

- that arrestee's ability to pay; and
- whether: (a) another amount of secured bail; (b) release on an unsecured bond with nonfinancial conditions; or (c) release on one or more nonfinancial conditions of relief, provides sufficient sureties.

"Sufficient sureties" includes both the misdemeanor arrestee's interest in pretrial freedom and the County's interest in reasonably assuring appearance at hearings and trial and the absence of new criminal activity.

(3) The County must use an affidavit or declaration to timely gather information about each arrestee's ability to pay a prescheduled amount of secured money bail or to pay another amount of secured money bail. The County may use either the form of the affidavit currently used to determine eligibility for appointed counsel or the adapted form that was prepared for Pretrial Services for use by July 1, 2017. The affidavit or declaration must be in a language and presented in a way that each arrestee is able to read or otherwise understand.

(4) The County must explain to each misdemeanor arrestee the nature and significance of the affidavit or declaration of financial condition, the process used to determine whether secured or unsecured money bail will be required, and, if so, in what amount. The explanations must specifically include that the affidavit or declaration of financial condition will be used to assess alternatives to imposing secured money bail or other financial conditions of release, and therefore whether and when the arrestee will be released from pretrial detention. The purpose of the explanation is to provide the notice that due process requires: that the misdemeanor arrestee's constitutionally protected right to be bailable by sufficient sureties is at stake. The disclaimer must be in a language and presented in a way each arrestee is able to read or understand.

- The affidavit or declaration must permit the arrestee to declare under penalty of perjury, after the significance of the information has been explained, the maximum amount of financial security the arrestee would be able to post or pay up front within 24 hours of arrest. The affidavit or declaration must ask each misdemeanor arrestee to provide enough details and information about his or her financial situation to allow the County to make timely and reliable determinations as to whether the prescheduled or a lower amount of secured financial condition of pretrial release is needed to provide sufficient sureties.
- The question is neither the misdemeanor arrestee's immediate ability to pay with cash on hand, nor what assets the arrestee could eventually produce after a period of pretrial detention. The question is what amount the arrestee could reasonably pay within 24 hours of his or her arrest, from any source, including the contributions of family, friends, or other sources. If a

commercial surety will put up the bond principal on an arrestee's behalf for a 10 percent premium, the secured condition of release may be no more than 10 times the amount declared on the affidavit or declaration of financial condition.

- The purpose of this requirement is to provide those determining and setting the conditions of release for each misdemeanor arrestee a better, easier, and faster way to get the information needed to determine each misdemeanor defendant's ability to pay. The Hearing Officers and County Judges testified that they presently do not know who has the ability to pay. The affidavit or declaration is to be completed within 24 hours of each arrest.
 - The completed affidavit or declaration for each misdemeanor arrestee must be delivered to the Harris County Sheriff's Office before each affiant's or declarant's hearing and individual assessment held in accordance with Section (6).
- (5) Misdemeanor arrestees who: (a) are not subject to formal holds, such as a federal immigration detainer or an outstanding warrant from another county or municipal authority; (b) are not subject to a pending finding of mental illness or intellectual disability; (c) are not subject to family-violence detention procedures governed by Texas Code of Criminal Procedure Articles 17.152–153; and (d) are not subject to a medical condition that prevents participation in the pretrial bail system, all have a constitutionally protected liberty interest in being bailable by sufficient sureties before trial.
- (6) All misdemeanor arrestees in the custody of Harris County:
- who are not subject to formal holds, such as a federal immigration detainer or an outstanding warrant from another county or municipal authority; who are not subject to a pending finding of mental illness or intellectual disability; who are not subject to family violence detention procedures governed by Texas Code of Criminal Procedure Articles 17.152–153; and who are not subject to a medical condition that prevents participation in the pretrial bail system;
 - who have executed an affidavit or declaration of financial condition in accordance with Section (3) showing an inability to pay the prescheduled or other secured financial conditions of release; and
 - who have not been granted release on an unsecured personal bond with nonfinancial conditions of release,

are entitled to a hearing and individual assessment within 48 hours of arrest.

