

TEXAS CRIMINAL
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OVERVIEW OF PRETRIAL SERVICES & BAIL IN TEXAS

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PRETRIAL SERVICES & BAIL OVERVIEW

Distinguishable from bail or bond, “pretrial services” is a term used to describe a larger process that may encompass assessments of arrestees, recommendations regarding release in light of such assessments, and supervision of individuals released on bond. Undergirding pretrial services in the United States are six well established legal principles, including: (1) the presumption of innocence, (2) the right to counsel, (3) the right against self-incrimination, (4) the right to due process of law, (5) the right to equal protection under the law, and (5) the right against bail that is excessive.¹ Still, today there is little uniformity with respect to how each of Texas’ 254 counties administers or governs pretrial services within its jurisdiction and the statutory landscape is sparse and provides little direction. Counties choosing to provide pretrial services may develop and implement their own programs within certain guidelines set forth in statute.

The fundamental precept “innocent until proven guilty” is a hallmark of justice in the United States, and it is a principal value that correlates to the right against excessive bail. With very few exceptions, until a person is convicted and properly sentenced, he or she cannot be imprisoned for an extended period of time. Bail reflects this ideal insofar as it provides a mechanism through which a person may be released from custody, while simultaneously providing assurance that he or she will return to court when required. So important is the right against excessive bail that it is enumerated in the Eight Amendment of the United States Constitution, which reads: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”² Pragmatically speaking, bail also serves an important function by helping to keep county jail populations at bay.

I. PRETRIAL SERVICES

Pretrial services are important for a number of reasons. In addition to protecting individuals’ rights, pretrial service programs may reduce costly jail overcrowding, as many individuals sitting in jail are as of yet un-convicted of the crime for which they have been arrested and present a low risk for pretrial misconduct. As of January 2012, nearly 60% of individuals in Texas’ county jails had not yet been convicted of a crime.³ With stronger pretrial service programs throughout the state, many of these individuals could have the opportunity for release and be able to resume their lives in the community prior to trial, rather than wasting taxpayer dollars sitting in confinement.

An effective pretrial services program should incorporate contemporary, validated assessment instruments, evaluate a defendant’s risks, determine the necessity for further evaluation or particular services/treatment – identifying, for instance, individuals with special needs, mental health issues, or substance abuse issues – and facilitate frequent communication between service providers and court officials. More specifically, a comprehensive program should undertake the following: (1) screen and collect data on all persons arrested and charged with a criminal offense, incorporating an evaluation as to indigency, making a determination as to whether the individual qualifies for a court appointed attorney,⁴ and compiling detailed information about a person’s mental and physical health; (2) interview the

accused and investigate specific information related to the accused – any previous convictions, employment status, family information, etc. – prior to an appearance before a magistrate; (3) use research-based risk assessment instruments to guide appropriate release and supervision decisions, including potential conditions of release; (4) provide supervision and report to the appropriate court; and (5) maintain communication with the defendant and court regarding the defendant’s obligations to appear at the appropriate place and time.⁵

A. GOVERNING AUTHORITY

Pretrial encompasses a myriad of processes, ranging from assessing an individual’s mental health or indigent status to establishing and monitoring conditions of bail. The statutory language governing pretrial services in Texas is broad, but the primary authority can be found in Article 17.42 of the Texas Code of Criminal Procedure and section 76.011 of the Texas Government Code.

1. Personal Bond Office – Code of Criminal Procedure

Under the Code of Criminal Procedure, any county or judicial district with more than one county may, with the approval of the County Commissioners Court,⁶ establish a personal bond office to gather and review information related to an accused that may have bearing on whether he or she will comply with conditions of a personal bond.⁷ The office may employ a director who has the authority to employ staff. Section 17.42 of the Code of Criminal Procedure provides that a fee may be assessed if a court releases an accused on personal bond based on the recommendation from a personal bond office. The personal bond fee is \$20 or three percent of the amount of bail fixed, whichever is greater. On good cause, the court may waive the fee or modify to a lesser amount.⁸

2. CSCDs’ Authority to Oversee Pretrial Services – Government Code

Counties are permitted to develop pretrial services through various methods. Some, for example, do so through the local sheriff’s office or by forming an independent pretrial entity/personal bond office. Often a county will partner with Community Supervision and Corrections Departments (CSCDs, or probation departments) to provide specific pretrial services. Government Code section 509.011(b) authorizes the Community Justice Assistance Division of the Texas Department of Criminal Justice to use discretionary grant funds to provide departments, municipalities, or counties the ability to develop and operate pretrial and presentencing services.⁹

Government Code section 76.011 authorizes CSCDs to operate programs for the supervision and rehabilitation of individuals in pretrial intervention programs. CSCD supervision may differ in some respects, such as the duration of supervision, but specific to CSCD pretrial intervention (diversion) programs, CSCD supervision is expressly limited to two years under statute.¹⁰ Legislation ratified during Texas’ 82nd Legislative Session (2011) amended this provision of the Government Code to clarify the explicit authorization to supervise persons released on bail under various programs and provisions in Texas code.¹¹

B. PRETRIAL SERVICES

A personal bond office created under Article 17.42 of the Code of Criminal Procedure must follow specific duties mandated by statute. For instance, the office must prepare and maintain information about any accused person, identified by case number, who is released on a personal bond. The office must update these records and keep each record in the office of the county clerk.¹² Furthermore, the personal bond office must maintain a record of operations, and, no later than April 1 of each year, submit the report to the Commissioners Court or district and county

judges that established the personal bond office. This report includes, among other things, operating budget, information related to staff positions, details about failures to appear, and other information regarding individuals released on bond.¹³

C. EXAMPLE OF PRETRIAL SERVICES

As noted above, pretrial services vary widely from county to county, but a robust program will incorporate various functions from pre-bond screening and assessment to supervision of released individuals. One of Texas' more comprehensive pretrial programs is in Travis County. Travis County's Pretrial Services Division, in partnership with Travis County CSCD, conduct interviews prior to bail setting to assess release options, screen for indigent status, make recommendations related to bond release and conditions, prepare personal bond applications, and provide supervision and assistance with intervention programs.¹² Under Travis County's Pretrial Services Division, Central Booking Officers collect important information and interview defendants to make recommendations to the court in regard to whether a defendant should be released on personal bond and what conditions should be imposed. Its pretrial officers also collect information for the courts to use in determining whether a defendant qualifies for court-appointed counsel.

