TEXAS - CODE OF

CRIMINAL PROCEDURE

Lessons 7 through 11

TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER
STANDARDS AND EDUCATION

INSTRUCTOR'S LESSON PLAN

Subject: Bail

UNIT: Code of Criminal Procedure - Lesson #7

AIMS: To inform the student of the laws concerning bail

MATERIALS: Outline for Handout

AIDS: Chalkboard

REFERENCE: Code of Criminal Procedure

I. PREPARATION

The officer may find himself in a position of having a prisoner in jail and several people, maybe even an attorney, demanding his release. The officer must be prepared to give the answers.

Excessive bail shall not be required under the 8th Amendment.

II. PRESENTATION

Instructional Topics and Teaching Points	Things for student to do Things for instructor to do or say
Definition of Bail	Article 17.01. "Bail" is security given by the accused that he will appear and answer before the proper court the accusation brought against him, and includes a bail bond or a personal bond. This new article provides for a bail bond or personal bond by the defendant. There is no longer a recognizance bond provided for in the C. C. P.; however, this term is sometimes used to describe a personal bond.
Definition of Bail Bond	Article 17.02. A 'bail bond" is written undertaking entered into by the defendant and his sureties for the appearance of the principal therein before some court or magistrate to answer a criminal accusation, provided, however, that the defendant upon execution of such bail bond may deposit with the custodian of funds of the court in which the prosecution is pending current money of the United States in the amount of the bond in lieu of having sureties signing the same. Any cash funds deposited under this Article shall be receipted for by the officer receiving the same and shall be refunded to the defendant if and when the defendant complies with the conditions of his bond, and upon order of the court. Provision is made here for cash bail in lieu of sureties on bail bond. The use of cash bail, though, without legal sanction has been prevalent over Texas for years, particularly in traffic cases.

PRESENTATION - Continued

Instructional Topics and Teaching Points	Things for student to do Things for instructor to do or say
Personal Bond	Article 17.03. The court before whom the case is pending may, in its discretion, release the defendant on his personal bond without sureties or other security. Article 17.04. Requisites of a personal bond. A personal bond is sufficient if it includes the requisites of a bail bond as set out in Article 17.08, except that no sureties are required. In addition, a personal bond shall contain the defendant's name, address and place of employment, and the following oath sworn and signed by the defendant: "I swear that I will appear before (the court or magistrate) at (address, city, county) Texas, on the (date), at the hour of (time, a.m. or p.m.) or upon notice by the court, or pay to the court the principal sum of (amount) plus all necessary and reasonable expenses incurred in any arrest for failure to appear." There are those defendants with ties to the community such as a family, a job, etc., but who do not have sufficient funds for a bail bondsman, corporate surety, nor friends with sufficient property to qualify as sureties. The amendment was designed to allow such defendant to be released on a personal bond and to return to his family and his job, pending trial.
When a Bail Bond is Given	Article 17.05. A bail bond is entered into either before a magistrate, upon an examination of a criminal accusation, or before a judge upon an application under habeas corpus; or it is taken from the de-

Instructional Topics and Teaching Points	Things for student to do Things for instructor to do or say
When a Bail Bond is Given - Cont'd.	fendant by a peace officer who has a warrant for arrest or commitment.
Requisites of a Bail Bond	Article 17.08. A bail bond shall be sufficient if it contain the following requisites: 1. That it be made payable to "The State of Texas," 2. That the defendant and his sureties, if any, bind themselves that the defendant will appear before the proper court or magistrate to answer the accusation against him; 3. If the defendant is charged with a felony, that it state that he is charged with a felony. If the defendant is charged with a misdemeanor, that it state that he is charged with a misdemeanor; 4. That the bond be signed by name or mark by the principal and sureties, if any, each of whom shall write thereon his mailing address; 5. That the bond state the time and place, when and where the accused binds himself to appear, and the court or magistrate before whom he is to appear The bond shall also bind the defendant to appear before any court or magistrate before whom the cause may thereafter be pending at any time when, and place where, his presence may be required under this Code or by any court or magistrate; 6. The bond shall also be conditioned that the principal and sureties, if any, will pay all necessary and reasonable expenses incurred by any and all sheriffs or other peace officers in re-arresting the principal in the event he fails to

