the following factors should be considered by the judicial officer;
 - (1) Whether the arrestee has previously failed to appear when previously released on a personal bond.
 - (2) Whether the arrestee has previously violated the terms and conditions of prior bonds.
 - (3) Whether the arrestee has been charged with additional crimes after having been released on a personal bond.

- d. Absent a compelling government interest in either promoting public safety or preventing flight from prosecution, misdemeanor arrestees whose money bail amount is “unaffordable” are presumptively entitled to a personal bond absent a finding on the record of either extraordinary circumstances or conduct described in subsection c. above. Such personal bond shall be without conditions other than those conditions set forth in Section 14. below and statutory conditions including but not limited to those set forth in Section 15. below.
8. At the individualized hearing, the Judicial Officer may consider the full range of available conditions of release, including: secured money bail, unsecured money bail, non-financial conditions subject to the provisions relating to personal bond contained in Texas Code of Criminal Procedure Articles 17.03 and 17.032, as well as all other applicable restrictions required under law.

Before a Judicial Officer may require secured money bail as a condition of release at an individualized hearing, the following procedures must be provided, and the following findings must be made:

- a. In every case, notice must be provided to the arrestee that financial information will be collected through an affidavit and must explain to the arrestee the nature and significance of the financial information to be collected.¹ The language required is as follows:

¹ The purpose of the explanation is to provide the notice due process requires: that the arrestee's federal constitutional rights to pretrial liberty and against wealth-based detention are at stake in the proceedings. The affidavit must give the arrestee an opportunity to declare under penalty of perjury the maximum amount of money she would be able to pay up front within 24 hours of arrest. The question is neither the arrestee's immediate ability to pay with cash on hand, nor what assets the arrestee could

“I am [First Name] from Fort Bend County Pretrial Services. I am here to interview you and report your answers to the Court. What you tell me will be used to make decisions about your release from jail. I will ask you to provide financial information which will be used to decide whether a lawyer will be appointed in your defense. Also, you will need to state the amount of money that you can afford to pay for a bond within 24 hours of your arrest. I will then also ask you to sign a paper with the financial information that you provided. Your answers must be truthful under penalty of law. False answers may be used against you. The information will be shared with the Court, the District Attorney and possibly other agencies. You may refuse to complete the interview, provide me with the financial information, or both. You will be allowed to talk to an attorney before your bail hearing. You may decide to participate in an interview after speaking with your lawyer. Do you agree to go forward with both the interview and providing financial information?”

b. In every case, the arrestee's ability to pay money bail must be determined using an affidavit. The affidavit shall:

(1) be provided to the arrestee *after* arrest and *prior* to the individualized hearing, and

eventually produce after a period of pretrial detention. The question is what amount the arrestee could reasonably pay within 24 hours of his or her arrest.

(2) The affidavit shall ask the arrestee to state, under penalty of perjury, the amount of money she can afford to pay from any lawful source within 24 hours of arrest.

- c. The arrestee must be given an opportunity to be heard concerning both her ability to afford money bail and what non-financial conditions of release, if any, are necessary. Additionally, the arrestee must have an opportunity at the hearing to present evidence, make argument concerning those issues and to contest any evidence or argument offered by the government concerning those issues.
- d. If the Judicial Officer decides to require money bail as a condition of release, the order to pay money bail must be accompanied by substantive findings, on the record and reviewable by a higher court. The findings must be made by a preponderance of the evidence. Those on the record findings must state either:
- (1) the arrestee has the ability to pay the amount required within 24 hours of arrest, or
 - (2) alternative conditions of release were considered, that no less-restrictive condition or combination of conditions could reasonably assure appearance or another compelling government interest, and that imposition of unaffordable² money bail is necessary to satisfy the government's interests.
- e. If an arrestee earns income equal to or less than 125% of the federal poverty line, she may not be assessed any fee associated with a personal bond or an unsecured bond, or the cost of a non-financial condition of release, including but not limited

² A money bail amount is "unaffordable" if the arrestee cannot pay the amount within 24 hours of arrest.

to, a supervision fee, a fee for electronic monitoring, or the cost of an interlock device.