When conducting a pretrial assessment and investigation, the Travis County Pretrial Services Division's investigating officers collect information from the defendant regarding residence, employment, and references; verify information, including employment, with references; conduct a criminal history check; obtain a summary of the allegations against the defendant; and obtain input from complaining witnesses concerning the defendant's possible release in most victim-oriented offenses.¹⁵

Regarding individuals who have been released on bond, the Pretrial Services Division's Case Management Officers perform various supervisory

tasks, including: (1) monitoring compliance with release conditions; (2) ensuring that defendants report to court, as well as monitoring court-ordered treatment or other conditions; (3) connecting defendants with community resources, like treatment referrals and employment assistance, that will help them maintain stability while awaiting trial; and (4) providing information to the court about defendants' compliance with conditions of personal bond.

Other Texas counties offer various degrees of service. Harris County Pretrial Services, for instance, investigates and compiles information on individuals who are charged with a felony or Class A or B misdemeanor. This report is sent to the courts to assist with release and detention decisions, especially to determine eligibility for personal bond. Harris County Pretrial Services also monitors and enforces defendants' compliance and reports non-compliance to the court.¹⁶

II. BAIL, BAIL BONDS & PERSONAL BONDS

A. GOVERNING AUTHORITY

The primary statutory authority governing bail bonds can be found in Chapter 17 of the Texas Code of Criminal Procedure and Chapter 1704 of the Texas Occupations Code.

Whether a county falls within the purview of the Occupations Code depends on whether a bail bond board exists. A bail bond board is created to regulate and monitor the bail bond business within a specific county. In counties with a population over 110,000, a bail bond board is automatically created, although counties with a population of less than 110,000 may also elect to establish a bail bond board.¹⁷ For those counties with a bail bond board, sections 1704.001 through 1704.306 of the Occupations Code apply.¹⁸

It should be observed, however, that Chapter 17 of the Texas Code of Criminal Procedure will still apply to counties with bail bond boards. While the Occupations Code is superior with respect to the

bond business, provisions of Chapter 17 are always applicable to issues such as setting bail, the time to set bail, the timeframe to release someone on bail, special considerations to release someone on bail, the right against excessive bail, etc. Both codes should be read in conjunction with one another.

Bail bond boards are described more fully in Section I, *Bail Bond Board Counties*, below.

Non-bail bond board counties generally fall within the ambit of Chapters 17 and 22 of the Code of Criminal Procedure and the county and its officials are limited by the provisions enumerated therein.¹⁹

B. DEFINITIONS OF BAIL, BAIL BOND & PERSONAL BOND

Bail is simply a security provided by the accused (the defendant) to ensure that he or she will appear before the proper court to answer the accusations brought against him or her.²⁰ Section 17.01 of the Code of Criminal Procedure explains that “bail” includes either a “bail bond” or a “personal bond.”²¹ Under the Occupations Code, “bail bond” is defined as a “cash deposit, or similar deposit or written undertaking, or a bond or other security given to guarantee the appearance of a defendant in a criminal case.”²² While bail determinations are rendered at the discretion of the person authorized to set bail, some counties may provide a general bond schedule as a guide, which is not binding on the court.²³

Ultimately, there are three types of bonds contemplated in statute: cash bond, personal bond, and surety bond. Cash and surety bonds (often described in the context of “bail bond”) can be distinguished from personal bond because a personal bond does not require the same type of surety or security to be deposited as a condition of release. Nevertheless, personal bonds basically serve the same function, that is, a guarantee to appear at the appropriate time and place. The distinction between the terms bail and bond is confusing. It is further obfuscated by the fact that Article 17.01 of the Code

of Criminal Procedure includes both bail bond and personal bond within its definition of bail, and then subsequently separates “bail bond” – *e.g.*, cash and surety bonds – from personal bond in Articles 17.02 and 17.03 respectively. Essentially bail bond and personal bond are both means of achieving release through bail, which is the process whereby an individual provides some assurance (be it fiscal or otherwise) that he or she will appear before the proper court in exchange for his or her release.

The three types of bond are explained in greater detail below.

C. DENIAL OF BAIL, SPECIAL CONSIDERATIONS, SETTING BAIL & RELEASE ON BOND

Because bail is reflective of the presumption of innocence that underpins our judicial system, it is not intended to be punitive. Article 1.07 of the Code of Criminal Procedure provides: “All prisoners shall be bailable unless for capital offenses when the proof is evident. This provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.”²⁴

1. Who May be Denied Bail

While Texas upholds the general edict against excessive bail, which would include bail set unreasonably high or a flat denial of bail, there are multiple exceptions allowing a court to deny bail. In conjunction with Chapter 17 of the Code of Criminal Procedure, Article I, sections 11, 11a, and 11b of the Texas Constitution provide various descriptions of who may be denied bail. It also includes section 11c to some degree, but this provision simply provides the Legislature the power to enact laws proscribing bail.²⁵ The statutory language is dense, but in sum, the exceptions enumerated in the Texas Constitution include:

- Charged with a capital felony where proof is evident. This exception does not apply to

everyone charged with murder, and is limited to those murders in which the defendant is eligible for the death penalty.

- If a person is charged with a felony and previously convicted of two prior felonies. This exception requires three sequential convictions. It is also limited to defendants facing a penalty range of 25 years to life (also known as “True Habitual”). Significantly, this exception cannot be used if the defendant was previously convicted of two felonies arising out of one event and then subsequently charged with a third felony.
- Charged with a felony while on bail for a previously indicted felony charge.
- Charged with a felony involving the use of a deadly weapon after previously having been convicted of a felony.
- Charged with a violent or sexual offense while on parole or probation. Violent or sexual offense includes: aggravated kidnapping, aggravated robbery, certain types of aggravated assault, sexual assault, aggravated sexual assault, and indecency with a child.
- Violated a condition of bail in a family violence case: If a defendant is charged with family violence, violates the terms of his bail and the judge revokes his bail, the Constitution allows for a complete denial of bail pending trial.²⁶

Further, under Articles 17.152 and 17.153 of the Code of Criminal Procedure, a court may deny bail for certain violations of protective orders and emergency protective orders involving family violence, as well as sexual offense cases where a child under 14 is the alleged victim.²⁷ Article 17.152 appears to facilitate the spirit of Article I, section 11c of the Texas Constitution. Section 11c of the Texas Constitution pertains to a violation of emergency protective orders and protective orders involving family violence, but

it only furnishes the Legislature the authority to make a general law prohibiting bail for violation of protective orders. The law proscribing bail in these circumstances is created in Article 17.152 of the Code of Criminal Procedure.