Instructional Topics and Teaching Points	Things for student to do Things for instructor to do or say
Requisites of a Bail Bond -Cont'd.	appear before the court or magistrate named in the bond at the time stated therein. The amount of such expense shall be in addition to the principal amount specified in the bond. The failure of any bail bond to contain the conditions specified in this paragraph shall in no manner affect the legality of any such bond, but it is intended that the sheriff or other peace officer shall look to the defendant and his sureties, if any, for expenses incurred by him, and not to the State for any fees earned by him in connection with the rearresting of an accused who has violated the conditions of his bond.
Disqualified Sureties	Article 17.10. A minor cannot be surety on a bail bond, but the accused party may sign as principal. Now provides that a married woman may now be a surety on a bond. The only person disqualified from making a bond is a minor.
How Bail Bond is Taken	Article 17.11. Section 1. Every court, judge, magistrate or other officer taking a bail bond shall require evidence of the sufficiency of the security offered; but in every case, one surety shall be sufficient, if it be made to appear that such surety is worth at least double the amount of the sum for which he is bound, exclusive of all property exempted by law from execution, and of debts or other encumbrances; and that he is a resident of this state, and has property therein liable to execution whorth the sum for which he is bound.

Instructional Topics and Teaching Points	Things for student to do Things for instructor to do or say
How Bail Bond is Taken - Cont'd.	Section 2. (Art. 17.11 Cont'd) Provided, however, any person who has signed as a surety on a bail bond and is in default thereon shall thereafter be disqualified to sign as a surety so long as he is in default on said bond. It shall be the duty of the clerk of the court wherein such surety is in default on a bail bond, to notify in writing the sheriff, chief of police, or other peace officer, of such default. A surety shall be deemed in default from the time the trial court enters its final judgment on the scire facias until such judgment is satisfied or set aside. Section 1 reflects that this Article refers to bail bond since it requires sureties.
Exempt Property	Article 17.12. The property secured by the Constitution and laws from forced sale shall not, in any case, be held liable for the satisfaction of bail, either as to principal or sureties, if any.
Sufficiency of Sureties Ascertained	Article 17.13. To test the sufficiency of the security offered to any bail bond, unless the court or officer taking the same is fully satisfied as to its sufficiency, the following oath shall be made in writing and subscribed by the sureties: "I, do swear that I am worth, in my own right, at least the sum of (here insert the amount in which the surety is bound), after deducting from my property all that which is exempt by the Constitution and Laws of the State from forced sale, and after the payment of all my debts of every description, whether individual or security debts, and after satisfying all encum-

Instructional Topics and Teaching Points	Things for student to do Things for instructor to do or say
Sufficiency of Sureties Ascertained - Cont'd.	brances upon my property which are known to me; that I reside in.... County, and have property in this State liable to execution worth said amount or more". (Dated,.....and attested by the judge of the court, clerk, magistrate or sheriff) Such affidavit shall be filed with the papers of the proceedings. Article 17.14. (280) Affidavit not conclusive. Such affidavit shall not be conclusive as to the sufficiency of the security; and if the court or officer taking the bail bond is not fully satisfied as to the sufficiency of the security offered, further evidence shall be required before approving the same.
Amount of Bail	Article 17.15. The amount of bail to be required in any case is to be regulated by the court, judge, magistrate or officer taking the bail; they are to be governed in the exercise of this discretion by the Constitution and by the following rules: 1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with. 2. The power to require bail is not to be so used as to make it an instrument of oppression. 3. The nature of the offense and the circumstances under which it was committed are to be considered.

