

LOCAL PROCEDURAL RULES

CRIMINAL CASES

LUBBOCK COUNTY, TEXAS

(As Amended Dec. 2004 for year 2005)

As Adopted by the Board of Judges

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LUBBOCK COUNTY, TEXAS, AS ADOPTED BY THE BOARD OF JUDGES

LOCAL FAIR DEFENSE ACT, 15.17 PROCEDURES- All informal rules and guidelines for attorneys, courts and court staff as maintained pursuant to the original filing instructions of the Texas Task Force on Indigent Defense with the Central Office of Court Administration of Lubbock County pursuant to Local Administrative Rule 10.30.

I. Article 15.17 Hearings-

(A) MAGISTRATES

(1) The Lubbock County Magistrates shall when not in conflict with laws and their oath follow the Local Fair Defense Act Rules, these local procedures, and the Magistration Manual/Handbook of Lubbock County.

(2) The Lubbock County Magistrate designated by the Board of Judges to coordinate scheduling and billing of the 15.17 hearings on nights, weekends, and holidays for fiscal year 2005 is Judge Pat Moseley.

(3) 15.17 hearings are conducted by the Magistrate at the Lubbock County Jail in the designated secure facility courtroom. Access to an attorney representing the accused is not denied at the hearings. Family may have access to the magistrate.

(4) The hearings are scheduled and coordinated every day of the year. In order to meet the needs of the Fair Defense Act and Lubbock County, the schedule is:

(1) On days when the Courthouse is open, 8:00 A.M. and 1:00 P.M., or at least once daily as necessary.

(2) Weekends at 9:00 A.M. and 9:00 P.M., or at least once daily as necessary.

(B) Sheriff's Office-

(1) The Sheriff's Office and Jail coordinates the arrangement for accessibility of attorneys and the courts to inmates and defendants and the booking and processing of defendants.

(2) Reasonable requests for information about defendants by attorneys and access of defendants to their attorneys as required by law and regulations is observed by the Sheriff's office.

(3) The Sheriff's Office follows the procedures and adheres to the procedures in the Local Fair Defense Act Rules, these local procedures, and "Magistration Manual/Handbook and Easy Steps" prepared for the guidance of all involved with the Article 15.17 process with a spirit of cooperation and understanding.

(4) To assist the attorneys in fulfilling their responsibilities to their clients and the Courts, and to comply with the Fair Defense Act, the Sheriff's Office arranges for private visitation and access by attorneys to clients obtainable by calling the attorney visitation coordinator.

(5) Attorney "contact" letters and correspondence are delivered promptly with due regard to security and rights of the defendant and all reasonable effort is made for delivery to inmates of all legal correspondence and documents from attorneys and the Courts. The correspondence or documents will be delivered by the Sheriff to the inmate within 24 hours of receipt.

(6) "Booking" assists the Courts by entering all cause numbers, printing commitment, requests for attorney, and financial information forms through the County computer system and in the event of computer failure uses the hard copy of commitment, request for attorney, and financial information forms and all other forms necessary for 15.17 hearings.

(C) The 15.17 Hearing -

The 15.17 hearing is conducted by the Magistrate. It is the responsibility of the Judge to perform all judicial duties.

(1) At the hearing the Judge shall be provided by the sheriff's office a copy of all reports, booking sheet, N.C.I.C./CCH, commitment forms, request for attorney and financial information forms, and records of the jail of mentally ill or impaired inmates.

(2) The District Attorney reviews all on-view arrest reports to obtain

information for processing of criminal charges through the District Attorney's office, assists the Magistrate with county record checks on defendants including the D.A. records, and consults with defense attorneys who appear. In the event there is no district attorney available at the 15.17 hearing the Magistrate shall conduct the hearing and leave the information on "on-view" arrests on the form provided by the District Attorney's office in the secure place designated by the District Attorney in the magistrating room.

(3) The Magistrate shall be allowed access to "case analysis" or "JBK", with the assistance of the D.A. and/or Sheriff's office, and access to the records of all warrantless arrest defendants presented at 15.17 hearings.