Finally, section 11a of the Texas Constitution provides various procedural requirements for denying bail that are fairly complex, including various restrictions on which judges or magistrates have the authority to deny bail in specific cases, the time frame in which bail denial must be issued, and the length of time a denial of bail may last.²⁸

2. Special Considerations – Continued Detention

Article 17.291 of the Code of Criminal Procedure allows a magistrate to hold a person for a period of no more than four hours (though under certain circumstances, it may be extended for not more than 48 hours) if the person has been arrested *without a warrant* for purposes of preventing family violence, provided there is probable cause to believe that family violence would continue.²⁹

3. Magistrate Duties, Rules for Setting Bail, & Requirements

Article 15.17 of the Code of Criminal Procedure describes some of the pretrial duties of the arresting officer and the magistrate; among them, the magistrate must set bond.³⁰ A list of qualified Magistrates is provided in Article 2.09 of the Code of Criminal Procedure.³¹

Ultimately, the rules for setting bail must comport with the Eighth Amendment of the U.S. Constitution, as well as Article I, section 13 of the Texas Constitution, both of which explicitly proscribe excessive bail. Conjunctively, Article 1.09 of the Code of Criminal Procedure provides, “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.”³² The amount of bail is regulated by the court, judge, magistrate, or

officer taking bail, and they are governed in the exercise of their discretion by the Constitution and the following rules established in state statute: (a) 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 used as an instrument of oppression; (c) the nature of the offense and circumstances under which it was committed are to be considered; (d) the ability to make bail is to be regarded, and proof may be examined; and (e) the future safety of a victim of the alleged offense as well as the community shall be considered.³³

Article 17.08 of the Code of Criminal Procedure provides the criteria of a bail bond. It must be payable to the State of Texas and contain a binding agreement that the defendant will arrive at the appropriate location. It must also state the charge, either misdemeanor or felony, and be signed by the principal (the defendant) and any sureties. It must also state the time and place, when and where, the accused binds himself to appear before the court. The bond is conditioned on the principal and sureties paying any necessary and reasonable expenses in re-arresting the principal should he or she fail to appear.³⁴

Article 17.04 provides the criteria for a personal bond, which must include the same requisites of a bail bond generally (as codified in Article 17.08) sans the surety requirement. Additionally, the personal bond must include the defendant's name, address, place of employment, specific identification information, and a sworn oath to appear before the magistrate or court.³⁵ This also binds the defendant to paying the full bail amount if he or she fails to appear (commonly referred to as FTA's.)

4. Exception for Certain Misdemeanors

There are certain exceptions to requiring the presentation of a defendant before a magistrate. Under the Code of Criminal Procedure, Article

14.06, a peace officer, in certain circumstances and with numerous restrictions, may issue a citation to a person charged with a Class A, B, or C misdemeanor rather than take the person before a magistrate. The citation must contain specific information described in statute including, among other things, notice of the time and place the person must appear before the magistrate, the name of the person charged, and the offense charged. With respect to class A and B misdemeanors, this provision is limited to only a few enumerated offenses.³⁶ In contrast, this citation provision may be applied to any Class C misdemeanors other than Penal Code section 49.02.³⁷

5. Adjustment of Bail

Article 17.09 of the Code of Criminal Procedure furnishes the magistrate or judge the authority to adjust the bond due to defectiveness – *e.g.*, excessive or insufficient amount, unacceptable sureties, or any other good and sufficient cause.³⁸ Both the prosecutor and defendant can seek changes to the bail amount, and adjustments may be made at a hearing held by the judge, an examining trial, or at the defendant's request via a writ of habeas corpus. Pursuant to Article 17.091, if a judge or magistrate reduces the amount of bail set for a defendant charged with an offense listed in section 3g, Article 42.12 of the Code of Criminal Procedure, the judge must provide reasonable notice to the attorney representing the state, and on request of the attorney representing the state, the defendant, or the defendant's counsel, provide an opportunity for a hearing concerning the proposed bail reduction.³⁹ **Note:** 3g offenses include violent offenses like murder, sexual assault, aggravated robbery, and offenses involving children or the elderly, as well as certain offenses under the controlled substances act relating to children, schools, or other youth-related areas.

6. Timing Issues re: Bail & Bond Release – Includes Arrests with & without Warrant

a. Generally

The Code of Criminal Procedure dictates that, with limited exception, an individual arrested *with or without a warrant* must be taken before a magistrate within 48 hours of arrest.⁴⁰ The 48-hour rule is important for purposes of efficiency, but it also comports with the Fourth Amendment requirement against unreasonable seizures. As established in case law, holding a person for more than 48 hours after a *warrantless* arrest presumptively violates the Fourth Amendment of the U.S. Constitution, shifting the burden to the government to demonstrate an emergency or extraordinary circumstance justifying the delay.⁴¹

Article 17.033 of the Code of Criminal Procedure requires release within 24 hours, and a bail amount not to exceed \$5,000, if (a) the person was arrested *without a warrant* for a misdemeanor, and (b) a magistrate has not determined probable cause. If the defendant has insufficient funds, he or she must be released on personal bond. Similarly, a person who is arrested *without a warrant* for a felony must be released within 48 hours with a bail amount not to exceed \$10,000 if no probable cause has been determined. Again, the defendant must be released on personal bond if he or she does not have the funds to pay the designated amount. The attorney representing the state may file an application to extend the period of detention for either a misdemeanor or felony offense for no more than 72 hours. Article 17.033 should be read in conjunction with Article 17.22, granting the sheriff or other peace officer, in limited situations when the court is not session, the power to take and/or fix the amount of bond.⁴²

Taking bond is described in greater detail below.

Note: The 82nd Legislature (2011) adopted legislation, House Bill 1173, amending the provision in Article 17.033, Code of Criminal Procedure, relating to misdemeanor offenses to allow large counties (over three million in population) to increase the period of detention prior to a probable cause determination in misdemeanor cases from 24 hours to 36 hours.

b. Special Time Considerations for Release

In addition to the foregoing time restrictions, Article 17.151 of the Code of Criminal Procedure provides an important release mechanism whereby a detained defendant must be released either on a personal bond or by a reduction in the bail requirement if the state is not ready for trial within the following schedule:

- (a) 90 days from the commencement of the defendant’s detention if he or she is accused of a felony;
- (b) 30 days from the commencement of detention if he or she is accused of a misdemeanor punishable by a sentence of imprisonment in jail for more than 180 days;
- (c) 15 days from the commencement of detention if he or she is accused of a misdemeanor punishable by a sentence of imprisonment for 180 days or less; or
- (d) five days from the commencement of detention if he or she is accused of a misdemeanor punishable by a fine only.⁴³