PRESENTATION - Continued

Instructional Topics and Teaching Points	Things for student to do Things for instructor to do or say
Amount of Bail - Continued	Art. 17.15 - Cont'd. 4. The ability to make bail is to be regarded, and proof may be taken upon this point.
Surety	Article 17.16. Surety may surrender his principal. Those who have become bail for the accused, or either of them, may at any time relieve themselves of their undertaking by surrendering the accused into the custody of the sheriff of the county where he is prosecuted. Article 17.19. Surety may obtain a warrant. Any surety, desiring to surrender his principal, may upon making affidavit of such intention before the court or magistrate before which the prosecution is pending, obtain from such court or magistrate a warrant of arrest for such principal, which shall be executed as in other cases.
Bail in Misdemeanor	Article 17.20. The sheriff, or other peace officer, in cases of misdemeanor, has authority, whether during the term of the court or in vacation, where he has a defendant in custody under a warrant of commitment, warrant of arrest, or capias, or where the accused has been surrendered by his bail, to take of the defendant a bail bond.
Bail in Felony	Article 17.21. In cases of felony, when the accused is in custody of the sheriff or other peace officer, and the court before which the prosecution is pending is in session in the county where the accused is in custody, and court shall fix the amount

PRESENTATION - Continued

Instructional Topics and Teaching Points	Things for student to do Things for instructor to do or say
Bail in Felony - Cont'd.	Art. 17.21 - Cont'd. of bail, if it is a bailable case and determine if the accused is eligible for a personal bond; and the sheriff, or other peace officer, unless it be the police of a city, is authorized to take a bail bond of the accused in the amount as fixed by the court, to be approved by such officer taking the same, and will thereupon discharge the accused from custody. It shall not be necessary for the defendant or his sureties to appear in court. This article permits the court to determine if the accused is eligible for a personal bond in felony cases.
Who May Take Bail in a Felony	Article 17.22. In a felony case, if the court before which the same is pending is not in session in the county where the defendant is in custody, the sheriff, or other peace officer having him in custody, may take his bail bond in such amount as may have been fixed by the court or magistrate, or if no amount has been fixed, then in such amount as such officer may consider reasonable.

III. APPLICATION (drill, illustrations, analogies, oral questions or assignments, making investigations or experiments, notetaking, making sketches, participating in discussion)

Have each student explain his department's policies concerning bail.

Have students explain some of their experiences with bonds.

What property is exempt?

Discuss the four rules governing the amount of bail.

IV. VERIFICATION AND/OR EVALUATION
(Final check on students' comprehension of material presented)

TEST

1. The use of cash bail has been prevalent in Texas for years. Is there a provision in the Code for accepting cash bail?

2. May the court release a defendant without sureties or other security?

3. There are at least three times when a bail bond is given or entered into. Name one instance.

4. Is it necessary that the defendant sign the bail bond?

5. Can a married woman be a surety on a bond?

6. How can a surety relieve himself of his undertaking, if he no longer wishes to be a surety for the defendant?

V. SUMMARY (Give a brief account of each topic re-emphasizing the important points. This summary may be given at any place in the lesson the teacher feels will be profitable to the students.)

Explain again the definition of Bail Bond - Article 17.02.

Explain again the Personal Bond - Article 17.03.

Go over the requisites of a Bail Bond - Article 17.08.

Suggested Reading for Student:

The Next Lesson is:

TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

INSTRUCTOR'S LESSON PLAN

Subject: The Grand Jury

UNIT: Code of Criminal Procedure - Lesson #8

AIMS: To give the new police officer a basic understanding of the Grand Jury--how it's organized, how it works.

AIDS: Chalk board

MATERIALS: Outline for hand-out

REFERENCE: Code of Criminal Procedure

I. PREPARATION

a. Put student at ease.

The grand jury, like any other agency, is a tool of the law. It is not complicated once you understand it.

b. This lesson covers the formation of the grand jury and the duty of you as a witness.

c. There are some points that you need to understand about grand juries which differ from regular court. Your understanding of the total operation will make your visit more enjoyable.

You recall back in your study of the Constitution that a person must first be indicted by a grand jury before answering to a capital or infamous crime.

