

Recommended Practice for Maintaining Magistration Data

The Fair Defense Act requires that magistration is conducted without unnecessary delay, but not later than 48 hours after the person is arrested. At magistration, the arrestee is to be informed in clear language of the following:

- the accusation against him/her and of any affidavit filed;
- the right to retain counsel;
- the right to remain silent;
- the right to have an attorney present during any interview with peace officers or attorneys representing the state;
- the right to terminate the interview at any time;
- the right to have an examining trial; and
- the person's right to request the appointment of counsel if the person cannot afford counsel.

The magistrate is to inform the person arrested of the procedures for requesting appointment of counsel. If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate. The magistrate is to ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. Tex. Code Crim. Proc. Art. 15.17(a). If the arrestee requests appointed counsel, the arrestee is required to complete under oath a questionnaire concerning his financial resources. Tex. Code Crim. Proc. Art. 26.04(n).

Tex. Code Crim. Proc. Art. 15.17(e) requires a record of magistration proceedings which includes:

- (1) the magistrate informing the person of the person's right to request appointment of counsel;
- (2) the magistrate asking the person whether the person wants to request appointment of counsel; and
- (3) whether the person requested appointment of counsel.

Section (f) allows this record to consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Article 26.04(a).

For all persons magistrated for Class B or Class A misdemeanors and/or any level of felony, it is recommended that the magistrate's warning form containing the three data elements listed above be centrally maintained in the defendant file and stored electronically, if possible.