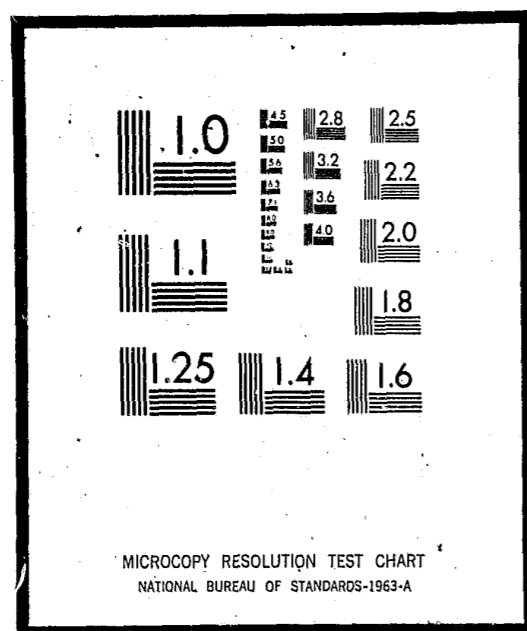


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U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE
WASHINGTON, D.C. 20531

Date filmed

5/18/76

DALLAS POLICE ACADEMY

TEXAS LAWS OF ARREST

By: Inspector Edward Preston
& Lt. Edwin D. Heath, Jr.

Instructor _____

Trainee _____

Date _____

CONSTITUTIONAL HISTORY

For the law enforcement officer to understand the laws of arrest, he should understand that laws of arrest are based upon principles contained in both the Constitution of the United States and the Constitution of the State of Texas. It is necessary that the law enforcement officer understand these basic principles, because they regulate the authority of an officer to make an arrest and protect the freedom of an individual.

During the period when the United States was thirteen British colonies, the colonial rule was harsh with respect to individual liberties and property rights. A long period of dissatisfaction with British rule resulted in early colonial meetings, one of which was the Stamp Act Congress in New York in 1765, attended by representatives from all of the 13 colonies. This meeting was probably the beginning of the colonial organization, because, prior to that date, the King of England had dealt individually with each colony's governor or viceroy.

Prepared - 1945

Revised - 1958, 1966, 1968

After a series of armed clashes between British troops and the colonists in the Boston Massacre of 1770, North Carolina's Almanac Creek of 1771 and the Boston Tea Party of 1773, the colonies began to organize militia units and collect arms.

As relations with England gradually worsened, the 13 colonies called a meeting in Philadelphia. The meeting began on September 5, 1774, and became known as the First Continental Congress. This body drafted a petition of grievances to the King of England and agreed to meet again in 1775.

When the Second Continental Congress met in Philadelphia on May 10, 1775, the delegates found that they were actually a De Facto Government involved in the American Revolutionary War. The battles of Concord and Lexington had been fought a month earlier on April 18, 1775, and war was now imminent. The delegates appointed George Washington to command the Continental Army and began planning the Articles of Confederation, which were later passed on November 11, 1777, and finally adopted and approved July 9, 1778.

On July 4, 1776, the colonies formally declared their independence, and, after five years of war, the British army surrendered at Yorktown on October 19, 1781.

The Articles of Confederation gave the Continental Congress little authority, but the Congress did act as a unifying force through the Revolutionary War.

With the war's successful end, many leaders recognized the ineffective and weak powers of government given the Continental Congress by the Articles of Confederation. A meeting was called in Philadelphia on May 10, 1787, to examine the defects in this system of government and to recommend corrections and changes to the Articles of Confederation. This meeting was later referred to by historians as the Constitutional Convention.

After many compromises and exchanges of opinion, the Convention prepared a completely new constitution, creating a new nation with a national sovereignty rather than the loose organization of separate sovereign states which had existed under the Articles of Confederation. This Constitution was adopted by the Continental Congress on September 17, 1787, and was promptly sent to the states for ratification.

The new Constitution became effective June 21, 1788, when New Hampshire became the ninth state to ratify it. The Continental Congress then passed a resolution activating the new Constitution on September 13, 1788, and George Washington was inaugurated as President on April 30, 1789.

Thus, the new Constitution came into effect, with a new President and Congress, but there was widespread fear of a powerful central government throughout the states. A Bill of Rights was demanded to protect individual liberties and property rights from the abuses known prior to the Revolutionary War.

The demand for a Bill of Rights came from both individual leaders and state legislative bodies. In 1789, Congress passed the first ten amendments to the Constitution, which became known as the Bill of Rights, since they passed as a guarantee of individual rights, freedoms and liberties. These amendments became effective when ratified by the State of Virginia on December 15, 1791.

Even with the addition of the Bill of Rights some individuals and leaders feared the strong power of a central government. However, the passage of time, together with the division of our national government into three branches - Legislative, Executive and Judicial, acting as a system of checks and balances on the power of the Federal Government - as provided by the Constitution, have resulted in only 14 additional amendments in one hundred and seventy-seven years.

CONSTITUTIONAL PROVISIONS RELATING TO ARREST

While several of the provisions of the U. S. Constitution have been held to regulate the laws of arrest, the Fourth Amendment is considered the basic Constitutional guide with respect to these laws.

Amendment Four, Searches & Seizures, Constitution of the U. S.

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The early court decisions held that the provisions of the U. S. Constitution applied only to Federal law enforcement officers in their enforcement of Federal laws, and no restrictions were placed upon state and local officers in their enforcement of state and local laws.

Confronted with this problem, the authors of the early Constitutions of the State of Texas placed a similar provision into these documents, and our present Constitution provides:

Article 1, Section 9, Searches & Seizures,
Constitution of State of Texas

"The people shall be secure in their persons, houses, papers, and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be nor without probable cause, supported by oath or affirmation."

It is to be noted that this provision is very similar to the wording of the Fourth Amendment to the U. S. Constitution and was designed to give the individual citizen the same guarantee of freedom, rights and liberties that the Fourth Amendment to the U. S. Constitution allows.

In 1866, Congress passed the Fourteenth Amendment to the U. S. Constitution. This amendment, after some difficulties in ratification by the states, was declared to be a part of the Constitution by a joint resolution of Congress on July 21, 1868.

Amendment Fourteen, Constitution of the U. S.

"Section 1 . . . No state shall make or enforce any law which shall abridge the privileges or immuni-

ties of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. "

This Constitutional Amendment was passed to protect individual rights and freedoms from unauthorized acts by the several states.

In 1961, the United States Supreme Court, in the decision of Mapp vs. Ohio, 367 U. S. 643, 81 S. Ct. 1684, in effect extended the guarantees of the U. S. Constitution to individuals prosecuted in state courts.

Therefore, state and local law enforcement officers are now affected by the restrictions of the U. S. Constitution as well as their own state constitution and laws.

THE ARREST

Article 15.22 (239) C. C. P. - When a Person is Arrested

"A person is arrested when he has been actually placed under restraint or taken into custody by an officer or person executing a warrant of arrest, or by an officer or person arresting without a warrant. "

Article 14.05 (216) C. C. P. - Rights of Officer

"In each case enumerated where arrests may be lawfully made without warrant, the officer or person making the arrest is justified in adopting all measures which he might adopt in cases of arrest under warrant. "

So long as an officer has legal authority it is immaterial whether an arrest is made with or without a warrant. There is no requirement

of the use of formal words and it is not necessary to touch the accused's person to lawfully effect an arrest.

Article 15.23 (240) C. C. P. - Time of Arrest

"An arrest may be made on any day or at any time of the day or night."

The arresting officer making an arrest should make his authority known, but this is not an absolute requirement, especially where an officer is approaching a place where a crime is being committed or where the accused has knowledge of the capacity and authority of the officer.

A police officer should always remember that there is no law giving a police officer the authority to inflict punishment on any accused, no matter what law may have been violated or how heinous a crime might be. The punishment of an accused is the exclusive prerogative of a court of competent jurisdiction, and the Texas Court of Criminal Appeals has stated "A commission to be a peace officer is not a license to commit an assault." Vera vs. State, 111 Tex. Cr. R. 85, 10 S. W. 2d 383 (1928)

An officer may use such force as is necessary to effect an arrest, but an officer's use of excessive force or violence against the accused will be subject to possible criminal prosecution and/or a civil damage action.

An accused has the legal duty to submit to a lawful arrest, whether with or without a warrant, and the resistance by an accused may subject him to an additional charge of resisting arrest or assault upon an officer.

An accused, however, has no legal duty to submit to an unlawful arrest and may lawfully resist an unlawful arrest. Likewise, an officer can be prosecuted or subject to a civil damages action where he unlawfully arrests an accused.

Article 15.24 (241) C. C. P. - What Force May be Used

"In making an arrest, all reasonable means are permitted to be used to effect it. No greater force, however, shall be resorted to than is necessary to secure the arrest and detention of the accused."

Article 15.26, C. C. P. - Authority to Arrest Must be Made Known

"In executing a warrant of arrest, it shall always be made known to the accused under what authority the arrest is made. The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, provided the warrant was issued under the provisions of this Code, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of arrest he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued."

Article 37, P. C. - Officer Justified

"A person in the lawful execution of a written process or verbal order from a court or magistrate is justified for any act done in obedience thereto. A peace officer is in like manner justified for any act which he is bound by law to perform without warrant or verbal order."

Article 2.14 (38) C. C. P. - May Summon Aid

"Whenever a peace officer meets with resistance in discharging any duty imposed upon him by law, he shall summon a sufficient number of citizens of his county to overcome the resistance; and all such persons summoned are bound to obey." See R. C. S. 6876 - Posse Comitatus

Article 1216, P. C. - Persons Aiding Officer Justified

"Persons called in the aid of an officer, in the perform-

ance of a duty, are justified in the same manner as the officer himself."

A person so summoned by a police officer not only has similar authority as a police officer but such person may arm himself with a pistol so long as he goes under the direction of the police officer. Brown vs. State, 51 Tex. Cr. R. 423, 102 S. W. 406 (1907). The refusal to aid an officer makes a person so summoned liable for prosecution himself.

Article 348 P. C. - Refusing to Aid an Officer

"If any person, being called on by a magistrate or peace officer, shall fail or refuse to aid such officer in any manner in which by law he may be rightfully called on to aid or assist in the execution of a duty incumbent upon such magistrate or peace officer, he shall be fined not exceeding one hundred dollars."

IDENTIFICATION OF WITNESSES

Peace officers may now demand that witnesses identify themselves where the peace officer has reasonable grounds to believe that a crime has been committed.

Article 2.24, C. C. P. - Identification of Witnesses

"Whenever a peace officer has reasonable grounds to believe that a crime has been committed, he may stop any person whom he reasonably believes was present and may demand of him his name and address. If such person fails or refuses to identify himself to the satisfaction of the officer, he may take the person forthwith before a magistrate. If the person fails to identify himself to the satisfaction of the magistrate, the latter may require him to furnish bond or may commit him to jail until he so identifies himself."

EXEMPTIONS FROM ARREST

There are limitations on the authority to arrest some citizens.

(A) Diplomatic immunity from arrest has been recognized as a principle of International Law since the beginning of recorded history. Several references can be found in the Bible and in other early records of history.

Diplomatic immunity protects foreign ambassadors, ministers, emissaries, legations, their employees, staffs, servants and members of their families from arrest and prosecution in countries where they are sent by their national government. This protection is afforded to these individuals because they are considered to be direct representatives of their national sovereignty. They are not accorded the privilege of violating our laws but are merely exempt from arrest and criminal prosecution while in this status. Such individuals who do violate our laws or who commit crimes are normally asked to leave the country through the diplomatic action of the United States Department of State. The buildings or houses that diplomatically immune persons use as their offices or homes are likewise exempt from the normal law of search and seizure, because this property is considered a part of their country from a diplomatic viewpoint. Likewise, this rule of diplomatic immunity protects the diplomatic corps of the United States in foreign countries.

Consuls of foreign countries and their employees are not normally granted full diplomatic immunity. They are usually commercial agents who handle

business matters for the foreign country or its citizens. In some cases, however, these consuls are granted diplomatic immunity by the United States Department of State.

All persons granted diplomatic immunity are normally registered with the United States Department of State and will usually have upon their person cards identifying them as diplomatic personnel and stating that they are immune from arrest.

(B) Members of the Congress of the United States

Article 1, Section 6, Public Laws of the United States (Excerpts)

"Senators and Representatives shall be privileged from arrest during their attendance at the sessions of their respective Houses, and in going to and returning from the same."

(C) Members of the Texas Legislature During Session

Article 1.21 (18) C. C. P. - Privilege of Legislators

"Senators and Representatives shall, except in case of treason, felony, or breach of the peace, be privileged from arrest during the session of the Legislature, and in going to and returning from the same, allowing one day for every twenty miles such member may reside from the place at which the Legislature is convened."

(D) Voters on Election Days

Article 1.22 (19) C. C. P. and Constitution, Article 6, Section 5

"Voters shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom."

Article 261, P. C.

