

17.16 Affidavit Rules and Procedures

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1. These rules are promulgated under Texas Occupations Code § 1704-101 which gives the Bail Bond Board authority to supervise and regulate each phase of the bonding business in Webb County. They aim to give effect to all parts of article 1706 of the Texas Code of Criminal Procedure.
2. These rules apply equally to sureties licensed under Texas Occupations Code chapter 1704 and attorneys acting as sureties.
3. A surety must comply with the statutory requirements and local rules in order to benefit from art. 17.16. Strict compliance with these rules, assuming the surety is otherwise eligible for relief under art. 17.16, will guarantee that the surety obtains discharge under that article. Failure to strictly comply with these rules increases the likelihood of not obtaining discharge.
4. Verification by the Sheriff's Office:
 - a. Only the sheriff or a deputy sheriff assigned to do so may verify 17.16 affidavits. Civilian employees may not verify an affidavit or sign the verification.
 - b. Under no circumstances shall a 17.16 affidavit be verified after a principal has been released from custody.
 - c. Under no circumstances shall a 17.16 affidavit be backdated.
 - d. An affidavit shall not be verified if the principal is still incarcerated under the same booking number for which the bond was posted.
 - e. The time of verification shall be the time the verification takes place, not the time the surety delivered the affidavit to the Sheriff's Office.
 - f. An affidavit shall not be verified if it has not been signed by surety and notarized.
 - g. The deputy sheriff verifying the affidavit shall timestamp the document at the time of verification.
 - h. The verifying deputy sheriff shall sign and print his or her name and badge number.
 - i. If a principal is in federal custody, the verification shall state what charges the principal is being held for and clearly state whether the principal is in custody for immigration reasons. The verification shall also indicate the A, L, or appropriate federal identifying number and indicate the type of identifying number.

- j. Upon verification, the Sheriff's Office shall place a detainer on the principal, whether the principal is in custody in Webb County or any other jurisdiction. The Sheriff's Office may place a detainer on a principal who is the subject of a verification of incarceration without a court order pursuant to art. 17.16(c).
 - k. The Sheriff's Office shall notify the magistrate or judge before which prosecution is pending of any verified affidavits pertaining to principals incarcerated in the Webb County Jail so that the magistrate may review detainers at the conclusion of the regularly held magistration docket. The Sheriff's Office shall provide a daily list of all affidavits verified before 4:00 pm the prior day and after 4:00 pm the day before that.
5. The surety must pick up, file, and serve any affidavits verified before 4:00 pm on the same day as the verification. If the affidavit is verified at 4:00 pm or later, the surety must pick up, file, and serve the affidavit by noon the day following verification.
6. Filing affidavits:
- a. Affidavits will not be accepted for filing if:
 - i. The affidavit is incomplete or missing any information,
 - ii. The affidavit contains any incorrect information,
 - iii. The affidavit does not include the principal's date of birth,
 - iv. The affidavit has not been signed by surety and notarized,
 - v. The affidavit is for multiple charges or bonds.
 - vi. The certificate of service has not been filled out with the name and contact information of both the prosecutor and defense attorney and signed by the surety,
 - vii. There is no cause/booking number at the top or the cause/booking number is incorrect,
 - viii. The surety has not indicated the proper clerk of court in the case caption by circling the correct one or crossing out the inapplicable ones,
 - ix. It is filed with an incorrect clerk of court, or
 - x. It is for an out of county charge.
 - b. Affidavits must be filed with the clerk of the appropriate court.
 - i. Affidavits for unfiled charges must be filed with Pretrial Services.

1. The correct booking number is the booking number for which the bond was written, not the booking number the principal is currently incarcerated under.
 2. Pretrial Services shall upload the 17.16 affidavit to “Jailing Documents” under the booking number the bond was posted for in Odyssey.
 3. Pretrial Services shall not accept affidavits for charges that have a cause number.
- ii. If the charge has been filed, the affidavit must be filed with the County Clerk or the District Clerk under the applicable cause number.
 1. If the cause number ends with L1 or L2, the affidavit must be filed with the County Clerk.
 2. If the cause number ends with D1, D2, D3, or D4, the affidavit must be filed with the District Clerk.
7. The surety must serve the District Attorney’s Office with a file stamped copy the same day as filing of the affidavit with the appropriate clerk of court.
 8. The clerk of the appropriate court shall forward the affidavit to the judge or magistrate with jurisdiction over the case.
 - a. Pretrial Services shall prepare the affidavit and make note of relevant information so that the magistrate may review it following the regularly held magistrate docket if the affidavit was filed by the surety before 4:00 pm the preceding day or after 4:00 pm the day before that. An affidavit that is not timely filed in accordance with these rules shall nonetheless be forwarded to the magistrate.
 - b. The District Clerk and County Clerk shall promptly forward an affidavit to the judge of the court in which the case is pending or to the magistrate or other judge if so instructed by the presiding judge.
 9. The judge or magistrate shall issue a capias provided that the statutory requirements and local rules have been satisfied.
 - a. The affidavit shall be denied and a capias shall not be issued if:
 - i. The principal is still incarcerated under the same booking number for which the bond was posted.