These time limitations do not apply to certain persons including: (a) a defendant serving a sentence of imprisonment for another offense while the defendant is awaiting trial on the current offense; (b) a defendant being detained pending trial for another accusation, whose applicable detention period has not yet elapsed; (c) a defendant who is incompetent to stand trial, during the period of his or her detention; or (d) a person being detained for a violation of the conditions of a previous release related to the safety of a victim of the alleged offense or to the safety of the community.⁴⁴

c. Release Based on Mental Health

Article 17.032 of the Code of Criminal Procedure describes specific conditions requiring release on personal bond of certain persons with a mental health issue. It provides in pertinent part:

A magistrate shall release a defendant on personal bond *unless good cause is shown otherwise* if the: (1) defendant is not charged with and has not been previously convicted of a violent offense; (2) defendant is examined by the local mental health or mental retardation authority or another mental health expert under Article 16.22 of [the Code of Criminal Procedure]; (3) applicable expert, in a written assessment submitted to the magistrate under Article 16.22: (A) concludes that the defendant has a mental illness or is a person with mental retardation and is nonetheless competent to stand trial; and (B) recommends mental health treatment for the defendant; and (4) magistrate determines, in consultation with the local mental health or mental retardation authority, that appropriate community-based mental health or mental retardation services for the

defendant are available through the Texas Department of Mental Health and Mental Retardation under Section 534.053, Health and Safety Code, or through another mental health or mental retardation services provider [emphasis added].⁴⁵

This provision is important as we begin to understand more about mental health issues, and begin to realize that our jails and prisons are ill-suited for people suffering from a mental illness. **Note:** This provision should be read in conjunction with Article 16.22, described in the endnote below.⁴⁶

7. Who May Take Bail

Taking bail essentially means that the authorized peace officer takes the documentation and paperwork associated with bail and processes it for the defendant’s release. At some point, all bonds have to go to the case file, so that if the need arises they can be pulled and processed for forfeiture. The sheriff would typically send the bonds to the clerk after accepting them (checking the list in a board county, checking security in a non-board one). Personal bonds, however, may be filed differently; in Harris County, for instance, they are filed directly with the clerk, similar to a court order.

A bail bond may be entered before a magistrate upon an examination of a criminal accusation or before a judge in habeas corpus applications; it may also be taken from the defendant by a peace officer.⁴⁷ Generally, sheriffs, peace officers, and jailers may take bail. Pursuant to Article 17.21, Code of Criminal Procedure, in felony cases, if it is a bailable case, the court shall fix the amount of bail and determine if the accused is eligible for a personal bond. After the amount is fixed, the sheriff or authorized peace officer may then take the bond. Likewise, in a misdemeanor case, the sheriff or authorized peace officer may take the bail bond.

As a caveat, there are extraordinary circumstances where an officer may take bail without it having first been fixed by a magistrate. Generally, however, magistrates are usually available within 24 to 48 hours to fix the amount of bond. In rare occasions, when the court is not in session or the magistrate is unavailable, a sheriff or peace officer may take bail in such amount as the officer considers reasonable without the amount first being fixed by the court.⁴⁸ This can apply to felony cases where both the court and a magistrate are unavailable for the 48 hour period, but this is a very unusual circumstance.

Note: The 82ndnd Legislature (2011) passed House Bill 1070, which adds Article 17.025 to the Code of Criminal Procedure, and amends Articles 17.05, 17.20, 17.21, 17.22. This bill amends the Code of Criminal Procedure to grant jailers licensed under Chapter 1701 of the Occupations Code the same authority to take a bail bond for a defendant and then release him or her from custody; previously, this power was limited to sheriffs or peace officers.

D. AFTER BAIL IS SET

Once bail is set, a reasonable time must be given to the accused to procure security.⁴⁹ If, after a reasonable time has elapsed after bail is ordered, and no security is given, the magistrate must make an order committing the accused to jail to be kept until legally discharged.⁵⁰ At any time during confinement, an accused may request a magistrate to review the written statements of witnesses for the State, as well as all other available evidence, for the purpose of reviewing his or her bail. This does not affect the defendant’s right to an examining trial under Article 16.01 of the Code of Criminal Procedure.⁵¹

Once bail is met, the accused must be set free under Article 17.29.

E. BAIL BOND FOR WITNESSES

In limited cases, a magistrate may require bail for important witnesses in a criminal case. Articles 17.34 through 17.38 of the Code of Criminal Procedure set forth the rules governing bail set and taken by a witness. A witness required to give bail who fails or refuses to do so can be committed to jail.

F. TYPES OF BAIL

There are three types of bail contemplated in statute:

1. Cash Bond

The “cash bond” is somewhat intuitive. In lieu of having a surety (like a bail bondsman) post the bond, a cash bond occurs when the defendant, or someone on the defendant’s behalf, executes the bond himself as the principal and posts the whole amount of the bond with the “custodian of funds of the court.”⁵²

2. Personal Bond

In contrast to cash or surety bonds, a “personal bond”⁵³ is a mechanism whereby a magistrate may release a defendant – on his or her personal bond – without sureties or other security, although in some instances a small fee may be charged.⁵⁴

3. Surety Bond

Notwithstanding cash or personal bonds, a bail bond is generally referred to as a “surety bond.” Under this bail bond scheme, a bond is executed by the defendant as the principal and one or more sureties who post bond for the defendant in exchange for compensation.

G. SURETY

Surety bonds – anything other than a cash or personal bond – may be made by corporate sureties (through their agents) or individual sureties. The only corporate sureties that can be licensed to act as sureties are insurance companies authorized by the

Texas Department of Insurance.⁵⁵ Any corporation authorized to act as a surety must first file in the office of the court clerk a power of attorney designating and authorizing the named agent(s) to execute such bail bonds.⁵⁶

Any individual surety, except a minor, can post bond for a defendant in counties that do not have a bail bond board.⁵⁷ The person must, within two years of writing the bond, complete at least eight hours, in person, of specific continuing legal education courses.⁵⁸ In addition, an individual surety must be able to meet the financial obligations as laid out in statute.

For non-bail bond board counties, the sufficiency of security offered by a surety is governed by Articles 17.11 through 17.14 of the Code of Criminal Procedure.⁵⁹ Furthermore, Chapter 17 allows convicted felons to write bonds in non-bail bond board counties.⁶⁰ Importantly, the sufficiency of the security offered for bail must be ascertained before taking a bond; this may be established through a sworn affidavit or submission of further evidence to prove the sufficiency of the security.⁶¹ Certain property is exempt from providing the basis of security. Article 17.12 provides that, “the property secured by the Constitution and laws from forced sale shall not ... be held liable for the satisfaction of bail, either as to principal or surety.”⁶²

As noted above, bail bond board counties are also governed by Chapter 17 of the Texas Code of Criminal Procedure, as well as Chapter 1704 of the Texas Occupations Code.