"If any magistrate or peace officer shall knowingly cause an elector to be arrested in attending upon, going to, or returning from an election, except in cases of treason, felony or breach of the peace, he shall be fined not exceeding three hundred dollars."

(E) Active Militia Personnel (National Guard)

Article 5847, R. C. S.

"No person belonging to the active militia of this State shall be arrested on any civil process while going on duty or returning from any place at which he may be required to attend from military duty, except in the cases of treason, felony, or breach of the peace."

(F) Members of the State Guard

Article 5891, Section 12(c) R. C. S.

"No officer or enlisted man of the Texas State Guard shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from place where he is ordered to attend for military duty. Every officer and enlisted man of such forces shall, during his service therein, be exempt from service upon any posse comitatus and from jury duty."

(G) Witnesses from Without State

Article 24.28, Section 5, (486A) C. C. P. - Uniform Act to Secure Attendance of Witnesses from Without State

"If a person comes into this state in obedience to a summons directing him to attend and testify in this state he shall not while in this state pursuant to such summons be subject to arrest."

PEACE OFFICERS

The authority to make arrests is normally given only to peace officers by the laws of the State of Texas. A private citizen has no general

authority to make "a citizens' arrest" in this state, and, unless there is a specific authority given by statute, an arrest by a private citizen is illegal. The right of a private citizen to make an arrest is generally limited by statute to include only cases of felony or breach of the peace in his presence, prevention of the consequences of theft and shoplifting, resistance to any offense against his person, prevention of any illegal removal of or injury to property in his lawful possession, or when lawfully summoned by a peace officer to aid in the execution of his office.

Article 2.12.(36) C. C. P. - Who are Peace Officers

"The following are peace officers: The sheriff and his deputies, constables and deputy constables, marshal or police officers of an incorporated city, town or village, rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety, investigators of the district attorneys', criminal district attorneys' and county attorneys' offices, each member of an arson investigating unit of a city, county or the state, law enforcement agents of the Texas Liquor Control Board, and any private person specially appointed to execute criminal process."

Article 2.13 (37) C. C. P. - Powers and Duties

"It is the duty of every peace officer to preserve the peace within his jurisdiction. To effect this purpose, he shall use all lawful means. He shall in every case where he is authorized by the provisions of this Code, interfere without warrant to prevent or suppress crime. He shall execute all lawful process issued to him by any magistrate or court. He shall give notice to some magistrate of all offenses committed within his jurisdiction, where he has good reason to believe there has been a violation of the penal law. He shall arrest offenders without warrant in every case where he is authorized by law, in order that they may be taken before the proper magistrate or court and be tried."

WHO ARE MAGISTRATES

Article 2.09 (33) C. C. P. - Who are Magistrates

"Each of the following officers is a magistrate within the meaning of this Code: The judges of the Supreme

Court, the judges of the Court of Criminal Appeals, the judges of the District Court, the county judges, the judges of the county courts at law, judges of the county criminal courts, the justices of the peace, the mayors and recorders and the judges of the city courts of incorporated cities or towns. "

Article 2.10 (34) C. C. P. - Duty of Magistrates

"It is the duty of every magistrate to preserve the peace within his jurisdiction by the use of all lawful means; to issue all process intended to aid in preventing and suppressing crime; to cause the arrest of offenders by the use of lawful means in order that they may be brought to punishment. "

Article 8.05, R. C. S. - Power of Presiding Judge

"Judges of election are authorized to administer oaths to ascertain all facts necessary to a fair and impartial election. The presiding judge of election, while in the discharge of his duties as such, shall have the power of the district judge to enforce and keep the peace. He may appoint special peace officers to act as such during the election and may issue warrants of arrest for felony, misdemeanor or breach of peace committed at such election, directed to the sheriff or any constable of the county, or such special peace officer, who shall forthwith execute any such warrants, and, if so ordered by the presiding judge, confine the party arrested in jail during the election or until the day after the election, when his case may be examined into before some magistrate, to whom the presiding judge shall report it; but the party arrested shall first be permitted to vote, if entitled to do so unless he is drunk from the use of intoxicating liquor, then he shall not be permitted to vote until he is sober." (Acts 1951, 52nd Leg.)

ARREST WITH A WARRANT

A warrant of arrest may be issued by a magistrate or other official authorized by law for commission of any act declared by statute to be a criminal offense.

(A) MAGISTRATE WARRANTS

Article 7.01 (79) C. C. P. - Shall Issue Warrant

"Whenever a magistrate is informed upon oath that an offense is about to be committed against the person or property of the informant, or of another, or that any person has threatened to commit an offense, the magistrate shall immediately issue a warrant for the arrest of the accused; that he may be brought before such magistrate or before some other named in the warrant."

Article 15.01 (218) C. C. P. - Warrant of Arrest

"A "warrant of arrest" is a written order from a magistrate, directed to a peace officer or some other person specially named, commanding him to take the body of the person accused of an offense, to be dealt with according to law."

Article 15.02 (219) C. C. P. - Requisites of Warrant

"It issues in the name of "The State of Texas", and shall be sufficient, without regard to form, if it has these substantial requisites:

1. It must specify the name of the person whose arrest is ordered, if it be known, if unknown, then some reasonably definite description must be given of him.
2. It must state that the person is accused of some offense against the laws of the State, naming the offense.
3. It must be signed by the magistrate and his office be named in the body of the warrant, or in connection with his signature."

Article 15.03 (220 C. C. P. - Magistrate May Issue Warrant or Summons

"a A magistrate may issue a warrant of arrest or summons:

1. In any case in which he is by law authorized to order verbally the arrest of an offender;
2. When any person shall make oath before the magistrate that another has committed some offense against the laws of the State; and
3. In any case named in this Code where he is specially authorized to issue warrants of arrest.

b. A summons may be issued in any case where a warrant may be issued, and shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate at a stated time and place. The summons shall be served upon a defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing it to the defendant's last known address. If a defendant fails to appear in response to the summons a warrant shall be issued, "

Article 15.06 (223) C. C. P. - Warrant Extends to Every Part of the State

"A warrant of arrest, issued by any county or district clerk, or by any magistrate (except mayors or recorders of an incorporated city or town), shall extend to any part of the State; and any peace officer to whom said warrant is directed, or into whose hands the same has been transferred, shall be authorized to execute the same in any county in this State. "

Article 15.07 (224) C. C. P. - Warrant Issued by Other Magistrate

"When a warrant of arrest is issued by any mayor or recorder of an incorporated city or town, it cannot be

executed in another county than the one in which it issues, except:

1. It be endorsed by a judge of a court of record, in which case it may be executed anywhere in the State; or
2. If it be endorsed by any magistrate in the county in which the accused is found, it may be executed in such county. The endorsement may be: "Let this warrant be executed in the county of". Or, if the endorsement is made by a judge of a court of record, then the endorsement may be: "Let this warrant be executed in any county of the State of Texas." Any other words of the same meaning will be sufficient. The endorsement shall be dated, and signed officially by the magistrate making it."

Article 15.08 (225) C. C. P. - Warrant May Be Telegraphed

"A warrant of arrest may be forwarded by telegraph from any telegraph office to another in this State. If issued by any magistrate named in Article 15.06, the peace officer receiving the same shall execute it without delay. If it be issued by any other magistrate than is named in Article 15.06, the peace officer receiving the same shall proceed with it to the nearest magistrate of his county, who shall endorse thereon, in substance, these words:

"Let this warrant be executed in the county of", which endorsement shall be dated and signed officially by the magistrate making the same."

All warrants must be based upon a written "complaint" made under oath before the magistrate or other person authorized by law to receive complaints.

Article 15.04 (221) C. C. P. - Complaint

"The affidavit made before the magistrate or district or county attorney is called a "complaint" if it charges the commission of an offense."

Article 15.05 (222) C. C. P. - Requisites of Complaint

"The complaint shall be sufficient, without regard to form, if it have these substantial requisites:

1. It must state the name of the accused, if known, and if not known, must give some reasonably definite description of him.
2. It must show that the accused has committed some offense against the laws of the State, either directly or that the affiant has good reason to believe, and does believe, that the accused has committed such offense.
3. It must state the time and place of the commission of the offense, as definitely as can be done by the affiant.
4. It must be signed by the affiant by writing his name or affixing his mark. "

Article 45.01 (867) C. C. P. - Complaint

"Proceedings in a corporation court shall be commenced by complaint, which shall begin: "In the name and by authority of the State of Texas, " and shall conclude: "Against the peace and dignity of the State"; and if the offense is only covered by an ordinance, it may also conclude: "Contrary to the said ordinance. " The recorder need not charge the jury except upon charges requested in writing by the defendant or his attorney, and he may give or refuse such charges. Complaints before such court may be sworn to before any officer authorized to administer oaths or before the recorder, clerk of the court, city secretary, city attorney or his deputy, each of whom, for that purpose, shall have power to administer oaths. "

In addition to the statutory requirements for a warrant of arrest, recent decisions by the United States Supreme Court now require that the officer making a complaint before a magistrate must set forth in the complaint

sufficient facts regarding the offense and acts of the accused to provide basis upon which a finding of "probable cause" for the issuance of the warrant can be made by the magistrate. Barnes vs. Texas, 380 U. S. 253, 85 S. Ct. 942 (1965).

"Probable cause" has been defined by the Texas Court of Criminal Appeals to be "a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the accused person is guilty of the offense with which he is charged." Mere suspicion not based on fact is insufficient to constitute probable cause. Crawford vs. State, 148 Tex. Cr. R. 563, 189 S. W. 2d 871 (1945)

(B) CAPIAS "WARRANTS"

A "capias" is a writ issued by a court or clerk commanding the arrest of a person accused of a criminal offense. The "capias" is a process of the court and is normally issued by the court having jurisdiction to try the offense.

Article 23.01 (441) C. C. P. - Definition of a "Capias"

"A 'capias' is a writ issued by the court or clerk, and directed "To any peace officer of the State of Texas," commanding him to arrest a person accused of an offense and bring him before that court immediately, or on a day or at a term stated in the writ."

Article 23.02 (442) C. C. P. - Its Requisites

"A capias shall be held sufficient if it has the following requisites:

1. That it run in the name of "The State of Texas";

2. That it name the person whose arrest is ordered, or if unknown, describe him;
3. That it specify the offense of which the defendant is accused, and it appear thereby that he is accused of some offense against the penal laws of the State;
4. That it name the court to which and the time when it is returnable; and
5. That it be dated and attested officially by the authority issuing the same."

Article 23.03 (443) C. C. P. - Capias or Summons in Felony

"a. A capias shall be immediately issued by the district clerk upon each indictment for felony presented, or upon the request of the attorney representing the State....."

Article 23.04 (444) C. C. P. - In Misdemeanor Case

"In misdemeanor cases the capias or summons shall issue from a court having jurisdiction of the case....."

Article 23.07 (447) C. C. P. - Capias Does Not Lose Its Force

"A capias shall not lose its force if not executed and returned at the time fixed in the writ, but may be executed at any time afterward, and return made. All proceedings under such capias shall be as valid as if the same had been executed and returned within the time specified in the writ."

Article 23.13 (453) C. C. P. - Who May Arrest Under Capias

"A capias may be executed by any peace officer. In a felony case, the defendant must be delivered immediately to the sheriff of the county where the arrest is made together with the writ under which he was taken."

From a police officer's standpoint, it is immaterial whether a warrant of arrest is issued as a magistrate warrant or a capias. The officer's authority

is the same under either process, and, from a practical viewpoint, the authority of the two are synonymous.

(C) BENCH WARRANT

The term "bench warrant" is used to describe warrants of arrest issued from the bench or court to compel the attendance of witnesses, in cases of contempt committed out of court, or to bring before the court an accused who is already in custody. Article 24.13, C. C. P. - Attachment for Convict Witnesses.

(D) EXECUTIVE OR EXTRADITION WARRANTS

The Governor of the State of Texas is empowered by the Uniform Criminal Extradition Act, Article 51.13 (1008a) C. C. P., to issue a warrant of arrest to another State or to the District of Columbia upon the proper application of the state's attorney for the arrest of a person charged with a crime, or with escaping from confinement or with breaking the terms of his bail, probation or parole. Such warrants can likewise be issued for parole violations within the State. Article 48.01 (952) C. C. P. - Governor May Pardon.

(E) PREPARATION OF THE WARRANT

1. Name of accused

The warrant of arrest must state the name of the accused if it is known; and if the accused's name is not known, then a reasonably definite physical description must be given in the warrant. The use of the term "John Doe" or the use of fictitious names as permitted in other jurisdictions where the accused's name is not known voids the warrant in this State.

The name of the accused should be correctly spelled on the warrant if possible, but a slight variation in the name on the warrant and the true spelling of the names does not void the warrant if the names are so nearly alike as to be held "Idem Sonans." A warrant with the accused's first name incorrectly spelled is defective, and a peace officer cannot add a name or correct the name on a warrant after its issuance. These defects can only be cured by the official or magistrate having authority to issue the warrant, and any change or insertion by a peace officer renders the warrant null and void.