(4) The Magistrate shall set bond in accordance with the Texas Constitution and Code of Criminal Procedures.

(5) The Magistrate may consider if the defendant is on probation in setting the amount of bond on a new arrest, "on-view," charges.

(6) The Magistrate shall conduct the hearing in compliance with the Texas Code of Criminal Procedure, Article 15.07 of the C.C.P, the Lubbock Fair Defense Act Rules, these local procedural rules, and the Lubbock County Magistration Manual/Handbook (prepared for guidance by the Lubbock County Magistrate's office about the 15.17 process and Fair Defense Act Procedures).

(7) The Magistrate shall complete all forms regarding requests for attorney and financial information, commitment forms, conditions of bonds, EPO's, and log sheets.

(8) All documents and log sheets should be left at a designated place in the jail "arraignment" room for transmission to the Lubbock County Magistrate office.

(9) If teletypes from other counties are not clear as to court, bond recommendation, or denial of bond the Magistrate will fill out a request for clarification form for the jail personnel to FAX back. The Magistrate should not sign the commitment until response is received back. If there is a Fair Defense Act time problem, the Magistrate shall fill out the commitment in compliance with their oath, C.C.P. and Constitution of the State of Texas. All request for attorney forms for out-of-county cases are directed to the Lubbock County Magistrate whose office is responsible for forwarding to the designated

appointing judge of the court or county.

(10) Evidence of any failure by law enforcement officers to comply with Article 14.06, 15.16, and 15.17 of the Code of Criminal Procedure and the Local Criminal Fair Defense Act Rules should be copied and the complete set of documents that were presented to the Magistrate, if possible, should be delivered to the Lubbock County Magistrate Office for transmission of the same to the Board of Judges.

(D) Persons to be taken directly to the Lubbock Magistrates for Article 15.17 hearings are:

- (1) All warrants and capias (including out-of-county “teletypes”).
- (2) All “on-view,” arrests without warrant.
- (3) Applications to revoke probation or motion to proceed. Art.42.12(2)(b) Code of Criminal Procedure requires these be taken to the judge issuing the warrant on the revocation, but the Lubbock practice is to take to the magistrate.
- (4) Capias pro fine warrants if they are contesting identity (one and the same) or contesting the amount owed or who need to be advised of their rights to file habeas corpus with the trial court.

(E) Persons who are not to be taken to the magistrate for 15.17 hearings are:

- (1) Persons on out-of-state warrants (extraditions).
- (2) Federal arrestees.
- (3) Child support contempt (Judge of the Court and Court Coordinator is notified).
- (4) Civil contempt or attachments - follow the order of the court and contact the court coordinator of the court issuing the order.

(F) Bail will be set and conditions imposed on all warrantless arrests by the magistrate following the Texas Constitution and Code of Criminal Procedure. Bail will be set on a warrant or capias for which there is not a bond set and noted on the warrant or capias, or other order by the court, by the magistrate at 15.17 hearings.

(G) On all warrants and capias for which bond amount appears on the warrant or capias, the 15.17 hearing may be waived by the accused with an attorney, by the accused and the attorney signing a written waiver of 15.17 hearing that is in substantial compliance with the form filed with these local procedural rules, and presented to the

jail desk who shall release the defendant on bond without awaiting the next 15.17 hearing..

(H) Signs shall be posted in the booking area of the jail and the magistrate 15.17 hearing room explaining the procedures for requesting a court appointed attorney and a financial information form. The approved brochure regarding Rights of Accused printed by the LCCLA may be distributed in the booking area, as well as Drug Court information booklets.

(I) Written Explanations of 15.17 hearings will be furnished by the magistrate to any deaf person if an interpreter is unavailable that complies with the law, if there is ever a 24 to 48 hour problem approaching under the Fair Defense Act with the deaf person. The Magistrates are advised of the procedures for obtaining interpreters for the deaf and should call the Lubbock County Magistrate office or otherwise advise the office of a need for an interpreter or on weekends call the interpreter service directly.