What is an indictment, and how is it returned?

Instructional Topics and Teaching Points	Things for Student To Do Things for Instructor To Do or Say
	GRAND JURY
Appointment of Jury Commissioners	The district judge shall appoint from three (3) to five (5) persons to perform the duties of jury commissioners.
Oath	Each person appointed must take an oath to the effect that he will not knowingly elect a man who is unqualified. He will not discuss proceeding with anyone. The jury commissioners, after being organized and sworn in, are instructed in their duties by the judge.
Number to be Summoned	The jury commission selects 20 persons from the citizens of different parts of the county to be summoned as grand jurors. The present code has increased the array from 16 to 20 and better assures the presence of 12 qualified to serve.
Report to Judge	The commission writes the names of those chosen on a paper and signs their names to it. The certified and signed paper is placed in an envelope, sealed, then taken to the judge. Sealed envelope is delivered to the clerk under oath that he not open same until time.
Grand Jury--Call of Those Selected	Upon notification, the clerk opens envelope and notifies the sheriff, who summons the persons named on the lists.
Persons Called Are Tested	Each person who is presented to serve as a grand juror shall be tested and interrogated.
Number of Members	When twelve qualified jurors are found to be present, the court proceeds to impanel them as a grand jury.

PRESENTATION - Continued

Instructional Topics and Teaching Points	Things for Student to do Things for Instructor To Do or Say
Grand Jury - Continued	
Work of Jury	After the grand jury is organized, they shall proceed to the discharge of their duties. The deliberations of the grand jury shall be secret. The foreman shall preside over the sessions of the grand jury.
Witnesses Testify	Witnesses who testify are under oath--true answers will be given and witnesses will not divulge any of the proceedings.
Action Taken	After all the testimony which is assessable has been given, the vote shall be taken as to the presentment of an indictment, and if nine (9) members concur in finding the bill, the foreman shall make note of the date for the attorney. The attorney representing the state shall prepare the indictment which is then signed by the foreman of the grand jury. When the indictment is ready to be presented, the grand jury, in body, goes into open court, and through their foreman, deliver the indictment to the judge.
How Witness Questioned	The grand jury shall first state to the witness called the subject matter under investigation, then may ask pertinent questions relative to the transaction in general terms, and in such a manner as to determine whether he has knowledge of the violation, and if so, by what person.

PRESENTATION - Continued

Instructional Topics and Teaching Points	Things for Student To Do Things for Instructor To Do or Say
Grand Jury - Continued	
Summons	The attorney for the state or the foreman may issue a summons or attachment for any witness in the county, which summons may require a witness to appear without stating the matter under investigation. Out-of-county witness may also be called by attorney or foreman after notification to district court.
Evasion	If it be made to appear to the court that a witness for whom an attachment has been issued is in any manner wilfully evading the service of such summons or attachment, he may be found in contempt and fined not to exceed $500.00.
Witness Refuses to Testify	When a witness refuses to testify, this will compel him to answer the question, if it appears to be a proper one, by imposing a fine not exceeding $500.00 and by committing the person to jail until he is willing to testify.

III. APPLICATION (Drill, illustrations, analogies, oral questions or assignments, making investigations or experiments, notetaking, making sketches, participating in discussion)

DISCUSSION

Go over the program.

How many jurors comprise a grand jury? (12 persons)

Deliberations of grand jury are secret.

Discussion - Continued

Foreman presides over grand jury.

Witnesses are under oath? (True, and secret).

Summons may require witness to appear without stating the matter under investigation.

Officer can be fined for evading the service of summons. (Up to $500.00).

Officer can be fined if he refuses to testify. (Up to $500.00 and placed in jail until he is willing to testify.)