The right to arrest under a warrant is restricted to the person who is named or described therein. It has been held by the Texas Supreme Court that a person cannot be lawfully arrested merely because he happens to have the same name as that which appears in the warrant. If such an arrest is made, even though innocently on the part of the officer in circumstances indicating the error, the officer is liable to the person thus wrongfully arrested, in a civil court for damages. But, where the officer is led to believe by the statements of the apprehended party that he is the one named in the warrant, the arrest is justifiable.

2. Offense charged

The warrant should state the offense charged. No exact wording is required, but the wording should be sufficiently definite as to allow the accused to know with what offense he is being charged. Warrants which state only "a felony" or "the offense of a misdemeanor" are invalid. Ellis vs. Glasgow (Civ. App.) 168 S. W. 2d 946 (1943)

3. Signed by magistrate or other official authorized by law

The magistrate or other official authorized by law to issue the warrant must sign the warrant and state his official capacity. A facsimile stamp by a justice of the peace to an affidavit or warrant is valid. Stork vs. State, 114 Tex. Cr. R, 398, 23 S. W. 2d 733 (1929).

4. Execution of the complaint

The officer or other person signing a complaint upon which a warrant will issue must actually swear under oath to the truth of the contents before the magistrate or other official authorized by law to receive complaints. The affiant or person who signs a complaint does not have to be a witness to the transaction covered in the complaint, but such person must allege that he has "good reason to believe and does believe" that the accused committed the offense charged. The Texas Court of Criminal Appeals has held that a police sergeant, although not present when the offense was committed, was a proper person to make a complaint upon information received by him. Richards vs. State, 165 Tex. Cr. R., 305 S. W. 2d 375 (1957). The complaint is usually made by a peace officer, but it may be made by any "credible person." A credible person is any person who is competent to testify for the State in the particular case in which the complaint is made.

5. Who may receive a complaint

A magistrate is, of course, authorized by law to receive complaints and issue warrants based upon these complaints where a sufficient probable cause is found to exist. While not empowered to issue warrants,

district attorneys, county attorneys and/or city attorneys may receive complaints for offenses they are empowered to prosecute. A notary public has also been held to be authorized to receive complaints in justice of the peace and corporation court cases. Such complaints received by prosecuting attorneys usually form the basis for the issuance of the *capias* "warrants," since these writs normally come from the court with jurisdiction to try the offense.

6. Authority of the warrant

As previously stated, a warrant of arrest extends to every part of the state. Some warrants require the endorsement of a court before they extend out of the county of issuance, but once properly endorsed they also extend to every part of the state and may be served by any peace officer who receives them.

Generally speaking, a peace officer's authority to make a lawful arrest extends only to the limits of his own bailiwick or geographical jurisdiction, but where a peace officer has a lawful warrant of arrest his authority can be geographically extended.

The Texas Court of Criminal Appeals held that the Sheriff of Hamilton County, who had a warrant of arrest, could lawfully arrest a defendant in Coryell County, notwithstanding the fact that there was no authorization in the warrant allowing execution in Coryell County. Lloyd vs. State, 143 Tex. Cr. R., 169 S. W. 2d 872 (1942).

The Texas Supreme Court has announced a similar rule of law with respect to city policemen in that they may execute a warrant of arrest

anywhere in their county. Newburn vs. Durham, 88 Tex. 288 (1890).

Likewise, a peace officer may legally pursue an accused out of his bailiwick and lawfully arrest him where the arrest would have been lawful in the first instance. Fance vs. State, 167 Tex. Cr. R. 32, 318 S. W. 2d 72.

Of course, the authority conferred by a warrant of arrest does not permit an officer to make an arrest outside of the State, but by virtue of the Uniform Extradition Act a warrant may be sent to an out-of-state police agency who may lawfully arrest under a Texas Warrant of Arrest and hold the accused for extradition proceedings.

The civil courts of this State held that failure to have a warrant, such as an officer's leaving it in another coat or at the police department, while an irregular exercise of authority, cannot give rise to civil damage action unless this action results in the loss or deprivation of the freedom of the accused in a way which would not have occurred had the authority been properly exercised by the officer having the warrant in his possession.

A warrant of arrest in felony cases gives a peace officer the authority to forcibly enter a house or building when he is denied entrance.

Article 15.25 (242) C. C. P. - May Break Door

"In case of felony, the officer may break down the door of any house for the purpose of making an arrest, if he be refused admittance after giving notice of his authority and purpose."

The specific authority to forcibly enter a house or other building under a misdemeanor warrant of arrest is not given by statute, and it is the policy of the Dallas Police Department not to forcibly enter a house or private residence with a misdemeanor warrant of arrest only.

7. Searches authorized by a warrant of arrest

It is a well settled rule of law that the authority to make a lawful arrest carries with it authority for a peace officer to make a search of the accused's person and the premises where the arrest occurs. If the accused is lawfully arrested in an automobile, the peace officer is justified in searching the accused's car incidental to the arrest. Stanton vs. State, 172 Tex. Cr. R., 354 S. W. 2d 582 (1962).

In a recent case the Texas Court of Criminal Appeals held that a peace officer having a felony warrant of arrest may forcibly enter a private residence, and "while legally on the premises," the officers were authorized to seize from the commode that contraband (marijuana) which was in plain view and "having found evidence of a violation of the law, had the right to search the entire premises." The arrest under a valid warrant authorizes a search of the place where the arrest occurred. "Barnes vs. State, 390 S. W. 2d 266 (1964). (Reversed on other grounds.)

Our courts, in effect, have said that when the arrest is lawful and when evidence is lawfully seized in a search incidental to such a lawful arrest, the seized evidence is admissible in a prosecution against the arrested person. In case the court declares the arrest to be unlawful, the

evidence so seized as a result of such unlawful arrest and search is not admissible as evidence and cannot be presented to the court or jury.

However, where an arrest is made without a warrant, the right of the arresting officer to arrest the accused must be determined by the facts existing or known to the officer either before or at the time of the arrest, and facts or evidence found as a result of the arrest cannot be utilized to authorize the arrest in the first instance. Giacona vs. State, 164 Tex. Cr. R. 325, 298 S.W. 2d 587 (1957).

Article 38.23 (727a) C. C. P. - Evidence Not To Be Used

"No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case.

In any case where the legal evidence raises an issue hereunder, the jury shall be instructed that if it believes, or has a reasonable doubt, that the evidence was obtained in violation of the provisions of this Article, then and in such event, the jury shall disregard any such evidence so obtained."

(F) EXECUTION AND RETURN OF THE WARRANT

Article 15.16 (233) C. C. P. - How Warrant Is Executed

"The officer or person executing a warrant of arrest shall without unnecessary delay take the person or have him taken before the magistrate who issued the warrant or before the magistrate named in the warrant, if the magistrate is in the same county where the person is arrested. If the issuing or named magistrate is in another county, the person arrested shall without unnecessary delay be taken before some magistrate in the county in which he was arrested."

As a matter of good practice peace officers should endorse a warrant by stating the date and time of the arrest and the disposition of the offender. This will eliminate any later claim of an irregular execution of the warrant.

If a prisoner is discharged on bond or by a writ of habeas corpus, the officer should place this information on the back of the warrant and make the return to the Court.

Article 23.18 (460) C. C. P. - Return of Capias

"The return of the capias shall be made to the court from which it is issued. If it has been executed, the return shall state what disposition has been made of the defendant. If it has not been executed, the cause of the failure to execute it shall be fully stated. If the defendant has not been found, the return shall further show what efforts have been made by the officer to find him, and what information he has as to the defendant's whereabouts."

ARREST WITHOUT A WARRANT.

In the discussion of arrests with a warrant, it was noted that a warrant of arrest could be issued for the commission of any act which is declared by law to be a criminal offense. Arrests without a warrant, however, are strictly controlled by statute, and, unless the peace officer has a specific authority to arrest without a warrant, the arrest is illegal.

The courts of Texas have uniformly held that an illegal arrest is an unreasonable seizure of the accused's person and is prohibited by both constitutional and statutory provisions. A lawful arrest, whether with or without a warrant, is not an unreasonable seizure of the accused's person.

Since the great majority of arrests, especially those made by uniformed patrol or traffic officers, are without a warrant, a careful study of each provision of law authorizing an arrest without a warrant is necessary.

Our objective is to make valid, lawful arrests in all cases, with or without a warrant.

- (A) As we are professional enforcers of the law, we are under a legal and moral obligation to follow the requirements of the law when making arrests.
- (B) Our courts, in effect, have said that when the arrest is lawful, the officer can search the person of, and immediate premises occupied by or under the custody and control of, the arrested person. The evidence seized by such a search and seizure is then admissible. In case the arrest is declared to be unlawful, the evidence cannot be presented to the court or jury.
(Article 38.23 (727a) C. C. P.)

- (C) We must learn to make legal and valid arrests in order to protect ourselves from criminal prosecution and damage suits in the civil courts.

While the duty of a peace officer is to protect life and property, he is required to do it in a prescribed manner.

Article 2.13 (37) C. C. P. - Duties and Powers

"It is the duty of every peace officer to preserve the peace within his jurisdiction. To effect this purpose, he shall use all lawful means. He shall in every case where he is authorized by the provisions of this Code, interfere without warrant to prevent or suppress crime. He shall execute all lawful process issued to him by any magistrate or court. He shall give notice to some magistrate of all offenses committed within his jurisdiction, where he has good reason to believe there has been a violation of the penal law. He shall arrest offenders without warrant in every case where he is authorized by law, in order that they may be taken before the proper magistrate or court and tried."

Article 14.05 (216) C. C. P. - Rights of Officer

"In each case enumerated where arrests may be lawfully made without warrant, the officer or person making the arrest is justified in adopting all the measures which he might adopt in cases of arrest under warrant."

Generally speaking, the peace officer has all rights and authority in making a lawful arrest without a warrant than he does in making an arrest with a warrant. There is one major exception to this rule of law: A peace officer may normally arrest without a warrant only in his own bailiwick or geographical jurisdiction.

The Texas Court of Criminal Appeals has stated: "A public officer (peace officer) appointed as a conservator of the peace for a particular county or

municipality as a general rule has no official power to apprehend offenders beyond the boundaries of the county or district for which he has been appointed. Where the sheriff of a county attempts to make an arrest in another county, without a warrant, he is usually considered as having only the authority which a private person may have in apprehending criminals. "Henson vs. State, 120 Tex. Cr. R. 176, 49 S. W. 2d 463 (1932)

In at least four recent cases the Texas Court of Criminal Appeals has upheld the authority of city policemen to arrest without a warrant outside of their city limits. In Hurley vs. State, 155 Tex. Cr. R. 315, 234 S. W. 2d 1006 (1950), and Milligan vs. State, 170 Tex. Cr. R. 584, 343 S. W. 2d 455 (1961) city policemen were permitted to make D. W. I. arrests outside of their city limits; in Winfield vs. State, 163 Tex. Cr. R. 445, 293 S. W. 2d 765, (1956), city policemen were permitted to make an arrest for driving without headlights which resulted in the discovery of and subsequent prosecution for possession of illicit liquor; and in Gonzalez vs. State, 167 Tex. Cr. R. 227, 320 S. W. 2d 9 (1959), city policemen were permitted to make an arrest for blocking and obstructing a public roadway with his automobile which resulted in the discovery of and subsequent prosecution for carrying a pistol.

While these cases extended the geographical limits in their fact situations, a peace officer should be extremely cautious in making arrests without a

warrant outside of his bailiwick or geographical jurisdiction, because these cases should be viewed as exceptions to this rule of law and not an overall extension of authority to act beyond the normal bailiwick or geographical jurisdiction.

A peace officer, however, has authority to arrest outside his bailiwick or geographical jurisdiction where he is summoned to aid another police agency by authority of Article 2.14, C. C. P., which allows a peace officer to summon aid, or by Article 6876, R. C. S., which authorizes the sheriff of a county to summon a posse comitatus. In these cases a peace officer so summoned is acting under the authority of the officer making the summons.

The Texas Court of Criminal Appeals in Smith vs. State, 139 Tex. Cr. R., 140 S. W. 2d 452 (1940) stated that: it was the duty of a neighboring sheriff attending a rodeo to aid two State Highway Patrolmen when they called on him to do so. In LaDuke vs. State, 166 Tex. Cr. R. 160.; 312 S. W. 2d 242 (1958) a deputy sheriff of Knox County was visiting in Haskell County when a city policeman in Knox City asked him to aid in pursuit and arrest of the defendant for D. W. I. The court upheld the arrest by the deputy sheriff as being lawful and stated that "it was the duty" of the deputy sheriff when called by the policeman to assist him in the execution and discharge of his duties.

FELONY OR BREACH OF THE PEACE IN PRESENCE

It has been a rule since the early establishment of the English Common Law that a peace officer has the duty and a private person has the privilege of making an arrest without a warrant when a felony or a breach of the peace is committed in his presence.