(J) Nothing in these local procedures shall in any way prohibit or in any way interfere with the authority of any magistrate or judge to alter the amount of or add to or amend the conditions of the bond of any accused as provided by the Texas Code of Criminal Procedure or in any way interfere with the authority of any judge pursuant to the Texas Code of Criminal Procedure to amend or revoke bond on any case filed or that is subsequently filed in his or her court.

III. Administrative Procedures: (where things go for Magistrates, Lubbock County Magistrate's staff and Coordinators)

(A) All forms, documents, magistrate log sheets, orders, conditions of bond, Request for Attorney and Financial Information Forms and Emergency Protective Orders are transmitted to the Lubbock County Magistrate's Office as follows.

(1) Request for Attorneys Forms:

All requests for attorney forms are left by the magistrate with the log sheets in the Jail Magistrate/Arrestment Room for the appropriate court in the designated file. The Lubbock County Magistrate's staff collects all forms at the beginning of the next working business day for immediate distribution to the appropriate court coordinator.

(2) Conditions of Bond:

Give the defendant their copy. The original and other copy is for the Court Coordinator and Pre-Trial Services. Put with the log sheets.

(3) Interlock Orders:

Give the defendant their copy, and put the original and balance of the copies with the log sheets.

(4) Emergency Protective Orders:

(1) Make six (6) copies.

(2) Give the defendant their copy and leave a copy for the Sheriff's office with the jail marked for Sheriff's office.

(3) The original and balance of copies - leave with the log sheets and the Lubbock County Magistrate's Coordinator will mail a copy to the victim and a copy to the Police Department with a cover letter.

(B) The Lubbock County Magistrate's staff are to pick up this paperwork every working business day: the log sheets, E.P.O.s, Conditions of Bonds and the Request for Court Appointed Attorneys forms. The Magistrate's office distributes all as follows:

(1) E.P.O. -

(a) Original is filed with the log sheet at the County Court Arraignment Coordinator (the designated custodian of magistrate "pre-filing" documents) who matches up the documents to the case as filed in the Clerk's office when the case is filed or indicted.

(b) The Magistrate Court Coordinator mails, with cover letters, a copy to the victim and a copy to the Police Department of the City.

(2) Interlock Orders -

(a) all copies go to the County Court Arraignment Coordinator, who matches the original to the case file at the Clerk's office when the case is filed. A copy goes to the Interlock people and a copy to Pre-Trial Services.

(3) Conditions of Bond -

Original copy goes to County Court Arraignment Coordinator. The pink copy goes to Pre-Trial if ordered to Pre-Trial. The original stays with the log sheet with the County Court Arraignment Coordinator to “match up” to the case file number.

(4) The Magistrate Coordinator will make copies of the log sheets and all the above to be kept in order by month in the Magistrate’s office. Originals go to County Court Arraignment Coordinator for maintenance thereof and to match with case filings in District or County Court clerks.

(5) The “Request for Attorney” form - This is an official form that along with the Commitment Sheet is Lubbock County’s record of compliance with the Fair Defense Act and Article 15.07 procedures.

(a) If the defendant at 15.17 hearing signs the request form that they do not request a court appointed attorney, it is to be routed to the Lubbock Magistrate’s Office to direct to the appropriate court along with the forms signed requesting an attorney.

(b) Request for Attorney forms and financial information sheets are to be kept by the Magistrate and placed with the log sheet in the magistrate/arraignment room.

(1) Every work day the magistrate’s staff will pick up all the logs, etc., including the request for attorney forms.

(2) The request forms will be delivered immediately, the date received, to the Court Coordinator in which the case is filed if County Court at Law or District Court according to the established procedures.

(3) On warrant, without warrant cases, on all other District Court indictments or A.R.P.’s referred by the courts, and J.P. felony arrest warrants, the Lubbock County Magistrate shall appoint an attorney within three (3) days of the request if the defendant has not been released from jail per the Local Rules and the Fair Defense Act. The County Court Arraignment Coordinator will operate the revolving list appointment system for misdemeanor, only, cases. The Magistrate’s coordinator will do all others, including lesser offenses. All JP arrest warrants and “on view” arrests who make bond are to go to the Lubbock County Magistrate, designated appointing judge, for appointment of an attorney prior to indictment or case filing.