IV. VERIFICATION AND/OR EVALUATION
(Final check on students' comprehension of material presented)

TEST

1. How many jurors are in a grand jury?

   a. 20
   b. 12
   c. 9
   d. 11

2. Are deliberations of the grand jury made in open court? (No--the deliberations are secret).

3. A summons must state the matter or case to be discussed? (No, may not).

4. Officer does not have to testify? (He does).

V. SUMMARY (Give a brief account of each topic re-emphasizing the important points. This summary may be given at any place in the lesson the teacher feels will be profitable to the students.)

Officers who are called before the grand jury should be prompt and conduct themselves as they would in any other court. Remember that you are under oath and must answer the questions asked. The grand jury is looking into the case for information and evidence that will satisfy them that an offense was committed. Any member of the grand jury may ask questions of you, and you should answer. Do not ask questions of the grand jurors and discuss the proceedings outside of the jury room.

TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER
STANDARDS AND EDUCATION

INSTRUCTOR'S LESSON PLAN

Subject: The Trial Before the Jury

UNIT: Code of Criminal Procedure - Lesson #9

AIMS: To inform the new officer how the trial proceeds

TEACHING AIDS: Overhead projector - screen

MATERIALS: Transparency

REFERENCE: Notebook on Code of Criminal Procedure

PREREQUISITE EXPERIENCE
OF THE LEARNERS: Have to attend a class on Grand Jury first

I. PREPARATION

Put learner at ease.

This lesson is designed to inform you of the proceedings of a trial before the jury. It briefly states some of the items of importance to the officer--by no means will it attempt to explain all of the proceeding.

How many have testified before a district court?

Understanding the process will make your appearance more enjoyable, and will enable you to avoid some trouble spots.

INDICTMENT READ

COURT HEARS PLEAS

STATE ATTORNEY STATES THE NATURE OF ACCUSATION

STATE OFFERS TESTIMONY

DEFENDANTS COUNSEL STATES FACTS THEY EXPECT TO PROVE

WITNESSES FOR THE DEFENSE

REBUTTING TESTIMONY

FINDING

II. PRESENTATION

Instructional Topics and Teaching Points	Things for Student To Do Things for Instructor To Do or Say
Order of Proceeding	Article 36.01 A jury being impaneled in any criminal action, the cause shall proceed in the following order: 1. The indictment or information shall be read to the jury by the attorney prosecuting. When prior convictions are alleged for purposes of enhancement only and are not jurisdictional, that portion of the indictment or information reciting such convictions shall not be read until the hearing on punishment is held as provided in Article 37.07. 2. The special pleas, if any, shall be read by the defendant's counsel, and if the plea of not guilty is also relied upon, it shall also be stated. 3. The State's attorney shall state to the jury the nature of the accusation and the facts which are expected to be proven by the State in support thereof. 4. The testimony on the part of the State shall be offered. 5. The nature of the defenses relied upon and the facts expected to be proven in their support shall be stated by defendant's counsel. 6. The testimony on the part of the defendant shall be offered. 7. Rebutting testimony may be offered on the part of each party.

Instructional Topics and Teaching Points	Things for Student To Do Things for Instructor To Do or Say
Order of Proceeding - Contd.	Article 36.01 - Continued 8. In the event of a finding of guilty, the trial shall then proceed as set forth in Article 37.07. Article 37.07 referred to, of course, deals with the assessment of punishment by the jury.
Under the Rule	Article 36.03 At the request of either party, the witnesses on both sides may be sworn and placed in the custody of an officer and removed out of the courtroom to some place where they cannot hear the testimony as delivered by any other witness in the cause. This is termed placing witnesses under rule. Article 36.04 The party requesting the witnesses to be placed under rule may designate such as he desires placed under rule, and those not designated will be exempt from the rule, or the party may have all of the witnesses in the case placed under rule. The enforcement of the rule is in the discretion of the court. Article 36.05 Not to hear testimony. Witnesses under rule shall be attended by an officer, and all their reasonable wants provided for, unless the court, in its discretion, directs that they be allowed to go at large; but in no case where the witnesses are under rule shall they be allowed to hear any testimony in the case.