Article 14.01 (212) C. C. P. - Offense Within View

"(a) A peace officer or any other person, may, without a warrant, arrest an offender when the offense is committed in his presence or within his view, if the offense is one classed as a felony or as an offense against the public peace.

(b) A peace officer may arrest an offender without a warrant for any offense committed in his presence or within his view."

For a peace officer to arrest without a warrant under Article 14.01 (212) C. C. P., the offense must be classified as a felony or a breach of the peace. All misdemeanors are not classified as a breach of the peace.

(A) Felony

A felony in the State of Texas is any offense with a possible punishment of death or confinement in the penitentiary. Article 14.01 (212) C. C. P. makes no distinction between capital and non-capital felonies. The authority of the peace officer to arrest in either case is the same under this article.

(B) Breach of the Peace

In Woods vs. State, 152 Tex. Cr. R. 338, 96 S. W. 2d 981 (1948), Judge Davidson, of the Texas Court of Criminal Appeals, cited the following definition of a breach of the peace:

"The term 'breach of the peace' is generic, and includes all violations of the public peace or order, or decorum; in other words, it signifies the offense of disturbing the public peace or tranquility enjoyed by the citizens of a community; a disturbance of the public tranquility by any act or conduct inciting to violence or tending to provoke or excite others to break the peace; a disturbance of public order by an act of violence, or by any act likely to produce violence, or which, by causing consternation and alarm disturbs the peace and quiet of the community. By 'peace', as used in this connection, is meant the tranquility where good order reigns among its members. Breach of the peace is a common-law offense. It has been said that it is not a specific offense, yet it may be, and at times is, recognized as such by statute or otherwise; and only when so regarded will it be considered in this article.

The offense may consist of acts of public turbulence or indecorum in violation of the common peace and quiet, of an invasion of the security and protection which the laws afford to every citizen, or of acts such as tend to excite violent resentment or to provoke or excite others to break the peace. Actual or threatened violence is an essential element of a breach of the peace. Either one is sufficient to constitute the offense. Accordingly, where means which cause disquiet and disorder, and which threaten danger and disaster to the community, are used, it amounts to a breach of the peace, although no actual violence is employed. Where the incitement of terror or fear of personal violence is a necessary element, the conduct or language of the wrongdoer must be of character to induce such a condition in a person of ordinary firmness."

The Texas Penal Code in Title 9 declares Articles 439 through Article 489c to be "Offenses Against the Public Peace". These articles are divided into

four chapters, as follows:

Chapter 1 - "Unlawful Assemblies"

Chapter 2 - "Riots"

Chapter 3 - "Affrays and Disturbances of the Peace"

Chapter 4 - "Unlawfully Carrying Arms"

These articles should be frequently reviewed by peace officers, since they are numerous and include a wide variety of offenses.

Chapter 3 - "Affrays and Disturbances" is listed in detail here, because these offenses are the type peace officers are most frequently called upon to enforce. Offenses included in Chapter 3, Title 9, of the Texas Penal Code are:

- 473. Affray
- 474. Disturbing the Peace
- 475. "Public place."
- 475a. Motor boats, operating without muffler or silencer.
- 476. Profane language over telephone.
- 477. Drunk in public place.
- 478. Drinking liquor on train.
- 479. Peddler refusing to leave.
- 480. Shooting in public place.
- 480a. Shooting on public road.
- 481. Horse racing on road or street.
- 482. Abusive language.

The Texas Court of Criminal Appeals has upheld the right of a citizen to make an arrest under the Articles in Title 9. In McEathron vs. State, 163 Tex. Cr. R. (1956), 294 S. W. 2d 822, a citizen arrested a D. W. I. In affirming the conviction, the court stated "Article 14.01 (212), authorizes

an arrest by a private citizen for an 'offense against the public peace.' Title 9 of the Penal Code is entitled 'Offenses against the public peace'; therefore, any violation of an offense enumerated in these articles authorizes an arrest without a warrant by a private citizen or officer.

(C) Presence or View

The term "in his presence or within his view", used in the statute has been held to signify that an arrest may be made without a warrant when the arresting party detects the offender by sight or hearing by reason of what he said or did. 6 Tex. Jr. 2d, Arrest, Sect. 16

If an officer is appraised by any of his senses that a crime is being committed, he is justified in arresting without warrant. Clark vs. State, 117 Tex. Cr. R. 153, 35 S. W. 2d 420 (1931). The senses are the sense of hearing, seeing, smelling and tasting.

The peace officer making an arrest should be in such close proximity to the offense that he can detect its commission. It is insufficient if the peace officer was in a position so that the commission of the offense might have come to his attention. The test would seem to be that the arresting officer should have probable cause for the arrest based upon his detection of the actual commission of the offense. Certainly the peace officer's personal witness by view of sight to the commission of an offense is sufficient.

AUTHORITY OF CITY POLICEMEN TO ARREST WITHOUT A WARRANT

(A) City policemen shall arrest without a warrant all violators of the public peace or persons who have violated a State law or city ordinance in his presence.

Article 998, Revised Civil Statutes

"The city or town council in any city or town in this State, incorporated under the provisions of this title may, by ordinance, provide for the appointment, term of office and qualifications of such police officers as may be deemed necessary. Such police officers so appointed shall receive a salary or fees of office or both, as shall be fixed by the city council. Such council may, by ordinance, provide that such police officers shall hold their office at the pleasure of the city council, and for such term as the city council directs. Such police officers shall give bond for the faithful performance of their duties, as the city council may require. Such officers shall have like powers, rights and authority as are by said title vested in city marshals."

Article 999, Revised Civil Statutes

"The marshal of the city shall be ex-officio chief of police, and may appoint one or more deputies, which appointment shall only be valid upon the approval of the city council. Said marshal shall, in person or by deputy, attend upon the corporation court while in session, and shall promptly and faithfully execute all writs and process issued from said court. He shall have like power, with the sheriff of the county, to execute warrants; he shall be active in quelling riots, disorder and disturbance of the peace within the city limits and shall take into custody all persons so offending against the peace of the city and shall have authority to take suitable and sufficient bail for the appearance before the corporation court of any person charged with an offense against the ordinance or laws of the city. It shall be his duty to arrest, without

warrant, all violators of the public peace, and all who obstruct or interfere with him in the execution of the duties of his office or who shall be guilty of any disorderly conduct or disturbance whatever; to prevent a breach of the peace or preserve quiet and good order, he shall have authority to close any theatre, ball room or other place or building of public resort. In the prevention and suppression of crime and arrest of offenders, he shall have, possess and execute like power, authority, and jurisdiction as the sheriff. He shall perform such other duties and possess such other powers and authority as the City Council may by ordinance require and confer, not inconsistent with the Constitution and laws of the State. The marshal shall give such bond for the faithful performance of his duties as the city council may require. He shall receive a salary or fees of office, or both, to be fixed by the City Council. The governing body of any city or town having less than three thousand inhabitants according to the preceding Federal census, may by an ordinance, dispense with the office of marshal, and at the same time by such ordinance confer the duties of said office upon any peace officer of the county, but no marshal elected by the people shall be removed from his office under the provision of this article."

Among other things, Article 999 R. C. S. says that it is the duty, not privilege, of policemen to arrest without a warrant all violators of the public peace or those who are guilty of disorderly conduct or disturbance, to prevent a breach of the peace or to preserve quiet and good order. Furthermore, he shall perform such other duties and possess such other powers and authority as the City Council may by ordinance require or confer.

The City Council of the City of Dallas has enacted an ordinance under the authority granted by Article 999 R. C. S., the Revised Code of Civil and Criminal Ordinances of the City of Dallas, 1960, Chapter 37, Section 6, found in Volume II, Page 883.

"It shall be the duty of every policeman to make arrests, without a warrant, when a state law or city ordinance has been violated in his presence. But in making such arrest and in conveying the offender to the city jail, he shall use only such force as is necessary to effect his purpose."

It should be noted that this ordinance has extended to policemen the authority to arrest not only felony violators but those who violate any misdemeanor state law or city ordinance in his presence.

Sheriffs and constables are not included within Article 999' R. C. S. , which authorizes city marshals to arrest without warrant persons guilty of disorderly conduct.

In 15 Texas Jurisprudence, Page 300, it is stated that, "Drunkenness in a public place, which is made an offense by the Penal Code, is clearly disorderly conduct, regardless of the fact that the drunkard is not creating a disturbance."

While Article 477, P. C. , permits a person to be drunk in his own home, the Texas Court of Criminal Appeals in Pritchett vs. State, 152 Tex. Cr. R. 432, 214 S. W. (200) 623 (1948), ruled that where a person who is drunk in his own home creates a disturbance of the peace by loud talk or cursing in the presence of a peace officer, such person may be arrested without a warrant.

(B) The ordinances of a city or town may authorize the arrest without a warrant of a person found in suspicious places.

Article 14.03, C. C. P. - Authority of Peace Officers

"Any peace officer may arrest, without warrant, persons found in suspicious places and under circumstances which reasonably show that such persons have been guilty of some felony or breach of the peace, or threaten, or are about to commit some offense against the laws."

The Legislature has always realized the special crime problems of towns and cities and has, since earliest days of the Republic of Texas, granted them this special authority for arrests without a warrant. This statute has been declared constitutional by the Texas Court of Criminal Appeals in Purdy vs. State, 159 Tex. Cr. R. 154, 261 S. W. 2d 850 (1954).

The State statute, Article 14.03 (214) C. C. P., does not apply to sheriffs, constables or their deputies, to officers of the Texas Department of Public Safety or other state officers. The authority given by this statute applies only to officers of towns or cities. Furthermore, the municipal authority of these towns and cities must pass an enabling ordinance in order for their officers to have authority under this statute. The state statute alone will not confer this authority upon officers of towns or cities. Sanchez vs. State, 385 S. W. 2d 851 (1964)

The courts have held that mere suspicion alone is not enough to justify an arrest under this article. Furthermore, contrary to a mistaken belief held by some officers, this article does not authorize an arrest for the purpose of "investigation". There is not now, nor has there ever been, any authority in this State to make an arrest for "investigation" or to hold an arrested

person without a warrant for seventy-two (72) hours for "the purpose of investigation". Generally speaking, the test of the legality of arrest under this article has been held to be two-fold: (1) suspicious circumstances reasonably tending to show that the arrested person has been guilty of some offense (probable cause); PLUS, (2) some overt act or conduct by the arrested party to bolster or support the belief by the officer that the arrested party has committed some offense.

The Texas Court of Criminal Appeals has been liberal in upholding the authority of peace officers in towns and cities to make arrests under this statute in a wide variety of crimes, including murder, assault to murder, burglary, theft and narcotics offenses. This statute is not limited to any specific offense or category of crime. It is an important authority given to peace officers of towns and cities to suppress crime in all categories and should never be abused or used for making otherwise illegal arrests, or the authority could be removed by a court decision or legislative act.

A brief review of some of the cases will illustrate the circumstances which authorize an arrest under this statute.

(A) In Horrell vs. State, 124 Tex. Cr. R. 84, 61 S. W. 2d 108 (1933), the following facts were involved:

A man was shot to death with a 41-caliber pistol. There were no actual eye-witnesses. The crime was reported by a citizen who heard the shooting. The body was found by the officer answering the call. The crime took place at 9:30 P. M., November 19, 1932, in the city of El Paso, Texas.

The following morning at 10:00 A. M., approximately 12 hours after the crime, the officer investigating the case saw two men walking on the street about three blocks from the scene of the crime. The officer knew that one of the men had previously been handled for robbery. The other man was carrying a package under his arm. The officer followed and observed the two men, who attempted to evade him, and he arrested them after following for some time. During the search incident to this arrest, the officer seized the package, which concealed the pistol used in the murder. On the person of one of the arrested men was found a towel which had been used as a mask during the crime.

The arrest was legal under Article 214, Texas Code of Criminal Procedure, and also under an El Paso City Ordinance. Therefore, the evidence--the pistol and the towel--was admissible.

(B) In Saldana vs. State, 383 S. W. 2d 599 (1964):

An officer had two cabins under surveillance for some time. One of the cabins had previously been searched and its occupant charged with possession of narcotic paraphernalia. Upon seeing a taxicab enter the court at 3:00 A. M., the officer shined a light into the cab and found the defendant in the front seat. He heard crinkling noises and observed something being stuffed under the front seat. This was sufficient probable cause for arrest of the defendant without a warrant under the authority of Article 14.03 (214) C. C. P., and the subsequent search, in which marijuana was discovered, was also legal.

(C) In Barnes vs. State, 161 Tex. Cr. R. 510, 278 S. W. 2d 305 (1954):

An officer observed an automobile parked beside a closed pharmacy. When the officer later passed the parked car, he observed two men enter the automobile and drive away.

These facts constituted sufficient probable cause for an arrest under suspicious circumstances, and a subsequent search of the defendant's car, in which a bomb was found, was also legal.