- ii. A forfeiture is pending or judgment nisi has been granted (orally pronounced in court),
 - iii. The affidavit lacks required information,
 - iv. The affidavit is stale or not timely filed according the above requirements,
 - v. The principal has been released from custody in the time since verification,
 - vi. The principal is in custody to determine whether the accused is lawfully present in the United States or is only being held on an immigration detainer, or
 - vii. Any other statutory requirements have not been fulfilled.
- b. A judge or magistrate may decline to issue a capias if they believe the affidavit is the result of fraud or abuse. The judge or magistrate may then set the affidavit for a hearing and give notice to both the prosecutor and the surety.
 - c. If the affidavit is deficient or defective and the surety does not qualify for relief under art. 17.16, the judge or magistrate shall notify the Sheriff's Office by written order to remove the detainer placed on the principal.
10. The magistrate review detainers placed by the Sheriff's Office and the corresponding affidavits filed by sureties at a regularly held magistration docket following notification of verification by the Sheriff's Office.
- a. The Sheriff's Office shall provide to the magistrate daily a list of all verifications that took place before 4:00 pm the previous day or after 4:00 pm the day before that.
 - b. The magistrates, Pretrial Services, and the Sheriff's Office may create their own procedures in supplement to these rules to facilitate the review of detainers and 17.16 affidavits.
 - c. The magistrate shall review cases pending at the magistrate level unless delegated the task by the judge with jurisdiction over the case.
 - d. The magistrate shall hear cases on this docket within 48 hours (excluding weekends and holidays) of notification of verification.

- e. The magistrate shall not hear any case concerning a 17.16 affidavit before the expiration of the filing timeline mentioned above so that the surety has a reasonable opportunity to file the verified affidavit.
 - f. If a 17.16 affidavit has been filed outside of the timeline mentioned above but before the case is heard on the 17.16 magistration docket, the magistrate will in any case review the affidavit taking into account any change of circumstances or prejudice to the principal or the State due to delay in filing the affidavit.
 - g. If the surety has not filed the 17.16 affidavit by the time the case is heard by the magistrate, then the detainer shall be removed and the affidavit denied for want of prosecution by the surety.
 - h. If the 17.16 affidavit has been filed, then the magistrate shall review the affidavit on its merits in accordance with the above guidelines and applicable statutes.
 - i. The magistrate may request the assistance of the magistrate assistant and magistrate court clerks at Pretrial Services in gathering and verifying information relevant to a filed affidavit.
 - j. The magistrate may request the attendance or written answer of a prosecutor in response to or to contest a filed affidavit.
11. Upon the granting or denial of a 17.16 affidavit, the clerk of the court shall place the affidavit and signed order in the case file under the appropriate cause number or booking number and forward a copy to the surety.
12. Upon completion of all of the above steps, the surety shall present a copy of the 17.16 affidavit signed by the judge or magistrate to the Bail Bond Board administrator in order to receive back credit on the bond toward the surety's writing limit. The administrator shall then annotate the bond record on Odyssey with the date, time, and reason for the change in status.
13. If an affidavit is defective, untimely, or does not qualify for relief and the surety wishes to reapply for discharge under art. 17.16, the surety will have to start over this process from the beginning. If the principal has been released in the interim, the fact that the surety previously tried to obtain discharge will not entitle surety to any relief.
14. If an affidavit has not been filed by a surety, signed by a judge or magistrate, and a capias not issued within 72 hours of verification (excluding weekends and holidays), the

detainer shall be removed if there is no other charge holding the principal. This serves to avoid potentially wrongful continued detention.

15. If a principal is bonded out in Webb County on an out of county charge, the surety must file any 17.16 affidavits with the appropriate clerk of court in that county.
 - a. In order to get credit back under art. 17.16 for a bond written on an out of county charge, the surety must provide the Bail Bond Board administrator with a copy of the affidavit and order discharging surety signed by a judge or magistrate of that county.
 - b. The Bail Bond Board administrator shall then change the bond status from “Posted” to “Inactive”, annotate the bond record on Odyssey with the date, time, and reason for the change in status, and upload the certified copy of the affidavit and order to the “Jailing Documents” tab under the cause number for which the bond was written.
16. Return of the principal under art. 17.16:
 - a. When a principal is incarcerated in a location other than the Webb County Jail, the Sheriff’s Office and District Attorney’s Office shall confer on whether to bring the principal back to Webb County.
 - b. After a principal has been returned, whether transported by the Webb County Sheriff’s Office, another law enforcement agency, or a private entity, the Sheriff’s Office shall forward an invoice of the costs associated with transporting the principal.
 - c. For affidavits associated with a cause number, the presiding judge shall sign an order requiring the surety to pay the transportation costs in full to the appropriate clerk of court no later than 31 days after the order is signed.
 - d. For affidavits filed under the booking number, the magistrate shall sign an order requiring the surety to pay the transportation costs in full no later than 31 days after the order is signed. Payments associated with unfiled cases shall be remitted directly to the Sheriff’s Office.
 - e. Failure to pay transportation costs within 31 days shall result in the suspension of the surety’s ability to write bonds.