Instructional Topics and Teaching Points	Things for Student To Do Things for Instructor To Do or Say
Under the Rule - Contd.	Article 36.06 Instructed by the court. Witnesses, when placed under rule, shall be instructed by the court that they are not to converse with each other or with any other person about the case, except by permission of the court, and that they are not to read any report of or comment upon the testimony in the case while under rule. The officer who attends the witnesses shall report to the court at once any violation of its instructions, and the party violating the same shall be punished for contempt of court.
Jury	Article 36.13 Jury is judge of facts. Unless otherwise provided in this Code, the jury is the exclusive judge of the facts, but it is bound to receive the law from the court and be governed thereby. Article 36.22 Conversing with jury. No person shall be permitted to be with a jury while it is deliberating. No person shall be permitted to converse with a juror about the case on trial except in the presence and by the permission of the court. Article 36.23 Violation of preceding Article. Any juror or other person violating the preceding Article shall be punished for contempt of court by confinement in jail not to exceed three days or by fine not to exceed one hundred dollars, or by both such fine and imprisonment.

Instructional Topics and Teaching Points	Things for Student To Do Things for Instructor To Do or Say
Jury - Continued	Article 36.28 Jury may have witness re-examined or testimony read. In the trial of a criminal case in a court of record, if the jury disagree as to the statement of any witness, they may, upon applying to the court, have read to them from the court reporter's notes that part of such witness testimony or the particular point in dispute, and no other; but if there be no such reporter, or if his notes cannot be read to the jury, the court may cause such witness to be again brought upon the stand and the judge shall direct him to repeat his testimony as to the point in dispute, and no other, as nearly as he can in the language used on the trial. Article 36.29 permits 11 jurors in a felony case to render a verdict where one dies or becomes disabled before the charge is read. Article 36.31 Disagreement of jury. After the cause is submitted to the jury, it may be discharged when it cannot agree and both parties consent to its discharge; or the court may, in its discretion, discharge it where it has been kept together for such time as to render it altogether improbable that it can agree.
Verdict Definition	Article 37.01 A "verdict" is a written declaration by a jury of its decision of the issue submitted to it in the case.

PRESENTATION - Continued

Instructional Topics and Teaching Points	Things for Student To Do Things for Instructor To Do or Say
Verdict Definition - Contd.	Article 37.04 When jury has agreed. When the jury agrees upon a verdict, it shall be brought into court by the proper officer; and if it states that it has agreed, the verdict shall be read aloud by the clerk. If in proper form and no juror dissents therefrom, and neither party requests a poll of the jury, the verdict shall be entered upon the minutes of the court.

III. APPLICATION (Drill, illustrations, analogies, oral questions or assignments, making investigations or experiments, notetaking, making sketches, participating in discussion)

DISCUSSION

Here explain the number of people on the jury.

Have class explain what "under the rule" means.

Have class explain "verdict".

Explain conduct of officer before the jury--appearance, conversing with jury, etc.

IV. VERIFICATION AND/OR EVALUATION
(Final check on students' comprehension of material presented)

TEST

1. When an officer has been placed under the rule, may he talk with other officers regarding the case?
2. How many jurors may return a verdict in a felony case?
3. Should an officer talk with a juror when they are friends and it is not about the case?

V. SUMMARY (Give a brief account of each topic re-emphasizing the important points. This summary may be given at any place in the lesson the teacher feels will be profitable to the students.)

Proceeding of trial:

1. Indictment read
2. Court hears special pleas
3. State's attorney states the nature of accusation
4. State offers testimony
5. Defendant's counsel states facts that they expect to be proven
6. Witnesses for the defense
7. Rebutting testimony
8. Finding

Witness Under the Rule and conversing with jury.

Suggested Reading for Student:

The Next Lesson is:

TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER
STANDARDS AND EDUCATION

INSTRUCTOR'S LESSON PLAN

Subject: Capias, Subpoena and Attachment

UNIT: Code of Criminal Procedure - Lesson #10

AIMS: To explain requisites of Capias, Subpoena, and Attachment

AIDS: Overhead projector, and screen or chalk board

MATERIALS: Projection transparency

REFERENCE: Code of Criminal Procedure

I. PREPARATION

The Capias, Subpoena and Attachment, like the warrant, give officers certain authority to arrest or command certain duties.