- (D) In Mason vs. State, 160 Tex. Cr. R. 501, 272 S. W. 2d 527 (1954):

Two Dallas police officers saw two white men in a Negro neighborhood at 2:00 A. M. The men were carrying cardboard boxes. The men acted unusual at the approach of the officers, and it was noted that the boxes had something in them. Examination of the boxes revealed 60 packs of cigarettes, a radio, and some book matches imprinted with "Browning's Barbecue, No. 1321 Wood Street". The officers returned with the men to the Wood Street location, where they discovered that the business had been burglarized. The arrest under suspicious circumstances was upheld and the property taken in the burglary properly admitted in evidence.

- (E) In Ringo vs. State, 161 Tex. Cr. R. 93, 275 S. W. 2d 121 (1954):

Two Lubbock officers observed a car leaving a beer joint at 1:30 A. M., driving on the wrong side of the road without headlights. Upon stopping the car, officers found the occupants had no identification and that they had been unemployed since arriving in the state. A radio check revealed the car to be registered to another person. These facts constituted sufficient authority for an arrest under suspicious circumstances, and a subsequent search and discovery of marijuana was held to be legal.

- (F) In McCutcheon vs. State, 158 Tex. Cr. R. 419, 375 S. W. 2d 175 (1964):

A city policeman in Lufkin observed two suspects step from a cleaning establishment. As the officer approached they threw something over a hedge. A search behind the

hedge revealed two shirts taken in a burglary of the dry cleaners. Such conduct authorized an arrest and subsequent prosecution for burglary.

(G) In Edwards vs. State, 344 S. W. 2d 687 (1961):

Captain J. W. Fritz and three detectives of the Homicide and Robbery Bureau were making a rape investigation and had received information from the complainant as to the defendant's physical description, his dress, and the description of his car. The officers went to the service station where the defendant was employed and found that the defendant's physical appearance and that of his car and clothing matched the description of her attacker as given them by the complainant. The officers arrested the defendant without a warrant and searched his automobile, where they found a pistol and other evidence of the crime.

In upholding a death sentence, the Court of Criminal Appeals stated that the arrest was authorized by city ordinance because the officers had probable cause under the section of the ordinance which authorizes arrest without a warrant where "...any person or persons found under circumstances reasonably tending to show that such person has been guilty of some felony...".

(H) In Purdy vs. State, 159 Tex. Cr. R. 154, 261 S. W. 2d 850 (1953):

The Court of Criminal Appeals upheld an arrest for breach of the peace by a Temple officer, although the offense had not been witnessed by the officer. A waitress had reported to the officer that there had been a breach of the peace and identified the defendant as the person who had caused the trouble. The Court held that the arrest was authorized under city ordinance because it was "under circumstances reasonably showing that they have been guilty of breach of the peace or threaten or are about to commit some offense." The Dallas ordinance, Section 37-5, has a similar wording.

TO PREVENT THE CONSEQUENCES OF THEFT OR SHOPLIFTING

(A) THEFT

Article 18.22 (325) C. C. P. - Preventing Consequences of Theft

"All persons have a right to prevent the consequences of theft by seizing any personal property which has been stolen, and bringing it, with the supposed offender, if he can be taken, before a magistrate for examination, or delivering the same to a peace officer for that purpose. To justify such seizure, there must, however, be reasonable ground to suppose the property to be stolen, and the seizure must be openly made and in the proceedings had without delay."

It should be noted that all persons, private citizens as well as peace officers, have the authority to arrest under this article. Furthermore, the value of the article taken is immaterial, and an arrest is authorized for any type of theft, whether misdemeanor or felony.

Some cases which have been decided under this Article are as follows:

- (a) In Ash vs. State, 139 Tex. Cr. R. 420, 141 S. W. 2d 341 (1940):

The defendant was convicted in the District Court of Potter County in Amarillo, Texas, before Judge E. C. Nelson, Jr., on a charge of receiving and concealing goods valued at over \$50.00 and of being an Habitual Criminal. The courts placed his sentence at ten years confinement. The defendant appealed to the Court of Criminal Appeals and they delivered the following opinion, May 1, 1940: "Two diamond rings valued at \$800.00 were stolen from Mrs. Mecaskey, who resided in a hotel at Panhandle, Texas. Investigating officers obtained

information that the suspect, David Ash, was to take a prospective purchaser to a pawn shop in Amarillo, Texas, for an appraisal of the stolen rings. The officers waited in the store. When Ash saw the officers, he put the rings in his mouth and swallowed them. The officers saw him put a metallic substance in his mouth. They arrested him without a warrant, and took him back to the county where the theft had occurred. He was carried to a hospital, and by use of a fluoroscope, the rings were located in the lower bowel. By means of an enema, the officers forced him to eliminate the rings. After recovery the rings were identified by the owner. "

The defendant possessing the rings and secreting them in the presence of the officers is the gist of the offense. He was, therefore, committing a felony in their presence. This gave the officers a legal right to arrest and search his person. There is no contention that the officers resorted to any cruel or inhuman method of determining the presence of the rings, or in extracting them. They applied the most approved method of doing so. There is no evidence of any cruel or unusual treatment on the part of the officers. They gave him an enema, a very normal and rational thing to do, thereby extracting the rings which the appellant had chosen to secrete in this most unusual manner. We think that the officers had a legal right to arrest the appellant, and to search to such a reasonable degree as to permit them to ascertain whether or not the appellant possessed the stolen property, which they had a right to believe that he had. " (See Article 325, Code of Criminal Procedure).

(b) In Moore vs. State, 149 Tex. Cr. R. 229, 193 S. W. 2d 204 (1946):

Max Moore, a detective for the City of Dallas, had in his custody a burglar who admitted that he had burglarized a home in the City of Temple, Texas, and that he had sold a diamond ring taken in that burglary to a Ft. Worth "fence" by the name of Skipwith. Skipwith took the officers to a home in Ft. Worth occupied by a Mr. and Mrs. Holt, who

had purchased the stolen diamond ring from him. Skipwith said he had told the Holts that the diamond was stolen: Mrs. Holt was wearing the stolen diamond upon her finger in the presence of the officers during these conversations. The Holts refused to give up possession of the ring. Therefore, the officers placed them under arrest and brought them to the city jail at Dallas, Texas. Max Moore was charged with false imprisonment, tried in the District Court of Tarrant County and convicted, and the appeal was carried to the Texas Court of Criminal Appeals.

Judge Graves, speaking for the Texas Court of Criminal Appeals, in reversing the conviction and discussing this case and Article 325, Texas Code of Criminal Procedure said:

"This article has uniformly been held to give the right of arrest without a warrant. It is a wholesome statute, designed to give protection from thieves, and we have neither the inclination nor the legal right to nullify its salutatory provisions by declaring its operation to be controlled by the terms of the search and seizure law, enacted long after Article 325, and which neither expressly nor by necessary implication, repeals it."

- (c) In Ringo vs. State, 161 Tex. Cr. R. 93, 275 S. W. 2d 121 (1955):

An officer of the Big Springs Police Department stopped the defendant's car because of suspicious circumstances. A radio check by the officer revealed the car to be registered to a person other than the defendant. The suspicious circumstances, plus the registration information, authorized an arrest without a warrant under both this article and Article 14.03 (214) C. C. P.

- (d) In Converse vs. State, 386 S. W. 2d 283 (1965):

Two officers were notified by radio of a theft and given a description of the defendant's car. The officers arrested the defendant some two hours later in the car and recovered the stolen property in a search of the car incidental to the arrest. The Texas Court

of Criminal Appeals upheld the legality of the arrest, stating: "The arrest of the occupant and the search of the automobile in flight from the scene of the thefts was admissible." Article 325, C. C. P.

(B) SHOPLIFTING

Article 1436e, Penal Code - Shoplifting:

Section 1. Any person while legally in a retail business establishment as an invitee or licensee who removes from its place, goods, edible meat or other corporeal personal property of any kind or character kept, stored or displayed for sale with the intent to fraudulently take and to deprive the owner of the value of the same and to appropriate the same to the use and benefit of the person taking is guilty of shoplifting. Altering of label or marking on goods, edible meat or other corporeal personal property or transferring same from one container to another with intent to defraud the owner also constitutes the crime of shoplifting.

Prevention of Consequences of Shoplifting

Section 2. All persons have a right to prevent the consequences of shoplifting by seizing any goods, edible meat or other corporeal property which has been so taken, and bringing it, with the supposed offender, if he can be taken, before a magistrate for examination, or delivering the same to a peace officer for that purpose. To justify such seizure, there must, however, be reasonable ground to suppose the crime of shoplifting to have been committed and the property so taken, and the seizure must be openly made and the proceeding had without delay.

Detention of Persons

Section 3. Any merchant, his agent or employee, who has reasonable ground to believe that a person has wrongfully taken or has wrongful possession of merchandise, may detain such person in a reasonable manner and for a reasonable length of time for the purpose of investigating the ownership of such merchandise. Such reasonable detention shall not constitute an arrest nor shall it render the merchant, his agent or employee, liable to the person detained.

CONTINUED

1 OF 2

WHEN INFORMED OF A FELONYArticle 14.04 (215) C. C. P. - When Felony Has Been Committed

"Where it is shown by satisfactory proof to a peace officer, upon the representation of a credible person, that a felony has been committed, and that the offender is about to escape, so that there is no time to procure a warrant, such peace officer may, without warrant, pursue and arrest the accused."

This statute is restricted to felony cases only and does not include the authority to arrest in misdemeanor cases. As in Article 14.01, C. C. P., the statute makes no distinction between ordinary and capital felonies but includes all felonies, regardless of the nature of the offense.

It is well settled that the arresting officer may receive the information in person, from a complainant or witness, by telephone or by radio broadcast. It is not necessary, under this article, that the peace officer witness the commission of the offense or that the offense occur within his presence. This article is based upon necessity, and unless the suspect is about to flee and unless there is insufficient time to secure a warrant, an arrest cannot be justified under this article. In Butler vs. State, 151 Tex. Cr. R. 244, 208 S. W. 3d 89 (1947), the defendant was arrested in his home two days following a burglary without a warrant of arrest or search warrant. The Texas Court of Criminal Appeals held that such arrest and seizure of evidence two days after the commission of a burglary was illegal.

The United States Supreme Court has similarly held that there must be some information that a murder suspect is about to escape to justify an arrest without a warrant under this article. Ward vs. Texas, 316 U. S. 547, 62 S. Ct. 1139 (1942).

Some cases which have upheld arrests under this article are:

- (a) In Rickman vs. State, 138 Tex. Cr. R. 193, 134 S. W. 2d 668 (1940):

A police officer was informed that the defendant had committed a robbery and had forced a taxi driver to drive him to Wolfe City, Texas. During the arrest, the defendant shot and killed the officer. In upholding the legality of the deceased officer's arrest, the Court of Criminal Appeals stated:

"The testimony shows that the deceased was informed that J. W. Rickman had committed a felony, and that deceased was acquainted with Rickman, and that he was a fugitive from such felony. If that be true, and surely if he knew Rickman he recognized him when he saw him in the car, then under Article 215, Texas Code of Criminal Procedure, he would have the right to pursue and to arrest the accused. (Death penalty affirmed)."

- (b) In Tunnell vs. State, 168 Tex. Cr. R. 358, 327 S. W. 2d 590 (1959):

Information received by a deputy sheriff as to a robbery and a description of the automobile in which the suspects were fleeing was sufficient to warrant arrest of the defendant and his companions without a warrant, and search incidental to the arrest was legal.

- (c) In Gonzales vs. State, 379 S. W. 2d 352:

When an officer received information from a confidential source that the defendant had purchased a can of marijuana and was preparing to leave the

city on a bus, the officer immediately proceeded to bus station. He saw the defendant approaching a bus, and an arrest and search of the defendant's person was authorized.

V

OFFICER MAY ARREST ON MAGISTRATE'S VERBAL ORDER

Article 14.02 (213) C. C. P. - Within View of Magistrate

"A peace officer may arrest, without warrant, when a felony or breach of the peace has been committed in the presence or within the view of a magistrate, and such magistrate verbally orders the arrest of the offender."

This article merely gives a magistrate the same authority to order the arrest of an offender who commits a felony or breach of the peace in his presence. The magistrate has no authority under this article to verbally order the arrest of a person who commits a misdemeanor not amounting to a breach of the peace or an offense not committed in his presence or view.

The Texas Court of Criminal Appeals in Pritchett vs. State, 152 Tex. Cr. R. 214 S. W. 2d 623 (1948) held:

"The Mayor of an incorporated town or city is a magistrate with authority to verbally order the arrest of one who commits a breach of the peace within his view or presence, and a peace officer who is so ordered may lawfully arrest offender without a warrant."

ESCAPED PRISONERS

A peace officer may arrest an escaped prisoner without a warrant for, in reality, he is merely retaking the prisoner and not making an arrest.

Article 15.27 (244) C. C. P. - Escaped Prisoner

"If a person arrested shall escape, or be rescued, he may be retaken without any other warrant; and for this purpose, all the means may be used which are authorized in making the arrest in the first instance."