(C) Steps for Magistrate Coordinator and County Court Arraignment Coordinator -

- (1) Each day after 8:00 am and 1:00 pm the Magistrate Coordinator or County Court Arraignment Coordinator (time off needs to be coordinated or substitute coordinators lined up), will pick up and distribute the request for forms. The Magistrate Coordinator is primarily responsible.
- (2) The Magistrate Coordinator will immediately, within a reasonable time before the end of the working business day, deliver the requests received on filed cases in which adversarial proceedings have been initiated, to the court coordinator for that court or designated appointing judge.
- (3) “On-Views” and Indictments, A.R.P.’s as designated above, and J.P. felony warrants:
 - (a) The Magistrate Coordinator shall, the third day from the date the defendant is arrested and brought into county jail (weekends are done on Monday) pull up each defendant on case analysis or active jail list. If the defendant is shown as “in jail” the coordinator shall:
 - (1) Appoint an attorney off the rotating list under the direction of the Designated Appointing Judge:
 - (2) Create orders appointing an attorney and order to report to pre-trial.
 - (3) Call the attorney appointed and leave the name and case number immediately when appointment is made. If the attorney is not immediately available to accept the appointment and timely assume the responsibilities of representation (i.e. contact and interview the defendant within the time period provided in the Fair Defense Act and Local Rules and Procedures), the Magistrate Coordinator should advise the Appointing Judge and go to the next qualified attorney on the revolving list.
 - (4) Mail a copy of the appointment order to the attorney with a standard cover letter the day of the appointment.
 - (5) Take copies of appointments of attorney and “order to report to pre-trial” to the jail to be delivered to the defendant by procedures established with the jail.
 - (6) Take original orders to the District Court Coordinators to make entries on case analysis. (This is done by computer.)
 - (7) Take originals on “On-Views” and J.P. warrants to the County Court Arraignment Coordinator to enter on case analysis the day of appointment. (This is done by computer.)

IV. Arraignments:

(A) Arraignments for all defendants not on bond should be conducted within 10 days of indictment and/or filing of information and complaint by the courts or referral to the Lubbock County Magistrate.

(1) At arraignment the judge will be provided the Request for Attorney Form and Financial Information sheet for review and orders by the court.

(2) All evaluations and reevaluations of indigence are conducted in compliance with the Fair Defense Act and Code of Criminal Procedure.

(3) Indigence determination is made in compliance with the Fair Defense Act and the local rules.

(4) "In jail" is sufficient basis to appoint attorney unless they show liquid assets on financial forms.

(B) All defendants receiving court appointed attorneys are ordered to the Pretrial Services Program in the event they make bond.

(C) All pending cases in Lubbock County are presented to the judge at arraignment by the court coordinator. A court appointed attorney shall be appointed to all cases in accordance with the local rules and Fair Defense Act.

(D) Orders appointing attorneys shall have:

(1) Address and telephone number of attorney.

(2) The charge against the defendant.

(3) Time of order.

(4) Statement of good cause for variance from appointment rotation list, if applicable.

(E) The "Appointing Judge" of Lubbock County shall appoint lawyers on persons requesting an attorney on all "on-view" arrests, without warrant charges, and J.P. warrants in accordance with the local rules.

(F) The Lubbock County Magistrate Court Coordinator shall perform the duties set forth in these rules and the written outline of responsibilities attached.

(G) All Court Coordinators shall:

(1) Immediately enter all appointments and orders on the Lubbock County computer system.

(2) Immediately contact the lawyer appointed orally.

(3) Direct copies of all orders of defendants in jail to the defendants.

(4) Mail copies of all orders to the attorney.

(5) When the appointed attorney is contacted, immediately advise of the defendant's name, cause number, amount of bond, and if the defendant is in jail or out.

(6) Advise the court immediately if a lawyer, when contacted, cannot make immediate contact with the defendant and interview the defendant

within reasonable time in order that judge may appoint next available lawyer on the list.