H. FORFEITURE & SURRENDER

The rules controlling forfeiture of bail can be found in the Code of Criminal procedure, and is largely governed by Chapter 22, describing the process of forfeiture. Article 22.01 explains when bail can be forfeited (generally for failure to appear), and article 22.02 explains the manner in which forfeiture can be

taken. Chapter 22 goes on to explain how citation for forfeiture is issued, to whom it must be issued, rights of sureties, exoneration from liability resulting from forfeiture, judgment, etc.⁶³

It has become more commonplace for bondsmen to discharge their liability by surrendering the defendant to the jail prior to trial. This provides one method to pursue bond forfeitures, and it may be used as a tool for the purpose of collection.⁶⁴ This practice is allowable under Article 17.16 of the Code of Criminal Procedure, which states that a surety may, before forfeiture, relieve himself of his undertaking by: (1) surrendering the accused into the sheriff’s custody, or (2) delivering an affidavit to the sheriff of the county where prosecution is pending stating that the accused is incarcerated in federal custody or other custody.⁶⁵ If a surrender is made, the court may allow the principal (defendant) to post other bail. Failure to comply will result in commitment to jail until bail is given.⁶⁶

Other rules for forfeiture can be found in Articles 17.19 and 17.23. Rules for forfeiture and surrender differ in bail bond board counties, as described in section J, subsections 8 and 9 below.

I. CONDITIONS IMPOSED

Pursuant to Article 17.40 of the Code of Criminal Procedure, reasonable conditions may be imposed on released defendants to ensure the safety of the community or the alleged victim of the crime.⁶⁷ Article 17.032 also provides that the magistrate may require the defendant to comply with other conditions that are reasonably necessary to protect the community.⁶⁸ Conditions, as defined by the code, can include non-contact, communication restrictions, GPS monitoring, and other travel limitations.⁶⁹ They may also require home confinement or curfew, electronic monitoring, drug testing, motor vehicle ignition interlock devices, submission of a specimen for DNA sampling, counseling, education, and instruction on AIDS and HIV awareness.⁷⁰

J. BAIL BOND BOARD COUNTIES

Counties with a population of 110,000 must have a bail bond board, while counties with less than 110,000 may, within a county's discretionary power described in statute, choose to create one.⁷¹

The definitions and laws governing sureties and the bail bond business in bail bond board counties vary slightly from the rules discussed above for non-bail bond board counties.

1. Important Definitions under Bail Bond Board Counties

Under Chapter 1704 of the Occupations Code, a bail bond surety is a person who executes a bail bond as a surety or co-surety for another person, or who, for compensation, deposits cash to ensure the appearance in court of an individual accused of a crime. A person, within the meaning of Chapter 1704, means an individual or corporation.⁷² The bail bond business is defined in statute as "the solicitation, negotiation, or execution of a bail bond by a bail bond surety."⁷³

2. Board Composition & Authority

The composition of a bail bond board is established and limited by statute, described in the Texas Occupations Code.⁷⁴

The bail bond board must elect a member to serve as the licensed bail bond surety representative, as well as a presiding officer.⁷⁵ Rules for the meetings, quorum, and majority votes can be found in sections 1704.005 and 1704.056 of the Occupations Code. The administrative and regulatory authority of the board is discussed in Subchapter C, sections 1704.101 through 1704.109.⁷⁶ They include, among other things, the power to issue licenses, deny licenses, adopt and post rules, post lists of current bail bond sureties, and deposit fees. The board must supervise and regulate the bonding business in the county, which includes adopting rules

to regulate the business and issue licenses to qualified applicants.⁷⁷ Under section 1704.251, the board may conduct investigations of license holders in relation to certain complaints of rule violations.⁷⁸

Additionally, under section 1704.105, the board must post in each court with criminal jurisdiction, and provide each local official responsible for detaining individuals, a current list of each licensed bail bond surety and each licensed agent of a corporate surety in the county.⁷⁹

3. Licensing & Requirements

Under the current statutory scheme, with limited exception, a person may not act as a surety or agent of a corporate surety unless the person holds a license issued under Chapter 1704 of the Occupations Code.⁸⁰ According to the specific requirements for license eligibility, the person must: (a) be at least 18 and a resident of Texas and a citizen of the United States; (b) possess the financial resources to comply with section 1704.160, which establishes the security requirements (unless only acting as an agent for a corporation holding a license); and (c) submit evidence that in the two years preceding the license application date, the person has (i) been continuously employed by a person licensed under Chapter 1704 for at least one year and not less than 30 hours per week, not counting annual leave, and has performed jobs that encompass all aspects of bonding, and (ii) completed at least 8 hours of education in criminal law or bail bond law that are approved by the State Bar of Texas and offered by an accredited institution.⁸¹ For a corporation to be licensed, it must be chartered or admitted to do business in Texas and qualified to write bonds under the Insurance Code.⁸² Distinct from Chapter 17 of the Code of Criminal Procedure, an individual is ineligible to be licensed if he or she is convicted of a misdemeanor involving moral turpitude or a felony after August 27, 1973.⁸³

The application and hearing process is codified in sections 1704.154 through 1704.159 of the Occupations Code. The license application includes the following requirements: name, age, and address; if a corporation, whether the applicant is chartered or admitted to do business and qualified to write fidelity, guaranty, and surety bonds under the Insurance Code; the name under which the business will be operated; the place, including address, and municipality where the business will be conducted; and the amount of money that the applicant intends to deposit with the county treasurer if the application is approved, including the value of any real property to be used.⁸⁴ Additionally, if the applicant is an individual, the following requirements apply: a sworn financial statement; a declaration that the applicant will comply with Chapter 1704 of the Occupations Code and the rules adopted by the board; three letters of recommendation; a \$500 filing fee; a photograph of the applicant and a set of fingerprints; and, if the applicant is or has been licensed in another county, a list of each county in which the applicant holds a license and a list of any final judgments arising directly or indirectly from a bail bond that have been unpaid for more than 30 days.⁸⁵ If the applicant is a corporation, the applicant must also provide a statement of any judgment unpaid for more than 30 days arising from any bond executed by the agent as a surety, and it must file a separate corporate application for each agent designated by the corporation in the county.⁸⁶ If an individual is required to list nonexempt real property, the requirements for what must be listed in each parcel described can be found in Occupations Code section 1704.155.⁸⁷

The security regulations are set forth in section 1704.160. They include, among other things: (a) that a deposit be made with the county treasurer in the amount stated on the application under section 1704.154; (b) that the deposit not be less than \$50,000, either money or land value, and that corporations make a separate deposit for each license granted to it; and (c) that trusts

are subject to the condition that property may be sold to satisfy judgment on forfeiture on a bail bond.⁸⁸ It is important to note that the certificate of authority to do business in Texas, issued under section 861.102 of the Insurance Code, to an applicant that is a corporation is conclusive evidence of: (a) the sufficiency of the applicant's security; and (b) the applicant's solvency and credits.⁸⁹

Hearing requirements and application determinations are described in further detail in section 1704.157 through 1704.159 of the Occupations Code.