This article applies to all types of prisoners and to all categories of offenses. It is immaterial whether the prisoner is in custody on a misdemeanor or felony charge. Furthermore, it is immaterial whether or not the prisoner was originally arrested under a warrant or had been formally charged with an offense. So long as the original arrest was lawful, a peace officer may retake a prisoner under this article.

The Texas Court of Criminal Appeals has ruled that either a peace officer or a private citizen may arrest an escaped convict under this article.

Stephens vs. State, 147 Tex. Cr. R., 182 S. W. 2d 707 (1944)

FOR CARRYING CERTAIN FIREARMS OR WEAPONS

Chapter Four, Title 9, of the Texas Penal Code, provides in Article 487

the following authority for a peace officer to arrest without warrant persons in possession of certain firearms and other weapons.

Article 487, P. C. - Arrest Without Warrant

"Any person violating any article of this chapter may be arrested without warrant by any peace officer and carried before the nearest justice of the peace. Any peace officer who shall fail or refuse to arrest such person on his own knowledge or upon information from some reliable person, shall be fined not exceeding five hundred dollars (\$500). Acts 1871, p. 26."

Article 483 of the Penal Code specifies that pistols and certain other weapons may not be carried on or about the person.

Article 483, P. C. - Unlawfully Carrying Arms

"Any person who shall carry on or about his person, saddle or in his saddlebags, or in his portfolio or purse any pistol, dirk, dagger, sling-shot, blackjack, hand chain, night stick, pipe stick, sword cane, spear, knuckles made of any metal or any hard substance, bowie knife, switch blade knife, spring blade knife, throw blade knife, a knife with a blade over five and one half (5 1/2) inches in length, or any other knife manufactured or sold for the purpose of offense or defense shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by confinement in jail for not less than one (1) month nor more than one (1) year. As amended Acts 1957, 55th Leg., p. 806, chap. 340."

The following articles are included in Chapter Four and set forth in the acts which are made offenses:

- | | |
|------|------------------------------------|
| Art. | |
| 483. | Unlawfully carrying arms. |
| 484. | Not applicable to certain persons. |
| 485. | Carrying arms in any assembly. |
| 486. | Not applicable to whom. |
| 487. | Arrest without warrant. |

- 488. Dope seller carrying arms.
- 489. Sale of weapon to minor.
- 489a. Sale or lease of weapon to minor or person under heat of passion.
- 489b. Machine guns.
Sec.
 - 1. Definition
 - 2. Penalty
 - 3. Sale, penalty
 - 4. Exception of peace officers and others.
 - 5. Sale to certain officers as not prohibited.
- 489c. Possession of firearms by persons convicted of felony involving use of firearm.

It should be noted that peace officers have a duty to arrest persons in possession of these weapons, and it is immaterial in this State whether the weapon is concealed or in open view. It is a violation if carried "on or about" the person, and this includes weapons carried in automobiles. Allen vs. State, 158 Tex. Cr. R. 666, 259 S. W. 2d 225 (1953).

(a) In Gray vs. State, 382 S. W. 2d 481 (1964):

The defendant was arrested for carrying a pistol in her car when she was involved in a collision. The defendant contended that she was carrying \$1,100.00 after closing her business and that this constituted an exception to Article 484, P. C.

The Court of Criminal Appeals rejected the defendant's contention and stated: "The court was not bound to accept the testimony of the appellant and her friend and it is apparent from his finding of guilty, that he did not do so. . . . The evidence is sufficient to support a conviction."

(b) In Porter vs. State, 388 S. W. 2d 422 (1965):

The defendant was arrested approximately one block from his home for carrying a pistol. He claimed that he had left the house with a pistol after a disturbance with his girl friend and that

he had gone to call the police when he was arrested. The defendant contended that these facts constituted an exception to Article 484, P. C.

The Court of Criminal Appeals rejected the defendant's contention and stated:it is not required to believe the defendant's testimony as to his reason for carrying the pistol, even if it is not controverted."

Chapter 31, Section 31-11 of the Dallas City Code Provides:

Section 31-11, Firearms - Unlawful Possession or Discharge

"It shall be unlawful to have in one's possession within the city or upon any property owned by the city and firearms, rifle, shotgun, automatic rifle, revolver, pistol or any other weapon designed for the purpose of firing or discharging a shell or cartridge, or to discharge the same, whether such shell or cartridge is blank or live ammunition; provided, however, that this section shall not apply to law enforcement peace officers when acting in the performance of their official duties, provided further that this section shall not apply to pistol ranges located in the city operated by the Police Department nor to public shooting ranges located in public parks owned by the City of Dallas under the supervision of the Park Board."
Revised March 8, 1965

Title 18 of the United States Code makes the possession of certain weapons a felony under federal law. These weapons include sawed off shotguns, sawed off rifles, "Zip" guns, machine guns and automatic rifles. Since these violations are felonies, a peace officer has the right to arrest for violations of these laws as he would in any other felony where he has authority to arrest.

NARCOTIC VIOLATIONS

The Texas Uniform Narcotic Drug Act gives peace officers special permission to search for narcotic drugs without a warrant.

Article 725-B, Section 15, Penal Code

"Officers and employees of the Department of Public Safety, and all other peace officers who have authority to and are charged with the duty of enforcing the provisions of this act shall have power and authority, without warrant, to enter and examine any buildings, vessels, cars, conveyances, vehicles, or other structures or places, when they have reason to believe and do believe that any or either of same contains narcotic drugs manufactured, bought, sold, shipped, or had in possession contrary to any of the provisions of this act, or that the receptacle containing the same is falsely labeled except when such building, vessel, or other structure is occupied and used as a private residence, in which event a search warrant shall be procured as herein provided."

This statute gives the peace officer broad authority to make searches to discover narcotic drugs. It does not include authority to search a private residence, which searches must be made with a lawful search warrant, warrant of arrest or the consent of the owner or lawful resident of the private residence.

This article alone does not specifically authorize the arrest of narcotic violators, but only the search of certain places. To justify an arrest without a warrant there must be probable cause. The probable cause test in narcotic cases is two-fold: (1) information that the arrested person is in possession of narcotics; PLUS (2) some overt incriminating act on the part

of the accused. Thomas vs. State, 163 Tex. Cr. R. 68, 288 S. W. 2d 791 (1956).

The United States Supreme Court has upheld arrests without warrant by state officers for narcotic violations where probable cause existed at the time of the arrest. Ker vs. California, 374 U. S. 23, 83 S. Ct. 1623 (1963)

- (a) In French vs. State, 162 Tex. Cr. R. 48, 284 S. W. 2d 359 (1955):

Two Houston police officers received information that the accused was handling marijuana. While observing another arrest being made, the officers saw the defendant flee the scene and gave chase. They arrested French and recovered three marijuana cigarettes. The Court of Criminal Appeals held that the information plus the incriminating act constituted probable cause for arrest and affirmed the conviction.

- (b) In Sanders vs. State, 166 Tex. Cr. R. 293, 312 S. W. 2d 640 (1958):

Two Houston police officers received information that the accused was in possession of marijuana. They were told that he was walking on Main Street and that he was dressed in a checked sport shirt, khaki trousers and a dress cap. Acting on this information, the arresting officers found the accused walking on Elgin Street, dressed as described. As the officers approached the accused, he wrapped his cigarette in chewing gum paper and put it in his hip pocket. An arrest and search of the accused revealed the cigarette to be marijuana. In affirming the conviction the Court of Criminal Appeals stated: "We overrule the appellant's contention that the arrest and search were unlawful. The credible information plus the unusual act of appellant were sufficient to lead the officers to believe that a felony was being committed in their presence and to authorize the arrest without a warrant."

of the accused. Thomas vs. State, 163 Tex. Cr. R. 284, 263 S. W. 2d 261 (1954).

The United States Supreme Court has upheld arrests without warrant by state officers for narcotic violations where probable cause existed at the time of the arrest. Ker vs. California, 374 U. S. 23, 83 S. Ct. 1133 (1963).

(a) In French vs. State, 163 Tex. Cr. R. 48, 284 S. W. 2d 261 (1955):

Two Houston police officers received information that the accused was handling marijuana. While observing another arrest being made, the officers saw the defendant flee the scene and gave chase. They arrested French and recovered three marijuana cigarettes. The Court of Criminal Appeals held that the information upon which the terminating act consisted probable cause for the arrest and affirmed the conviction.

(b) In Sanders vs. State, 166 Tex. Cr. R. 287, 218 S. W. 2d 640 (1958):

Two Houston police officers received information that the accused was in possession of marijuana. They were told that he was waiting on Main Street and that he was dressed in a checked sport shirt, khaki trousers and a dress cap. Acting on this information, the arresting officers found the accused waiting on Fifth Street. The accused was described as being dressed as described. As the officers approached the accused, he wrapped his cigarette in chewing gum paper and put it in his hip pocket. An arrest was made of the accused and he was taken to the station. The Court of Criminal Appeals affirmed the conviction. The Court stated: "The facts in this case are undisputed. The evidence is clear and uncontroverted. The officers had probable cause to believe that the accused was in possession of marijuana at the time of his arrest. The officers acted properly in arresting him and in charging him with possession of marijuana. The conviction is affirmed."

Other legal arrests have been upheld as being a basis for a lawful search and subsequent prosecution for possession of some type of narcotic drug. These include speeding, Brown vs. State, 159 Tex. Cr. R. 306, 263 S. W. 2d 261 (1954); D. W. I., Richardson vs. State, 163 Tex. Cr. R. 585, 294 S. W. 2d 844 (1956); drunk in a public place, Hardin vs. State, 387 S. W. 2d 60 (1965) and persons arrested by virtue of Article 14.03 (214) C. C. P. when found under suspicious circumstances.

IX

CERTAIN GAMBLING VIOLATIONS

(A) Bookmaking

Article 652-A. P. C. has several violations, including both felonies and misdemeanor grades of gambling by bookmaking.

Article 652-A, Section 10, Penal Code

"It shall be the duty of all peace officers and all other officers named in this Act to arrest without warrant any and all persons violating any provisions of this Act, whenever such violation shall be committed within the view of such officer or officers."

(B) Betting on dog races

Article 646-A, Section 5, P. C. authorizes all peace officers to arrest without a warrant any and all persons engaged in betting on dog races. Dog racing and the raising of dogs for racing purposes is not prohibited by law, but betting in Texas on the results of dog races whether held in this State or elsewhere is illegal. Reed vs. Fulton, 384 S. S. 2d 173, ref. N. R. E. (civ. App. 1964).

Other legal arrests have been upheld as being...
and subsequent prosecution for possession of...
These include... *Brown v. State*, 1937...
34 501 (1954); *D. W. J., Richardson v. State*, 1952...
34 844 (1954); *drunk in a public place*, 1951...
34 60 (1953) and persons arrested by virtue of...
P, when found under... circumstances.

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ARTICLE 2338-1, SECTION 11, R. C. S., PARAGRAPH 2

(A) Inspection

Article 2338-1, Section 11, R. C. S., Paragraph 2
has been amended to read as follows:
"Any peace officer or probation officer shall have the
right to take into custody any child who is found vio-
lating any law or ordinance, or who is reasonably be-
lieved to be a fugitive from his parents or from justice,
or whose surroundings are such as to endanger his
health, welfare, or morals."

Article 2338-1, Section 11, R. C. S., Paragraph 2

"It shall be the duty of all peace officers to
enforce the law and to arrest all persons who
are found violating any provision of the
law or ordinance, or who are reasonably
believed to be a fugitive from his parents
or from justice, or whose surroundings are
such as to endanger his health, welfare,
or morals."

(B) Arrest

Article 2338-1, Section 11, R. C. S., Paragraph 2
has been amended to read as follows:
"Any peace officer or probation officer shall have the
right to take into custody any child who is found vio-
lating any law or ordinance, or who is reasonably be-
lieved to be a fugitive from his parents or from justice,
or whose surroundings are such as to endanger his
health, welfare, or morals."

(C) Policy games

Article 642-C, Section 8, P. C. authorizes all peace offi-
cers to arrest without a warrant any and all persons en-
gaged in keeping, exhibiting or operating a policy game.

X

JUVENILES

Officers may arrest juveniles under any of the conditions where adults may
be arrested. A juvenile may also be arrested for violation of any law,
whether felony or misdemeanor or city ordinance and he may be arrested
when he is a fugitive from his parents or when his health, welfare or morals
are endangered.

Article 2338-1, Section 11, R. C. S., Paragraph 2

"Any peace officer or probation officer shall have the
right to take into custody any child who is found vio-
lating any law or ordinance, or who is reasonably be-
lieved to be a fugitive from his parents or from justice,
or whose surroundings are such as to endanger his
health, welfare, or morals."

The juvenile has the same constitutional rights as adults insofar as pro-
tection against false arrest and unreasonable seizure is concerned,

State law requires that arrested juveniles be separated from adults, and
the Dallas Police Department Juvenile Bureau has a detailed Standard
Operating Procedure regarding the arrest, booking and deposition of ju-
venile offenders.