- f. No arrestee may be kept in jail due to her inability to pay a fee or cost associated with a condition of release.³ The findings and procedures required in (2) of Paragraph (d) must be made if the Judicial Officer imposes an order of pre-trial detention, either through an unattainable financial condition or directly through an order of pretrial detention.
 - g. Arrestees who do not appear competent to execute an affidavit may be evaluated under the procedures set out in the Texas Code of Criminal Procedure, Article 16.22. If competence is found, the arrestee is covered by the relief the Judicial Officer orders, with the exception that the 48-hour period begins to run from the finding of competency rather than from the time of arrest. As under Article 16.22, nothing in this order prevents the misdemeanor arrestee from being released on secured bail or unsecured personal bond pending the evaluation.
 - h. Nothing in provisions 10 (a)-(g) is intended to conflict with any requirement of Texas law.
10. Any arrestee who remains in jail after the individualized hearing must be provided with the opportunity for an adversarial bail review hearing before a District Court Judge, County Court at Law Judge or Associate Judge upon a properly filed or e-filed defense motion served upon the State. The adversarial bail review hearing will be held no earlier

³ An arrestee lacks the ability to pay for a non-financial condition of release if payment would constitute a substantial hardship. Substantial hardship includes, but is not limited to, when an arrestee's income is at or below 125% of the federal poverty line.

than 48 hours after the attorney for the State has been served with the motion and given requisite notice of the date and time of the hearing

11. Anyone who is released with pre-trial conditions is entitled to have an individualized hearing, if requested, to determine appropriate conditions of the arrestee's release from custody. If the Judicial Officer imposes conditions of release at that individualized hearing, the Judicial Officer must provide findings, based upon a preponderance of the evidence, on the record as to why the conditions imposed are the least restrictive necessary to meet a specific government interest in court appearance or community safety.
12. In the event that a risk assessment tool is approved by the Fort Bend County Judges, IDC shall utilize a risk-assessment tool to assist the decision-maker in establishing reasonable bail for an arrestee. The IDC shall determine reasonable bail for an arrestee by either assessing the arrestee's likelihood of appearing at future court proceedings or determining if the arrestee poses a real and present threat to the physical safety of any person or persons.
13. As set forth in Article 17.15 of the Texas Code of Criminal Procedure, the amount of bail to be required in any case is to be regulated by the Judicial Officer taking the bail; they are to be governed in the exercise of this discretion by the Constitution and by the following rules:
 - a. The bail shall be *sufficiently high to give reasonable assurance that the undertaking will be complied with.*
 - b. The power to require bail is *not to be so used as to make it an instrument of oppression.*

c. The *nature of the offense and the circumstances under which it was committed* are to be considered.

d. The *ability to make bail* is to be regarded, and proof may be taken upon this point.

e. The *future safety of a victim of the alleged offense and the community* shall be considered.

14. Conditions of Bonds must be pertinent to the facts alleged in the probable cause affidavit, as well as any additional addenda provided by the State and must adhere to the rules outlined in Texas Code of Criminal Procedure Article 17.15. Pre-trial bond conditions are meant to secure the accused's presence at Court. Thus, a condition must meet **three** standards:

(1) It must be "reasonable,"

(2) It must be intended to "secure a defendant's attendance at trial," and

(3) It must be related to the safety of the alleged victim or the community.

- All felony possession of controlled substance and felony manufacture or delivery, or both, of controlled substance charges will require mandatory random urinalysis conditions included in the court file;
- All driving while intoxicated charges greater than a misdemeanor B will require mandatory random urinalysis and mandatory installation of an interlock device conditions included in the court file.

15. **Statutory Mandatory Bond Condition Provisions**

(a) Mandatory bond conditions are required by law to be imposed on various offenses. These include, but are not limited to:

- CCP 17.152(f) – mandatory hearing on violation of protective order cases;

- CCP 17.41 mandatory bond conditions where there is a child victim;
- CCP 17.441 – mandatory bond conditions requiring ignition interlock devices for various intoxication offenses;
- CCP 17.47(b) – mandatory provision of DNA samples.