4. Suspensions, Revocations, & Prohibited Conduct

Rules governing license suspension and revocations, including mandatory suspensions, notice and hearings, and appeal and judicial review, are governed by sections 1704.252 through 1704.257 of the Occupations Code. Additionally, sections 1704.302 through 1704.306 delineate certain prohibited behavior and conduct that constitute a criminal offense. Furthermore, under section 1704.302, certain penalties also apply to people who are not bondsmen but who make a referral for a fee/payment.

5. Attorney Exemptions

Under section 1704.163 of the Occupations Code, attorneys are exempt from the foregoing licensing requirements. A person not licensed may execute a bail bond or act as a surety if the person is licensed to practice law and files a notice of appearance as counsel of record in the case for which the bond was executed.⁹⁰ The official taking bond may still inquire as to the sufficiency of the security of an attorney who posts bond for one of his or her clients. An attorney is subject to the financial requirements under Chapter 17 of the Code of Criminal Procedure.⁹¹ The attorney privilege to write bonds may be revoked based on misconduct.

6. Acceptance of Bonds

Under Chapter 1704 of the Occupations Code, a sheriff must accept a bond from a licensed surety executed in accordance with Chapter 1704 and the rules of the bail bond board, provided the bond is for a county or district case.⁹² Importantly, the sheriff may not accept bond from a bondsman not licensed in that county. This applies, for example, to a family member of a principal who wants to post a property bond on his or her behalf – unless that person is licensed or an attorney.⁹³

7. Bail Bond Limits

There are various limitations on a surety, and a person who holds a license is limited based on the date of licensure. Those licensed prior to September 1, 1999 may write bonds that equal up to ten times the value of the security they posted. On the other hand, individuals licensed after September 1, 1999 may have greater limitations on writing bonds, as laid out in section 1704.203 of the Occupations Code. The formula for limitations and the value that a license holder may execute is set forth in statute and largely based on the security deposited.⁹⁴

8. Provisions of Surrender

The surrender provisions in bail bond board counties are distinguishable from those in Chapter 17 of the Code of Criminal Procedure. A surety may surrender a principal (defendant) by notifying the principal's attorney of the person's intention to surrender the principal in accordance with Rule 21a of the Texas Rules of Civil Procedure, and filing an affidavit with the court or magistrate stating: (A) the intention to surrender the principal; (B) the court and cause number of the case; (C) the name of the defendant; (D) the offense; (E) the date of the bond; (F) the reason for surrender; and (G) that notice has been provided to the principal.⁹⁵

Surrender may be contested if a challenge to reasonable cause for the surrender is raised. If surrender is contested, and a court determines it was without reasonable cause, the court may require the person who executed the bond and surrendered the principal to refund the principal any fees.⁹⁶

9. Return of Security to Principal (Defendant)

Occasionally a surety will retain something of value from the principal to ensure payment or appearance in court. Even if the bondsman does not take collateral, he or she will usually have the person contacting them about the defendant sign a form that indemnifies the surety. While the surety is still liable to the court for the bail, the family/friend/defendant may still be responsible to the bondsman for the full bail amount. A surety may not hold security for more than 30 days after the date on which the owner of the security requests return of the security, and submits to the bail bond surety written evidence of the conclusion of either the payment agreement or all criminal cases for which the security was given.⁹⁷

ENDNOTES

- ¹ See VanNostrand, Marie, Ph.D., *Legal and Evidence-Based Practices: Applications of Legal Principles, Laws, and Research to the Field of Pretrial Services*, for the Crime and Justice Institute and the National Institute of Corrections, April 2007, pp. 5-10.
- ² “The Constitution of the United States,” Amendment 8.
- ³ Texas Commission on Jail Standards, *Texas County Jail Population*, January 1, 2012; of 61,540 total inmates in Texas’ county jails, 35,685 individuals, or 58%, are designated as pretrial (Felons, Misdemeanant, State Jail Felon).
- ⁴ Under the Code of Criminal Procedure, Article 26.04(m), the ability to make bail is not supposed to be a consideration in eligibility for an appointed attorney.
- ⁵ Burdeen, Cherise Fanno, PJI, *Jail Population Management: Elected County Officials’ Guide to Pretrial Services*, Sept. 2009, p. 8.
- ⁶ Commissioners Courts are a governing body of each county. As the Travis County Commissioners Court website explains, “As a group, the commissioners and county judge are the chief policy-making and administrative branch of county government. Among their many functions, the court sets the tax rate, determines fees for many county services, and determines how the collected revenues will be distributed among different county departments to provide services to the community.” available at http://www.co.travis.tx.us/commissioners_court/. There are four commissioners and a presiding officer, usually a judge. The statutory authority for the establishment of a Commissioners Court can be found in section 18, Article V of the Texas Constitution.
- ⁷ TEX. CODE CRIM. PROC. art. 17.42. **Note:** Personal bonds are often referred to as “personal recognizance bonds.”
- ⁸ *Id.* art. 17.42 § 4(a).
- ⁹ TEX. GOV. CODE § 509.011(b)(1).
- ¹⁰ *Id.* § 76.011 (funding for this programs is also provided under 76.011(b), providing that “The department may use money deposited in the special fund of the county treasury for the department under Article 103.004(b), Code of Criminal Procedure, only for the same purposes for which state aid may be used under this chapter.”).
- ¹¹ See Tex. S.B. 880, 82nd Leg., R.S. (2011), available at <http://www.legis.state.tx.us/BillLookup/Text.aspx?LegSess=82R&Bill=SB880>.
- ¹² TEX. CODE CRIM. PROC. art. 17.42 § 5. **Note:** this does not apply to a personal bond pretrial release office that, on 1 January 1995 was operated by a CSCD.
- ¹³ *Id.* art. 17.42 § 6.
- ¹⁴ See Travis County Pretrial Services website at http://www.co.travis.tx.us/pretrial_services/new_pages/pretrial_overview.asp.
- ¹⁵ See *Id.* at http://www.co.travis.tx.us/pretrial_services/pdfs/Pretrial_Overview.pdf.
- ¹⁶ See Harris County Pretrial Services at <http://www.hctx.net/Pretrial/faq.aspx>; Tarrant County Pretrial Services at <http://www.tarrantcounty.com/ePretrial/site/default.asp>. Check other county websites for additional information.
- ¹⁷ Davis, Robert S., *Bail Bond Handbook for Texas Counties*, for the Texas Association of Counties, Jan. 2012, pp. 42-43; Tex. Occ. Code § 1704.052.
- ¹⁸ Davis, *Bail Bond Handbook*, *supra* note 17, at 42.
- ¹⁹ *Id.* at 1.
- ²⁰ See TEX. CODE CRIM. PROC. art. 17.01.
- ²¹ *Id.*; see also TEX. CODE CRIM. PROC. art. 17.02.
- ²² TEX. OCC. CODE § 1704.001; see also TEX. CODE CRIM. PROC. art. 17.02, providing in part: “A ‘bail bond’ is a written undertaking entered into by the defendant and his sureties for the appearance of the principal therein before some court or magistrate to answer a criminal accusation; provided, however, that the defendant upon execution of such bail bond may deposit with the custodian of funds of the court in which the prosecution is pending current money of the United States in the amount of the bond in lieu of having sureties signing the same.”
- ²³ See e.g., Harris County Bond Schedule at <http://www.justex.net/BailBondSchedule.aspx>.