Arrested by the undersigned on 10/10/68 at Houston, Texas. The accused was arrested without a warrant by authority of the Texas Uniform Criminal Extradition Act.

X

EXTRADITION

Section 14.13 (1008a), Sec. 14, (p. 555) C. C. P.:

Arrest Without a Warrant

"Sec. 14. The arrest of a person may be lawfully made also by any peace officer or private person, without a warrant upon reasonable information that the accused stands charged in the courts of a State with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on a warrant."

Under this authority officers should proceed in a manner similar to that discussed in Section IV. The officer should have reasonable information that the person to be arrested is charged with a crime in a foreign jurisdiction. This crime must be classed as a felony or a serious misdemeanor where the maximum punishment could be by confinement for more than one year. There is no authority for arrest of a fugitive charged with a minor misdemeanor punishable only by a fine or jail sentence of less than a year.

FUGITIVE FROM OTHER STATES

Fugitives from justice from other states or the District of Columbia may be arrested without a warrant by authority of the Texas Uniform Criminal Extradition Act.

Article 51.13 (1008a), Sec. 14, (p. 555) C. C. P.:

Arrest Without a Warrant

"Sec. 14. The arrest of a person may be lawfully made also by any peace officer or private person, without a warrant upon reasonable information that the accused stands charged in the courts of a State with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on a warrant."

Under this authority officers should proceed in a manner similar to that discussed in Section IV. The officer should have reasonable information that the person to be arrested is charged with a crime in a foreign jurisdiction. This crime must be classed as a felony or a serious misdemeanor where the maximum punishment could be by confinement for more than one year. There is no authority for arrest of a fugitive charged with a minor misdemeanor punishable only by a fine or jail sentence of less than a year.

LIQUOR LAW VIOLATIONS

The Texas Liquor Control Act has special provisions which authorize seizure of contraband and arrest without warrant of those persons who violate its provisions.

Article 666-4, Section C. Paragraph (2), Penal Code

"Any alcoholic beverage possessed in violation of this Section is declared to be an illicit beverage and may be seized without warrant to be used as evidence of a violation of law, and any person in possession thereof or who otherwise violates any provision of this Section may be arrested without warrant."

Violations such as the illegal manufacture, sale and possession of liquor are grouped in this section.

Article 666-42, Penal Code

"All illicit beverages as defined by this Act together with the containers and any devices in which the beverage is packaged, and any wagon, buggy, automobile, water or aircraft, or any other vehicle, used for the transportation of any illicit beverage, or any equipment designed to be used or which is used for illicit manufacturing of beverages, or any material of any kind which is to be used in the manufacturing of illicit beverages, may be seized with or without a warrant by an agent or employee of the Texas Liquor Board, or by any peace officer, and any person found in possession or in charge thereof may be arrested without a warrant."

This section authorizes the seizure and confiscation of property used to violate the liquor law, but as a secondary phase it authorizes the arrest of persons found in charge of the property.

All peace officers are authorized to arrest without a warrant those who violate statutory clauses of the Texas Liquor Control Act, including the prescribed acts of omission or commission, in their presence and view, even though it be for a misdemeanor clause. This is restricted to violations of the statutory clauses.

The arresting officer must have probable cause to make an arrest, search or seizure under these articles. Mere suspicion alone is not sufficient to establish probable cause. Facts or information must be secured to support this belief before arrest without warrant after the evidence is found will be construed by the court as being lawful.

The basic statutes authorize the Texas Liquor Control Board to set up rules and regulations and to take administrative action against the license holder for violations. Peace officers are not permitted to arrest for violations of the administrative rules and regulations of the Board.

XII

SUPPRESSION OF RIOTS

Title 9, Chapters 1 and 2, of the Texas Penal Code sets out the specific acts which constitute an unlawful assembly or riot.

"An 'unlawful assembly' is the meeting of three or more persons with intent to aid each other by violence or in any other manner either to commit an offense or illegally to deprive any person of any right or to disturb him in the enjoyment thereof."

Article 455, P. C. - Riot

"If the persons unlawfully assembled together to or attempt to do any illegal act, all those engaged in such illegal act are guilty of riot."

Riots usually begin as disturbances followed by an unlawful assembly which becomes a riot when the persons assembled begin an unlawful act.

Disturbances, unlawful assemblies and riots all constitute offenses against the public peace, and a peace officer may arrest without a warrant for any of these offenses which occur within his presence or view. Article 14.01, (212) C. C. P.

Further authority is given peace officers and magistrates to suppress such unlawful acts in Chapter 8, "Suppression of Riots and Other Disturbances" of the new Code of Criminal Procedure.

Article 8.04 (98) C. C. P. - Dispersing Riot

"Whenever a number of persons are assembled together in such a manner as to constitute a riot, according to the penal law of the State, it is the duty of every magistrate or peace officer to cause such persons to disperse. This may either be done by commanding them to disperse or by arresting the persons engaged, if necessary, either with or without warrant."

Article 8.06 (100) C. C. P. - Means Adopted to Suppress

"The officer engaged in suppressing a riot and those who aid him are authorized and justified in adopting such measures as are necessary to suppress the riot, but are not authorized to use any greater degree of force than is requisite to accomplish that object."

Article 8.07 (101) C. C. P. - Unlawful Assembly

"The Articles of this Chapter relating to the suppression of riots apply equally to an unlawful assembly and other unlawful disturbances, as defined by the Penal Code."

The Texas Penal Code makes it a duty for a magistrate or peace officer to disperse unlawful assemblies and riots.

Article 472, P. C. - Duty of Officers in Case of Riot

"If any persons shall be unlawfully or riotously assembled together, it is the duty of any magistrate or peace officer, so soon as it may come to his knowledge to go to the place of such assembly and command the persons assembled to disperse; and all who continue so unlawfully assembled or engaged in a riot after being warned to disperse shall be punished by the addition of one-half the penalty to which they would otherwise be liable if no such warning had been given."

XIV

DISLOYALTY

Chapter 7 of the Penal Code is titled, "The Flag and Loyalty".

Article 156, Penal Code

"Any officer without warrant may arrest anyone violating any provision of the four preceding articles when the offense is committed in his presence or within his view, or within the view of a magistrate, and such officer about to make such arrest is authorized to require the offender to at once desist from such violation. Travis County shall also have venue of said offenses. The Suspended Sentence Law shall not apply to such offenses."

Officers are authorized to arrest persons who violate Article 152, P. C., Insult to United States Flag; Article 153, P. C., Disloyalty in Writing;

Article 154, P. C., Possessing Flag of Enemy; or, Article 155, P. C., Disloyal Language. The last three statutes apply only during time of war. Insults to the United States Flag, Article 152, P. C., applies during peace time.

XV

TRAFFIC VIOLATIONS

The traffic laws of the State of Texas and City of Dallas are found in three separate enactments. They are:

- (a) The Texas Penal Code, Title 13, Chapter 1, Articles 783-803.
- (b) The Uniform Act Regulating Traffic on Highways, Article 6701d, Revised Civil Statutes.
- (c) The City of Dallas Traffic Code, Chapter 28, Articles 28-1 through 28-427, the Revised Code of Civil and Criminal Ordinances of the City of Dallas, Texas, 1960.

(A) THE TEXAS PENAL CODE

Article 803 P. C., which was enacted by the Legislature in 1917 shortly after the automobile first became popular, authorizes arrest without warrant for offenses listed in Title 13, Chapter 1, of the Penal Code and includes:

- Article 783 Obstruction of Navigable Streams
- Article 784 Obstruction of Public Road, Street, etc.
- Article 784-1 Fishing from public road or bridge
- Article 787 Obstructing railway crossing

Article 792 Violation of promise to appear
Article 795 Racing
Article 796 Horn
Article 797 Prevent unusual noise, etc.
Article 798 Lights
Article 799 Brakes
Article 801 Law of the Road
Article 802 Driving while intoxicated

Article 803 P. C.

"Any peace officer is authorized to arrest without warrant any person found committing a violation of any provision of the preceding articles of this chapter."

Article 792, P. C.

"In case of any person arrested for violation of the preceding articles relating to speed of vehicles, unless such person so arrested shall demand that he be taken forthwith before a court of competent jurisdiction for an immediate hearing, the arresting officer shall take the license number, name and make of the car, the name and address of the operator or driver thereof, and notify such operator or driver in writing to appear before a designated court of competent jurisdiction at a time and place to be specified in such written notice at least ten days subsequent to the date thereof, and upon the promise in writing of such person to appear at such time and place, such officer shall forthwith release such person or persons from custody.

Any person wilfully violating such promise, regardless of the disposition of the charge upon which he was originally arrested, shall be fined not less than five nor more than two hundred dollars."

Under Article 803 of the Penal Code, peace officers have authority to stop motor vehicles for violation of the traffic laws and safety regulations and authority to search the vehicles incident to the arrest.

(B) UNIFORM HIGHWAY ACT

The Uniform Act Regulating Traffic on the Highways was originally enacted in 1947 by the 50th Texas Legislature and was designed to retain and extend the regulation of automobiles as originally passed by the Legislature in 1917 in the Penal Code.

Article 6701-D, Section 153, R. C. S.

"Any peace officer is authorized to arrest without warrant any person found committing a violation of any provision of this Act."

(C) CITY TRAFFIC CODE

In the Revised Code of Civil and Criminal Ordinances of the City of Dallas, Texas, 1960; Chapter 28 (including Articles 28-1 to 28-427) is known as the City Traffic Code. This Chapter is authorized by State Law, Article 6701D, Section 27, R. C. S. The City Traffic Code is not in conflict with the State Law but is a supplemental authority for the regulation and control of traffic in the City of Dallas. It is wide in its scope and covers all phases of traffic regulations.

Section 37-6, Volume II

It shall be the duty of every policeman to make arrests, without a warrant, when a state law or city ordinance has been violated in his presence. But, in making such arrest and in conveying the offender to the city jail, he shall use only such force as is necessary to effect his purpose.

Section 28-338, Volume I

Officers of the police department shall issue traffic tickets or notices to answer charges to violators of any of the provisions of this article in the same manner as tickets and notices are issued for any other offenses.

Section 28-339, Volume I

Whenever any person is arrested for violating any provision of this chapter, except as otherwise provided in the state law, the arresting officers shall take such person's name, address, the license number or registration of his vehicle, if any, and issue to such person, in writing on a form to be provided by the city, a notice, specifying the offense charged, to answer to the charge against him within not less than ten days at the time and place which shall be specified in such notice. The arresting officer shall thereupon have the arrested person give his written promise to answer as specified in the notice, and upon securing such written promise, shall release such person from custody. The arresting officer shall deliver one copy of the notice to the person arrested which copy shall contain on the back thereof instructions advising the arrested person of his rights. The original copy of the notice shall serve as a complaint to be delivered to the corporation court. Another copy of the notice shall be retained by the arresting officer for his own use and information, and a perforated IBM copy of the notice shall be sent to IBM section of the police department for their use in making a permanent record. The IBM copy will be forwarded to the corporation court whereon the final disposition of the case will be noted. After the case is disposed of the IBM copy will then be returned to the IBM section where a permanent record of the disposition of the case will be made.

The Courts of Texas have long upheld the right and duty of peace officers to make arrests without a warrant for traffic violations. The Courts have also been liberal in allowing peace officers to search vehicles, drivers and occupants of vehicles incidental to the violation of traffic laws where probable cause exists and in allowing the evidence of other crimes to be admitted into evidence.

Some cases in which a traffic arrest resulted in subsequent prosecution for an offense found as a result of the search incidental to the traffic arrest are:

- (a) In Doran vs. State, 163 Tex. Cr. R., 290 S. W. 2d 510 (1956):

Arresting officers stopped the defendant for running a flashing red light. As they checked his "drivers" license, the officers observed the defendant's attempt to conceal something. A search of the car revealed marijuana.

- (b) In Richardson vs. State, 163 Tex. Cr. R., 294 S. W. 2d 844 (1956):

The defendant was arrested for speeding and was found to be in possession of paraphernalia for using narcotic drugs. The Court of Criminal Appeals said:

"If the officer observed the appellant violating a traffic law, he was authorized in arresting him and searching his person. If after the arrest, he observed that the appellant was intoxicated or under the influence of a narcotic drug, he was then authorized to search his automobile."

- (c) In Aaron vs. State, 163 Tex. Cr. R., 296 S. W. 2d 264 (1956):

The defendant was arrested for D. W. I. and heroin was found in his shirt pocket.

- (d) In Piland vs. State, 162 Tex. Cr. R. 363, 285 S. W. 2d 230 (1955):

The defendant was stopped in an automobile with one license plate. A check by radio revealed the plate to be fictitious, and a search of the car revealed the fruits of a burglary.

- (e) In Staton vs. State, 354 S. W. 2d 582 (1962):

The defendant was arrested for speeding, and a pistol was found in the front seat of his car.