The city peace officer will not come in contact with them as often as a deputy sheriff or constable. It becomes no less important that he know what they are and how to serve them.

II. PRESENTATION

Instructional Topics and Teaching Points	Things for Student To Do Things for Instructor To Do or Say
	THE CAPIAS:
Definition	Article 23.01 This article provides that a capias be directed to any peace officer of the state rather than to any sheriff, as formerly required.
Requisites	Article 23.02 A capias shall be held sufficient if it have 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.
Summons	A summons shall be in the same form as the capias, except that it shall summon the defendant to appear before the court at a stated time and place.
How Served	Upon request of attorney for State. The summons shall be served upon a defendant by delivering a copy to him personally, OR by leaving it at his house or usual place of abode with some person of suitable age and discretion, OR by mailing it to the defendant's last known address.

PRESENTATION - Continued

Instructional Topics and Teaching Points	Things for Student To Do Things for Instructor To Do or Say
How Served - Continued	Authorize a summons to be issued in place of a capias in either a felony or misdemeanor case. If the defendant fails to appear in response to a summons, a capias shall issue.
When Issued:	
Felony	Article 23.03 Capias or summons in felony. 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. A summons shall be issued by the district clerk, and shall be delivered by the clerk or mailed to the sheriff of the county where the defendant resides or is to be found. A capias or a summons need not issue for a defendant in custody or under bond.
Misdemeanor	Article 23.04 In misdemeanor cases, the capias or summons shall issue from a court having jurisdiction of the case. The summons shall be issued only upon request of the attorney representing the State, and shall follow the same form and procedure as in a felony case.
Who May Arrest	Article 23.13 A capias may be executed by any peace officer. In felony cases, the defendant must be delivered immediately to the sheriff of the county where the arrest is

Instructional Topics and Teaching Points	Things for Student To Do Things for Instructor To Do or Say
Who May Arrest - Contd.	made, together with the writ under which he was taken.
Forfeiture of Bail	Article 23.05 Where a forfeiture of bail is declared, a capias shall be immediately issued for the arrest of the defendant; and when arrested, he shall be required to make new bail, unless the forfeiture taken has been set aside under the third subdivision of Article 22.13, in which case the defendant and his sureties shall remain bound under the same bail.
Time Fixed:	
No Loss of Force	Article 23.07 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.
Reason	Article 23.08 When the capias is not returned at the time fixed in the writ, the officer holding it shall notify the court from whence it was issued, in writing, of his reasons for retaining it.
Bail:	
Felony	Article 23.10 In cases of arrest for felony in the county where the prosecution is pending, during a term of court, the officer making the

Instructional Topics and Teaching Points	Things for Student To Do Things for Instructor To Do or Say
Bail: Felony (contd.)	arrest may take bail as provided in Article 17.21. Article 23.11 In cases of arrest for felony less than capital, made during vacation or made in a county other than the one in which the prosecution is pending, the sheriff may take bail; in such cases, the amount of the bail bond shall be the same as is endorsed upon the capias; and if no amount be endorsed on the capias, the sheriff shall require a reasonable amount of bail. If it be made to appear by affidavit--made by any district attorney, county attorney, or sheriff approving the bail bond--to a judge of the Court of Criminal Appeals, district or county court, that the bail taken in any case after indictment is insufficient in amount, or that the sureties are not good for the amount, or that the bond is for any reason defective or insufficient, such judge shall issue a warrant of arrest and require of the defendant sufficient bond, according to the nature of the case. Article 23.12 In felony cases which are bailable, the court shall, before adjourning, fix and enter upon the minutes the amount of the bail to be required in each case. The clerk shall endorse upon the capias the amount of bail required. In case of neglect to so comply with this Article, the arrest of the defendant and the bail taken by the sheriff shall be as legal as if there had been no such omission.