- At the hearing, an impartial decisionmaker must conduct an individual assessment of whether the prescheduled or other amount of secured money bail, or other financial condition of release, will provide sufficient sureties, or whether a personal bond, or other nonfinancial conditions of release, will reasonably do so.
- The purposes of this requirement are to provide each misdemeanor arrestee timely protection of the liberty interest in being bailable by sufficient sureties and to prevent the automatic imposition of prescheduled or other secured money bail. Instead, each misdemeanor arrestee must receive adequate process to ensure individualized consideration of whether any secured financial condition of release provides sufficient sureties.
- At the hearing, each misdemeanor arrestee, or the arrestee's counsel, must have the opportunity to present evidence and make arguments concerning the arrestee's ability to afford a prescheduled or other secured financial condition of release, to respond to any evidence presented, and to respond to any argument made by the prosecution or by law enforcement.
- If the decisionmaker declines to lower the secured bail amount from the prescheduled amount to an amount the arrestee is able to pay, or to impose alternative conditions of release, including an unsecured personal bond with nonfinancial conditions of release, then the decisionmaker must either provide written factual findings or state the factual findings on the record explaining the reasons for the decisions, and the County must provide that arrestee with a formal adversarial bail review hearing before a County Judge within one business day.
- The Harris County Sheriff is authorized to decline to enforce any order requiring payment of secured prescheduled bail amounts or other financial conditions of release for misdemeanor arrestees if the order is not accompanied by a record adequate to show that a Hearing Officer provided the required individual assessment and that there was an opportunity for formal adversarial bail review before a County Judge within one business day.
- All nonfinancial conditions of release ordered by the Hearing Officers, including protective orders, drug testing, alcohol-intake ignition locks, or GPS monitoring, will remain in effect.

(7) All misdemeanor arrestees in the custody of Harris County:

- who are not subject to formal holds, such as a federal immigration detainer or an outstanding warrant from another county or municipal authority; who

are not subject to a pending finding of mental illness or intellectual disability; who are not subject to family violence detention procedures governed by Texas Code of Criminal Procedure Articles 17.152–153; and who are not subject to a medical condition that prevents participation in the pretrial bail system;

- who have executed an affidavit or declaration of financial condition in accordance with Section (3) showing an inability to pay the prescheduled or other secured financial conditions of release;
- who have not been granted release on an unsecured personal bond with nonfinancial conditions of release;
- who would otherwise be released after arrest and before a hearing and individual assessment within 48 hours of arrest in accordance with Section (6) after paying a prescheduled or other secured bail amount, if not for their inability to pay the prescheduled or other secured financial conditions of release,

must promptly be released by the County on a personal bond with nonfinancial conditions of release.

- “Promptly” means on the same time frame of release that a misdemeanor arrestee who is able to pay secured money bail would receive. Verification of references must not delay release.
- The County may require misdemeanor arrestees who are released on unsecured personal bonds under this Section to return for a hearing and individual assessment under Section (6), within 48 hours of arrest or at a later time, but the County cannot detain those arrestees until a hearing and individual assessment have been held in accordance with Section (6).
- The purpose of this requirement is to address and prevent the problem of misdemeanor arrestees who are not able to pay secured money bail from being detained longer than those able to pay secured money bail before receiving a hearing and individual assessment in accordance with Section (6).

(8) All misdemeanor arrestees in the custody of Harris County:

- who are not subject to formal holds, such as a federal immigration detainer or an outstanding warrant from another county or municipal authority; who are not subject to a pending finding of mental illness or intellectual disability; who are not subject to family violence detention procedures governed by Texas Code of Criminal Procedure Articles 17.152–153; and who are not

subject to a medical condition that prevents participation in the pretrial bail system; and

- who have not appeared at a hearing and individual assessment within 48 hours of arrest in accordance with Section (6),

must promptly be released by the County on an unsecured personal bond.

- “Promptly” means on the same time frame of release that a misdemeanor arrestee who is able to pay a secured money bail would receive. Verification of references must not delay release.
 - If the City of Houston Police Department has detained a misdemeanor arrestee for more than 48 hours after arrest, the arrestee must be promptly released on unsecured or nonfinancial conditions when the Sheriff takes custody of that arrestee. That is, the Sheriff is authorized to promptly release the arrestee on unsecured or nonfinancial conditions on the same time frame as if the arrestee paid a secured bond amount when the Sheriff took custody of that arrestee.
 - The County may require misdemeanor arrestees who are released on unsecured personal bonds under this Section to return for a hearing and individual assessment in accordance with Section (6), but the County cannot detain those arrestees after the 48th hour after their arrest until a hearing and individual assessment have been held in accordance with Section (6).
- (9) The County must implement procedures to ensure the release of each misdemeanor arrestee who is eligible for release by the 48th hour after that arrestee’s arrest. The bail amount set by Assistant District Attorneys according to the County Judges’ bail schedule will remain the bail required of the misdemeanor arrestee, but, until a hearing and individual assessment have been held in accordance with Section (6), it must be required on an unsecured, rather than a secured, basis. In absentia hearings “on the papers” will not satisfy this Section’s 48-hour requirement.
- (10) To enforce the 48-hour time limit, the County must make a weekly report to this court of any misdemeanor arrestee identified in Sections (8), (11), and (12) for whom a hearing and individual assessment has not been held within 48 hours of arrest. The County must also promptly notify the arrestee’s counsel, designated individual, or next of kin, of the delay. A pattern of delays may warrant further relief from this court.
- The weekly reporting must begin on August 18, 2018. After a reasonable period, the County may move the court to authorize monthly reports in lieu of weekly reports.