- (f) In Anderson vs. State, 391 S. W. 2d 54 (1965):

A Garland police officer observed the defendant driving without lights at 3:45 A. M. Upon stopping the car, evidence of a burglary, burglary tools and two suspects attempting to hide in the back seat were found by the arresting officer.

PREVENTING OFFENSES

Chapter 5 of the new Code of Criminal Procedure provides that a private citizen may lawfully resist any unlawful offense against his person or any attempt to injure him or to take his property. Peace officers may prevent any unlawful offenses about to be committed in their presence.

Article 5.01 (65) C. C. P. - May Prevent

"The commission of offenses may be prevented either by lawful resistance or by the intervention of the officers of the law."

Article 5.02 (66) C. C. P. - Resistance to Protect Person

"Resistance by the party about to be injured may be used to prevent the commission of any offense which, in the Penal Code, is classed as an offense against the person."

Article 5.03 (67) C. C. P. - To Protect Property

"Resistance may also be made by the person about to be injured, to prevent any illegal attempt by force to take or injure property in his lawful possession."

Article 5.04 (68) C. C. P. - Limit to Resistance

"The resistance which the person about to be injured may make to prevent the commission of the offense must be proportioned to the injury about to be inflicted. It must be only such as is necessary to repel the aggression."

Article 5.05 (69) C. C. P. - Excessive Force

"If the person about to be injured, in respect either to his person or property, uses a greater amount of force to resist such injury than is necessary to repel the aggressor and protect his own person or property, he is himself guilty of an illegal act, according to the nature and degree of the force which he has used."

Article 5.06 (70) C. C. P. - Other Person May Prevent

"Any person other than the party about to be injured may also, by the use of necessary means, prevent the commission of the offense."

Article 5.07 (71) C. C. P. - Defense of Another

"The same rules which regulate the conduct of the person about to be injured, in repelling the aggression, are also applicable to the conduct of him who interferes in behalf of such person. He may use a degree of force proportioned to the injury about to be inflicted, and no greater."

Chapter 6 of the new Code of Criminal Procedure provides that peace officers have a duty to prevent the commission of offenses about to be committed in their presence.

Article 6.05 (76) C. C. P. - Duty of Peace Officer as to Threats:

"It is the duty of every peace officer, when he may have been informed in any manner that a threat has been made by one person to do some injury to himself or to the person or property of another, to prevent the threatened injury, if within his power; and, in order to do this, he may call in aid any number of citizens in his county. He may take such measures as the person about to be injured might for the prevention of the offense."

Article 6.06 (77) C. C. P. - Peace Officer to Prevent Injury

"Whenever, in the presence of a peace officer, or within his view, one person is about to commit an offense against the person or property of another or injure himself, it is his duty to prevent it; and, for this purpose the peace officer may summon any number of the citizens of his county to his aid. The peace officer must use the amount of force necessary to prevent the commission of the offense, and no greater."

Article 6.07 (78) C. C. P. - Conduct of Peace Officer

"The conduct of peace officers, in preventing offenses about to be committed in their presence, or within their view, is

to be regulated by the same rules as are prescribed in the action of the person about to be injured. They may use all force necessary to repel the aggression. "

PROCEEDINGS AFTER ARREST

(A) DUTY TO TAKE TO MAGISTRATE

(1) General Duty of Officers

In each case where an arrest is made either with or without a warrant, the arresting officer has the duty to take the arrested person before a magistrate.

Article 14.06 (217) C. C. P. - Must Take Offender Before Magistrate

"In each case enumerated in this Code, the person making the arrest shall take the person arrested or have him taken without unnecessary delay before the magistrate who may have ordered the arrest or before some magistrate of the county where the arrest was made without an order. The magistrate shall immediately perform the duties described in Article 15.17 of this Code. "

Article 15.17, C. C. P. - Duties of Arresting Officer and Magistrate

"In each case enumerated in this Code, the person making the arrest shall without unnecessary delay take the person arrested or have him taken before some magistrate of the county where the accused was arrested. The magistrate shall inform in clear language the person arrested of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, of his right to request the appointment of counsel if he is indigent and cannot afford counsel, and of his right to have an examining trial. He shall also inform the person arrested that he is

not required to make a statement and that any statement made by him may be used against him. The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall admit the person arrested to bail if allowed by law. "

(2) Traffic Violations

Section 147

"Whenever any person is arrested for any violation of this act, punishable as a misdemeanor, the arrested person shall be immediately taken before a magistrate within the county in which the offense charged is alleged or has been committed, and who has jurisdiction of such offense and is nearest or more accessible with reference to the place where said arrest is made, in any of the following cases:

1. When a person arrested demands an immediate appearance before a magistrate.
2. When the person is arrested upon a charge of negligent homicide.
3. When the person is arrested upon the charge of driving while under the influence of intoxicating liquor or narcotic drug.
4. When the person is arrested upon the charge of failure to stop, in the event of an accident causing death, personal injuries, or damage to property.
5. In any event, when the person arrested refused to give his written promise to appear in court as hereinafter provided. "

Section 148 (a)

"Whenever a person is arrested for any violation of this Act punishable as a misdemeanor, and such person is not immediately taken before a magistrate as hereinbefore required, the arresting officer shall prepare in duplicate written notice to appear in court containing the name and address of

such person, the license number of his vehicle, if any, the offense charged, and the time and place when and where such person shall appear in court. Provided, however, that the offense of speeding shall be the only offense making mandatory the issuance of a written notice to appear in court, and only then if the arrested person gives his written promise to appear in court, by signing in duplicate the written notice prepared by the arresting officer; and provided further, that it shall not be mandatory for an officer to give a written notice to appear in court to any person arrested for the offense of speeding when such person is operating a vehicle licensed in a state or country other than the State of Texas or who is a resident of a state or country other than the State of Texas."

(3) Time

The term "immediately" has been held by numerous court decisions in this State not to mean instantaneously, but at a time within the regular business hours of the court. Gilbert vs. State, 284 S. W. 2d 906; Beeland vs. State, 193 S. W. 2d 687; Fouraker vs. Kidd Springs Boating and Fishing Club, 65 S. W. 2d 796; Robinson vs. Lovell, 238 S. W. 2d 294; and Hicks vs. Matthews, 266 S. W. 2d 846.

The Attorney General of Texas ruled in opinion C-558, dated December 6, 1965, that:

"When a defendant is arrested at night, Article 14.06 and Article 15.16, Texas Code of Criminal Procedure, require that he be taken before a magistrate no sooner than the opening of the magistrate's office during daylight hours."

(4) City of Dallas Courts

Effective February 1, 1966, the City of Dallas will have one of the Corporation Courts open between the hours of 7:00 P. M. and 3:00 A. M., seven days a week, for the purpose of arrest arraignments as well as to try such

other cases as may be assigned to it in its regular course of business.

The Revised Civil and Criminal Ordinances of the City of Dallas, Texas, 1960, provides:

Section 37-7 - Person Arrested to be Brought Before Court

"In all cases of the arrest of any person without a warrant, the policeman making the arrest shall bring such person forthwith before the corporation court, if in session, and if not in session, the policeman shall commit such person to the city jail, there to be safely kept in custody until such court shall be in session, when such person shall be taken forthwith before such court, there to be tried according to law; provided, that the chief of police or any policeman may take good and sufficient bail from such offender for his appearance before the corporation court. (Code 1941, Article 109-6)."

Thus, whether the arrest is for violation of a State Law or City Ordinance, the arresting officer has the duty to take the arrested person before a magistrate.

(B) BEFORE CONFESSIONS ARE OBTAINED

Article 38.22 (727) C. C. P., states that before an officer can take a written confession from an arrested person he must take the person before a magistrate in accordance with Article 15.16, C. C. P. The magistrate must then warn the accused of his rights as enumerated in Article 15.17, C. C. P.

Article 38.22 (727) - When Confession Shall Not be Used

"(a) The confession shall not be admissible if the defendant was in jail or other place of confinement or in the

custody of an officer at the time it was made, unless:

1. It be shown to be the voluntary statement of the accused taken before an examining court in accordance with law; or,
2. It be made in writing and signed by the accused and shows that the accused has at some time prior to the making thereof received the warning provided in Article 15.17. It must further show the time, date, place and name of the magistrate who administered the warning. It must further show that the person to whom the confession is made warned the accused: First, that he does not have to make any statement at all. Second, that any statement made by him may be used in evidence against him on his trial for the offense concerning which the confession is therein made, or..."

(C) OUT OF COUNTY WARRANTS

Article 15.16 (233) C. C. P. - How Warrant is Executed

"The officer or person executing a warrant of arrest shall without unnecessary delay take the person or have him taken before the magistrate who issued the warrant or before the magistrate named in the warrant, if the magistrate is in the same county where the person is arrested. If the issuing or named magistrate is in another county, the person arrested shall without unnecessary delay be taken before some magistrate in the county in which he was arrested."

Article 15.18 (235) C. C. P. - Arrest for Out-of-County Offense

"One arrested under a warrant issued in a county other than the one in which the person is arrested shall be taken before a magistrate of the county where the arrest takes place who shall take bail, if allowed by law, and immediately transmit the bond taken to the court having jurisdiction of the offense."

Article 15.19 (236) C. C. P. - Notice of Arrest

"If the accused fails or refuses to give bail, as provided in the preceding Article, he shall be committed to the jail of the county where he was arrested; and the magistrate committing him shall immediately notify the sheriff of the county

in which the offense is alleged to have been committed of the arrest and commitment, which notice may be given by telegraph, by mail or by other written notice. "

Article 15.20 (237) C. C. P. - Duty of Sheriff Receiving Notice

"The sheriff receiving the notice shall forthwith go or send for the prisoner and have him brought before the proper court or magistrate. "

Article 15.21 (238) C. C. P. - Prisoner Discharged if Not Timely Demanded

"If the proper officer of the county where the offense is alleged to have been committed does not demand the prisoner and take charge of him within ten days from the day he is committed, such prisoner shall be discharged from custody. "

HABEAS CORPUS PROCEEDINGS

Article 11.01 (113) C. C. P. - What Writ Is

"The writ of habeas corpus is the remedy to be used when any person is restrained in his liberty. It is an order issued by a court or judge of competent jurisdiction, directed to any one having a person in his custody, or under his restraint, commanding him to produce such person, at a time and place named in the writ, and show why he is held in custody or under restraint.

Article 11.02 (114) C. C. P. - To Whom Directed

"The writ runs in the name of "The State of Texas". It is addressed to a person having another under restraint, or in his custody, describing, as near as may be, the name of the office, if any, of the person to whom it is directed, and the name of the person said to be detained. It shall fix the time and place of return, and be signed by the judge, or by the clerk with his seal, where issued by a court. "

Article 11.23 (135) C. C. P. - Scope of Writ

"The writ of habeas corpus is intended to be applicable to all such cases of confinement and restraint, where there is

no lawful right in the person exercising the power, or where, though the power in fact exists, it is exercised in a manner or degree not sanctioned by law. "

Generally speaking, from a peace officer's viewpoint, the purpose of a habeas corpus proceeding before a trial is to determine whether a person in jail or confinement is lawfully held. The judge ordering the hearing on the writ may order the person released on bond pending the hearing or he may order the person having custody of the accused to appear in court and to bring the accused before the court at that time. The officer receiving the writ is bound by law to obey the order of the writ.

Article 11.34 (146) C. C. P. - Disobeying Writ

"When service has been made upon a person charged with the illegal custody of another, if he refuses to obey the writ and make the return required by law, or, if he refuses to receive the writ, or conceals himself, the court or judge issuing the writ shall issue a warrant directed to any officer or other suitable person willing to execute the same, commanding him to arrest the person charged with the illegal custody or detention of another and bring him before such court or judge. When such person has been arrested and brought before the court or judge, if he still refuses to return the writ, or does not produce the person in his custody, he shall be committed to jail and remain there until he is willing to obey the writ of habeas corpus, and until he pays all costs of the proceeding. "

Generally speaking, the filing of a proper charge in a manner prescribed by law satisfies the requirement of a lawful custody after arrest, but where no charge is filed the officer having custody of the accused is bound to discharge or release him from further custody or confinement.

CONCLUSION

This pamphlet has covered the Law of Arrest, both with and without a warrant. The arresting officer should always remember that the detective or supervisor who prepares a case report, the Assistant District Attorney who prosecutes the case and the judge and jury who hear the case will only know the details of the arrest as recorded in the officer's report or in his testimony. The officer must always put in his report all of the details, circumstances and facts which are necessary to constitute probable cause for the arrest. No doubt should be left, either in the mind of the reader of the report or in the officer's own mind, as to what happened if he is later called to testify in court.

The officer should always remember the rule:

Our courts, in effect, have said that when the arrest is lawful then the officer can search the person of and the immediate premises occupied by or under the custody and control of the arrested person. The evidence seized by such a search and seizure is then admissible. In case the arrest is declared to be unlawful, the evidence cannot be presented to a court or jury.

END