V. The computer program for compliance with the Fair Defense Act is:

- (1) At booking - all entries for numbers are made and go directly into case analysis and JBK.
- (2) All forms- Commitment, Request for Attorney and Financial Information sheet print from entries at booking .
- (3) The system provides that:
 - (1) When appointment of attorney is made - all printed order forms print out.
 - (2) The list moves to the next qualified attorney.
 - (3) All database on fees paid to each attorney goes to retrieval system.

V. Responsibilities of appointed counsel - To enter an appearance and comply with the Code of Criminal Procedure, Fair Defense Act, and the Local Rules.

Responsibilities of retained counsel - Enter an appearance with the court coordinator the day retained and follow the Local Rules and Code of Criminal Procedure.

VII. Procedures for contacting client -

- (1) Contact letters may be delivered to jail for delivery to client within 24 hours of delivery to jail desk or other place designated by sheriff or by mail to clients who are out on bond.
- (2) Arrange an interview at jail with the client in custody immediately, consistent with the Fair Defense Act. Arrange an interview at the attorney's office immediately for defendants not in jail.
- (3) If an attorney has been appointed and the client has made bond, contact the jail desk or pretrial for the client's address.

VIII. Pretrial Services Program.

The Pre-Trial Services Department shall:

- (1) Assist the courts with Pre-Trial Release of persons on bond and all defendants ordered to pretrial with Conditions of Bond to report to Pre-Trial Services.
- (2) Assist the court with financial evaluations and reimbursement of court appointed fee orders made by the court.
- (3) Prepare the Order to Show Cause form and Show Cause and present to the coordinator for the Court to set for hearing all persons not complying with

conditions of bond. Pretrial will notify the bondsman and defendant by mailing a copy of the Application and Order to Show Cause to the defendant and notifying the bondsman of hearing date and time.

(4) Prepare the bonds and administer the release on personal bond with condition to report to pre-trial program. Upon order of a judge, the Pre-Trial Release Program will prepare the bond and make the personal bond of the defendant with any condition imposed by the judge. Pre-Trial will work with the sheriff's "court-jail" coordinator in identifying eligible defendants in the jail for the program. Personal bonds are not to be used for sex offenses, aggravated cases, DWI, protective orders or persons with history of multiple criminal convictions or bond forfeitures.

IX. Mentally Impaired:

(1) The mentally impaired are identified upon arrest by the MHMR program at the jail.

(2) Only lawyers qualified to assist and represent mentally impaired individuals will be appointed.

(3) Pre-Trial Services will assist the courts on Pre-Trial diversions of mentally impaired.

(4) The courts will divert all diagnosed mentally impaired according to the laws and Code of Criminal Procedures of Texas.

X. These Local Procedures may be amended, changed or revised by majority vote of the Criminal District Courts and the County Courts at Law.

Originally ADOPTED AND APPROVED 2002, as amended 2004, by the Board of Judges, Lubbock County.

These procedures and the forms are maintained along with the local rules by the respective Court Coordinators of the Courts and centralized in the Office of Court Administration office pursuant to Local Administrative Rule 10.30.

FORMS:

- (1) Local and Procedural Rules, Criminal Cases
- (2) Fee Order and request for pay
- (3) Arraignment Order
- (4) Report to Pre-Trial
 Out on bond
 In jail if make bond
- (5) Commitment form
- (6) Request for Attorney form
- (7) Financial Information form
- (8) Cover letters re appointment
- (9) Conditions of Bond form
- (10) Order to Show Cause and Application form
- (11) Magistrate Manual
- (12) Resolution of the Board of Judges, May 22, 2001
- (13) Local Procedural Rules
- (14) Instructions to Magistrate Coordinator
- (15) Local D.C.M. draft
- (16) Order on Request for Attorney
- (17) Order of Appointment of attorney form
- (18) Magistrate Court Coordinator Duties and Responsibilities

- (19) Current Court Appointed Attorney list - hard copy posted as required
- (20) Current Court Appointed
Attorney list for Capital Death Cases - hard copy posted as required
- (21) Model Procedure for Appeal of Disapproval of Requested Counsel Fee