²⁴ TEX. CODE CRIM. PROC. art. 1.07.

²⁵ TEX. CONST. art. I, §§ 11-11c.

²⁶ TEX. CONST. art. I, §§ 11-11c; Adam M. Gershowitz, Professor, University of Houston Law Center, in email correspondences to Travis Leete, Texas Criminal Justice Coalition, March 2012; also Adam M. Gershowitz, *Draft notes from “A Brief Overview of the Constitutional and Statutory Law of Bail and Pre-Trial Detention in Texas,”* prepared for forthcoming presentation, March 2012 (information gleaned from Professor Gershowitz’s discussion and notes regarding an upcoming presentation on the subject matter).

²⁷ TEX. CODE CRIM. PROC. art. 17.152-153.

²⁸ TEX. CONST. art. I, § 11a.

²⁹ TEX. CODE CRIM. PROC. art. 17.291. **Note:** A magistrate may also issue an order for emergency protection in cases involving family violence, see TEX. CODE CRIM. PROC. art. 17.292.

³⁰ *Id.* art.15.17.

³¹ Davis, *Bail Bond Handbook*, *supra* note 17, at 2. Texas Code of Criminal Procedure, Article 2.09, provides, for the purposes of setting bond and performing other duties of a magistrate:

Each of the following officers is a magistrate within the meaning of this Code: The justices of the Supreme Court, the judges of the Court of Criminal Appeals, the justices of the Courts of Appeals, the judges of the District Court, the magistrates appointed by the judges of the district courts of Bexar County, Dallas County, or Tarrant County that give preference to criminal cases, the criminal law hearing officers for Harris County appointed under Subchapter L, Chapter 54, Government Code, the criminal law hearing officers for Cameron County appointed under Subchapter BB, Chapter 54, Government Code, the magistrates appointed by the judges of the district courts of Lubbock County, Nolan County, or Webb County, the magistrates appointed by the judges of the criminal district courts of Dallas County or Tarrant County, the masters appointed by the judges of the district courts and the county courts at law that give preference to criminal cases in Jefferson County, the magistrates appointed by the judges of the district courts and the statutory county courts of Brazos County, Nueces County, or Williamson County, the magistrates appointed by the judges of the district courts and statutory county courts that give preference to criminal cases in Travis County, the criminal magistrates appointed by the Brazoria County Commissioners Court, the county judges, the judges of the county courts at law, judges of the county criminal courts, the judges of statutory probate courts, the associate judges appointed by the judges of the statutory probate courts under Subchapter G, Chapter 54, Government Code, the associate judges appointed by the judge of a district court under Subchapter II, Chapter 54, Government Code, the justices of the peace, and the mayors and recorders and the judges of the municipal courts of incorporated cities or towns.

³² TEX. CODE CRIM. PROC. art. 1.09.

³³ *Id.* art. 17.15.

³⁴ *Id.* art. 17.08.

³⁵ *Id.* art. 17.04.

³⁶ These offenses include the following: (1) Section 481.121, Health and Safety Code, if the offense is punishable under Subsection (b)(1) or (2) of that section (A or B possession marijuana); (2) Section 481.1161, Health and Safety Code, if the offense is punishable under Subsection (b)(1) or (2) of that section; (3) Section 28.03, Penal Code, if the offense is punishable under Subsection (b)(2) of that section (Class B criminal mischief); (4) Section 28.08, Penal Code, if the offense is punishable under Subsection (b)(1) of that section (Class B graffiti); (5) Section 31.03, Penal Code, if the offense is punishable under Subsection (e)(2)(A) of that section (Class B theft); (6) Section 31.04, Penal Code, if the offense is punishable under Subsection (e)(2) of that section (Class B theft of service); (7) Section 38.114, Penal Code, if the offense is punishable as a Class B misdemeanor (contraband in a correctional facility); or (8) Section 521.457, Transportation Code (driving while license invalid).

³⁷ TEX. CODE OF CRIM. PROC. art. 14.06.

³⁸ *Id.* art. 17.09.

³⁹ *Id.* art. 17.091.

⁴⁰ Davis, *Bail Bond Handbook*, *supra* note 17, at 2; TEX. CODE CRIM. PROC. art. 14.06, 15.17.

⁴¹ Davis, *Bail Bond Handbook*, *supra* note 17, at 3,8 (citing *County of Riverside v. McLaughlin*, 500 U.S. 44, 55-57, 111 S.Ct. 1661 (1991); *United States v. Adekunle*, 2 F.3d 559, 561 (5th Cir. 1993)). *County of Riverside v. McLaughlin* and its progeny establish the precedent that the Fourth Amendment requires a prompt determination of probable cause following a warrantless arrest.

⁴² *Id.* at 7; TEX. CODE CRIM. PROC. art. 17.22.

⁴³ TEX. CODE CRIM. PROC. art. 17.151 § 1.