- The report must identify whether a misdemeanor arrestee, for whom a hearing and individual assessment within 48 hours of arrest has not been held, has not received a hearing and assessment because he or she falls within either: (a) the mental-illness or intellectual-disability exception provided in Section (11); or (b) the medical-condition exception provided in Section (12).
 - The purpose of this requirement is to give timely protection to the liberty interest in being bailable by sufficient sureties, by enforcing federal standards that establish 48 hours as a reasonable timeframe for completing the administrative incidents to arrest. The 48-hour requirement is intended to address and prevent the endemic problem of misdemeanor arrestees being detained longer than those able to pay secured money bail, which can last until case disposition, or which can pressure misdemeanor arrestees to plead guilty to secure faster release from pretrial detention.
- (11) Misdemeanor arrestees in the custody of Harris County who do not appear mentally able to understand or to execute an affidavit or declaration of financial condition in accordance with Section (3), may be evaluated under the procedures governed by Texas Code of Criminal Procedure Article 16.22. If the evaluation results in a finding that no mental illness or intellectual disability exists that would prevent the execution of an affidavit or declaration of financial condition, the misdemeanor arrestee is covered by the relief this court orders, with the exception that the 48-hour deadline begins to run from the time of the finding, rather than from the time of arrest. As under Article 16.22, nothing in this Order prevents a misdemeanor arrestee from being released on secured bail or an unsecured personal bond pending the evaluation.
- In accordance with the reporting requirements provided in Section (10), the County is required to identify whether a misdemeanor arrestee did not receive a hearing and individual assessment within 48 hours of arrest because he or she fell into the mental-illness or intellectual-disability exception provided in this Section.
- (12) Misdemeanor arrestees in the custody of Harris County who, because of a medical condition, are unable to execute an affidavit or declaration of financial condition in accordance with Section (3), or who are otherwise unable to attend a hearing and individual assessment within 48 hours in accordance with Section (6), are covered by the relief this court orders, with the exception that the 48-hour deadline begins to run from the time the condition ceases to prevent execution of an affidavit or declaration or attendance at a hearing and individual assessment in accordance with Section (6), rather than from the time of arrest. Nothing in this Order prevents a misdemeanor arrestee from being released on secured bail or an unsecured personal bond during the pendency of the medical condition.

- In accordance with the reporting requirements provided in Section (10), the County is required to identify whether a misdemeanor arrestee did not receive a hearing and individual assessment within 48 hours of arrest because he or she fell into the medical-condition exception provided in this Section.

(13) All misdemeanor arrestees in the custody of Harris County:

- who are subject to formal holds; and
- who have executed an affidavit or declaration of financial condition in accordance with Section (3) showing an inability to pay the prescheduled financial condition of release,

must be deemed by the Harris County Sheriff to have satisfied their bond conditions for purposes of the hold at the earlier of: (1) their hearing and individual assessment in accordance with Section (6); or (2) 48 hours after arrest. The limitations period and the deadline on holds begins to run from the time the Sheriff deems the bond conditions satisfied.

- The purpose of this requirement is to ensure that misdemeanor arrestees are not prevented from, or delayed in, addressing their holds because they are indigent and therefore cannot pay a prescheduled or other secured financial condition of release.

(14) Misdemeanor arrestees in the custody of Harris County who, after being informed of the purpose of the affidavit or declaration of financial condition under Section (3), nevertheless refuse to execute the affidavit or declaration, are not covered by the relief this court orders.

(15) If a misdemeanor arrestee appears before a County Judge at a Next Business Day Setting under County Rules of Court Rule 4.3.1, instead of a probable cause hearing before a Hearing Officer, the same procedures will apply as to hearings and individual assessments before a Hearing Officer under Section (6).

(16) This Order applies to misdemeanor arrestees who are rearrested on misdemeanor charges only or on warrants for failing to appear while released before trial on bond (either secured or unsecured).

(17) The County Judges need not amend the County Rules of Court as written. If they choose to amend the County Rules of Court, they must not create or implement rules or policies that conflict with this Order.

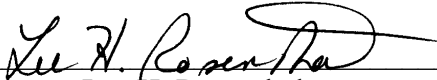
(18) This court does not order relief against the Hearing Officers. This court does not

order relief against the County Judges in their judicial capacities, but rather does so in their policymaking capacities.

This Order will take effect on **Monday, July 30, 2018**. Before that date, Harris County and the Harris County Sheriff must deliver a copy of this Order to all Harris County Pretrial Services personnel; all jail supervisors and booking personnel employed by the Harris County Sheriff; the Harris County District Attorney; and the Harris County Chief Public Defender. The current preliminary injunction order, (Docket Entry No. 304), remains in effect and will not dissolve until this Order takes effect.

This Order expires on entry of final judgment in this case, unless this court orders otherwise. Any party may seek modification of this Order by written motion served on all parties and counsel and on a showing of good cause.

SIGNED on June 29, 2018, at Houston, Texas.



Lee H. Rosenthal
Chief United States District Judge