(b) Only the Judge before whom the case is pending may release on personal bond a defendant who:

(1) Is charged with an offense under the following sections of the Penal Code:

- (A) Section 19.03 (Capital Murder);
- (B) Section 20.04 (Aggravated Kidnapping);
- (C) Section 21.02 (Continuous Sexual Abuse of Young Child or Children);
- (D) Section 20A.03 (Continuous Trafficking of Persons);
- (E) Section 22.021 (Aggravated Sexual Assault);
- (F) Section 22.03 (Deadly Assault on Law Enforcement or Corrections Officer, Member or Employee of Board of Pardons and Paroles, or Court Participant);
- (G) Section 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual);
- (H) Section 29.03 (Aggravated Robbery);
- (I) Section 30.02 (Burglary); OR
- (J) Section 71.02 (Engaging in Organized Criminal Activity)

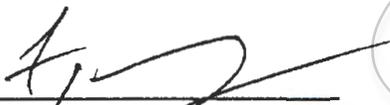
(2) Is charged with a felony under Chapter 481, Health and Safety Code, or Section 485.033, Health and Safety Code, punishable by imprisonment or a minimum term or by a maximum fine that is more than a minimum term or maximum fine for a first-degree felony; or

(3) Does not submit to testing for the presence of a controlled substance in the defendant's body as requested by the court or magistrate under or submits to

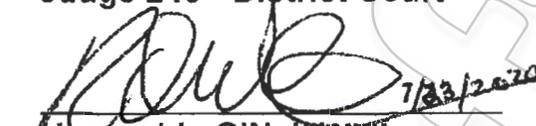
testing and the test shows evidence of the presence of a controlled substance in the defendant's body.

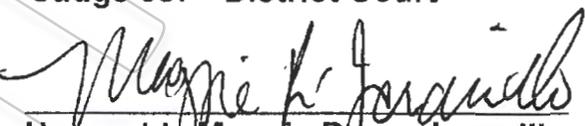
16. The above stated policies shall be utilized in conjunction with well-established Constitutional Law as well as the applicable statutory law including but not limited to the Texas Penal Code and Texas Code of Criminal Procedure.
17. The policies and procedure set forth in this Order shall be implemented as soon as practical in coordination with Fort Bend County officials.

Approved by a vote of the Fort Bend County Judges this 30th day of June, 2020.


Honorable Frank J. Fraley
Judge 240th District Court


Honorable Brenda Mullinix
Judge 387th District Court


Honorable O'Neil Williams
Judge 268th District Court


Honorable Maggie Perez-Jaramillo
Judge 400th District Court


Honorable Walter Armatys
Judge 328th District Court

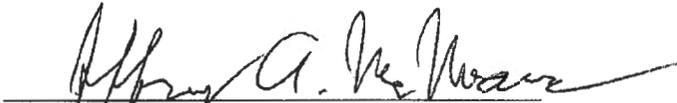

Honorable James H. Shoemake
Judge 434th District Court


Honorable Robert L. Rolnick
Judge 458th District Court

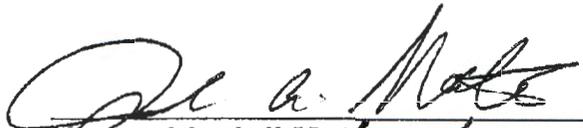

Honorable David S. Perwin
Judge 505th District Court



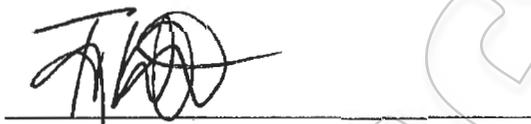
Honorable Christopher G. Morales
Judge County Court at Law No.1



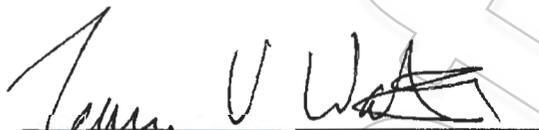
Honorable Jeffrey A. McMeans
Judge County Court at Law No.2



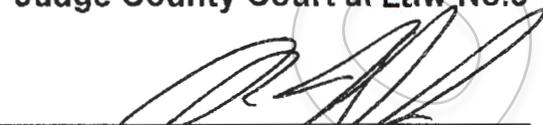
Honorable Juli Matthew
Judge County Court at Law No.3



Honorable Toni Wallace
Judge County Court at Law No.4



Honorable Teana Watson
Judge County Court at Law No.5



Honorable Sherman Hatton Jr.
Judge County Court at Law No.6