⁴⁴ *Id.* art. 17.151 § 2.

⁴⁵ *Id.* art. 17.033(b).

⁴⁶ Texas Code of Criminal Procedure, Article 16.22 requires the sheriff, “not later than 72 hours after receiving credible information that may establish reasonable cause to believe that a defendant committed to the sheriff’s custody has a mental illness or is a person with mental retardation,” to notify the magistrate, whereupon the magistrate must, with limited exception, order the local mental health authority to gather more information and conduct and assessment of the defendant.

⁴⁷ TEX. CODE CRIM. PROC. art. 17.05.

⁴⁸ Davis, *Bail Bond Handbook*, *supra* note 17, at 25; TEX. CODE CRIM. PROC. art. 17.20-22.

⁴⁹ TEX. CODE CRIM. PROC. art. 17.26.

⁵⁰ *Id.* art. 17.27.

⁵¹ *Id.* art. 17.33.

⁵² Davis, *Bail Bond Handbook*, *supra* note 17, at 9.

⁵³ Sometimes this is referred to as a personal recognizance bond, but this is not technically accurate for Texas.

⁵⁴ TEX. CODE CRIM. PROC. art. 17.03.

⁵⁵ Davis, *Bail Bond Handbook*, *supra* note 17, at 11; TEX. CODE CRIM. PROC. art. 17.06.

⁵⁶ TEX. CODE CRIM. PROC. art. 17.06.

⁵⁷ **Note:** individual sureties can post bond in bail bond board counties as well. In many instances, individual sureties are referred to as property bondsmen because, unlike agents for a corporate surety, the individual posts his/her own assets to write against.

⁵⁸ TEX. CODE CRIM. PROC. art. 17.10.

⁵⁹ Davis, *Bail Bond Handbook*, *supra* note 17, at 12-13 (citing TEX. CODE CRIM. PROC. art. 17.11-17.14; Att’y Gen. No. DM-105 (1998)).

⁶⁰ *Id.* at 12.

⁶¹ See TEX. CODE CRIM. PROC. art. 17.11-14.

⁶² *Id.* art. 17.12.

⁶³ *Id.* art. 22.01-22.18.

⁶⁴ Davis, *Bail Bond Handbook*, *supra* note 17, at 26.

⁶⁵ TEX. CODE CRIM. PROC. art. 17.16.

⁶⁶ *Id.* art. 17.17-18.

⁶⁷ *Id.* art. 17.40.

⁶⁸ *Id.* art. 17.032(d).

⁶⁹ *Id.* art. 17.292, 17.41, 17.46, 17.49.

⁷⁰ *Id.* art. 17.03(c).

⁷¹ TEX. OCC. CODE §§ 1704.002-1704.052.

⁷² *Id.* § 1704.001(2), (5).

⁷³ *Id.* § 1704.001(4).

⁷⁴ *Id.* § 1704.053, providing: (a) the sheriff or a designee; (b) a district judge with jurisdiction over criminal matters or designee; (c) the county judge, a member of the Commissioners Court designated by the county judge, or a designee approved by the Commissioners Court; (d) a judge of a county court or court at law having jurisdiction over criminal matters, or a designee; (e) the district attorney or assistant district attorney; (f) a licensed bail bond surety or agent for a corporate surety in the county elected by the board, or a bail bond surety or agent licensed in the county who is designated by the elected surety or agent; (g) a justice of the peace; (h) the district clerk or clerk's designee, if the county clerk has responsibility over criminal matters; (i) the county clerk or designee; (j) if appointed by the board, a presiding judge of a municipal court; (k) if the county's principal municipality designates a presiding judge in the municipal court, the presiding judge or a municipal judge appointed by the presiding judge; (l) the county treasurer or designee, or person appointed by Commissioners Court if the county does not have a treasurer; and (m) a criminal defense attorney practicing in the county.

⁷⁵ See TEX. OCC. CODE §§ 1704.0535 and 17.054 respectively.

⁷⁶ See *Id.* §§ 1704.101-1704.109. Additionally, the regulatory authority of the bail bond board is limited to those powers enumerated in statute, see also Davis, *Bail Bond Handbook*, *supra* note 17, at 47 fn. 20 (citing Tex. Att'y Gen. No. JM-1057 (1989)).

⁷⁷ TEX. OCC. CODE § 1704.101. Bail bond boards may adopt their own rules to govern the bail bond business. For an example of the rules adopted, see the Harris County Bail Bond Board website at <http://www.hctx.net/cmpdocuments/37/localrules/localrules.pdf>.

⁷⁸ TEX. OCC. CODE § 1704.251.

⁷⁹ *Id.* § 1704.105.

⁸⁰ *Id.* § 1704.151.

⁸¹ *Id.* § 1704.152(a).

⁸² *Id.* § 1704.152(b).

⁸³ *Id.* § 1704.153.

⁸⁴ *Id.* § 1704.154.

⁸⁵ *Id.* § 1704.154.

⁸⁶ *Id.* § 1704.154.

⁸⁷ TEX. OCC. CODE section 1704.155 provides that a list of nonexempt real property, if being used as part of its deposit trust must include: A legal description of the property; a statement from all taxing units showing there are no tax liens against the property; the property value either by real estate appraiser or statement from county certified tax appraisal roll; a statement that, while the property remains in trust, the applicant agrees to continue paying taxes on the property or further encumber it and maintain insurance on improvements against damage or destruction; and a statement whether the applicant is married and, if so, a statement from the spouse agreeing to transfer the property to the board.

⁸⁸ TEX. OCC. CODE § 1704.160.

⁸⁹ *Id.* § 1704.160.

⁹⁰ *Id.* § 1704.163.

⁹¹ See Davis, *Bail Bond Handbook*, *supra* note 17, at 60 (citing Op. Tex. Att'y Gen. No. DM-483 (1998); Op. Tex. Att'y Gen. No. JC-0277 (2000)).

⁹² *Id.* at 61; TEX. OCC. CODE § 1704.201.

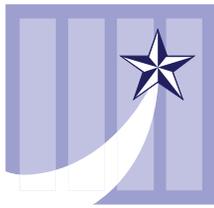
⁹³ Davis, *Bail Bond Handbook*, *supra* note 17, at 61 (citing Op. Tex. Att'y Gen. No. DM-59 (1991)).

⁹⁴ See *Id.* at 64; TEX. OCC. CODE § 1704.203.

⁹⁵ TEX. OCC. CODE § 1704.207(a).

⁹⁶ *Id.* § 1704.207(b), (c).

⁹⁷ *Id.* § 1704.301.



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