Instructional Topics and Teaching Points	Things for Student To Do Things for Instructor To Do or Say
Bail - Continued	
Misdemeanor	Article 23.14 Any officer making an arrest under a capias in a misdemeanor may in term time or vacation take a bail bond of the defendant.
Return	Article 23.17 When an arrest has been made and a bail taken, such bond, together with the capias, shall be returned forthwith to the proper court. Article 23.18 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.

Instructional Topics and Teaching Points	Things for Student To Do Things for Instructor To Do or Say

SUBPOENA AND ATTACHMENT

Subpoena

Definition

Article 24.01

A "subpoena" is a writ issued to the sheriff or other proper officer commanding him to summon one or more persons therein named to appear at a certain term of the court, or on a certain day to testify in a criminal action, or before an examining court, coroner's inquest, the grand jury, or before a judge hearing an application under habeas corpus, or in any other case in which the testimony of a witness may be required under the provisions of this Code. The writ shall be dated and signed officially by the court or clerk issuing the same, but need not be under seal.

Article 24.02. Subpoena duces tecum.

If a witness have in his possession any instrument of writing or other thing desired as evidence, the subpoena may specify such evidence and direct that the witness bring the same with him and produce it in court.

How Served

Article 24.04

A subpoena is served by reading the same in the hearing of the witness. The officer having the subpoena shall make due return thereof, showing the time and manner of service, if served, and if not served, he shall show in his return the cause of his failure to serve it; and if the witness could not be found, he shall state the

Instructional Topics and Teaching Points	Things for Student To Do Things for Instructor To Do or Say
Subpoena: How Served (contd)	Article 24.04 - Continued diligence he has used to find him, and what information he has as to the whereabouts of the witness.
Disobedience	Article 24.05 If a witness refuses to obey a subpoena, he may be fined at the discretion of the court, as follows: In a felony case, not exceeding five hundred dollars ($500); in a misdemeanor case, not exceeding one hundred dollars ($100). Article 24.06 It shall be held that a witness refuses to obey a subpoena: 1. If he is not in attendance on the court on the day set apart for taking up the criminal docket or on any day subsequent thereto and before the final disposition or continuance of the particular case in which he is a witness; 2. If he is not in attendance at any other time named in a writ; and 3. If he refuses without legal cause to produce evidence in his possession which he has been summoned to bring with him and produce.

PRESENTATION - Continued

Instructional Topics and Teaching Points	Things for Student To Do Things for Instructor To Do or Say
Attachment	
Requisites	Article 24.11 An "attachment" is a writ issued by a clerk of a court under seal, or by any magistrate or by the foreman of a grand jury in any criminal action or proceeding authorized by law, commanding some peace officer to take the body of a witness and bring him before such court, magistrate or grand jury on a day named, or forthwith, to testify in behalf of the State or of the defendant, as the case may be. It shall be dated and signed officially by the officer issuing it.
When Issued	Article 24.12 When a witness who resides in the county of the prosecution has been duly served with a subpoena to appear and testify in any criminal action or proceeding fails to so appear, the State or the defendant shall be entitled to have an attachment issued forthwith for such witness. Article 24.14 When a witness resides in the county of the prosecution, whether he has disobeyed a subpoena or not, either in term-time or vacation, upon the filing of an affidavit with the clerk by the defendant or State's counsel, if he has good reason to believe and does believe that such witness is a material witness and is about to move out of the county, the clerk shall forthwith issue an attachment for such witness;

Instructional Topics and Teaching Points	Things for Student To Do Things for Instructor To Do or Say
Attachment: When Issued (continued)	Article 24.14 - Continued provided that in misdemeanor cases when the witness makes oath that he cannot give surety, the officer executing the attachment shall take his personal bond. Article 24.15 At any time before the first day of any term of the district court, the clerk, upon application of the State's attorney, shall issue a subpoena for any witness who resides in the county. If at the time such application is made, such attorney files a sworn application that he has good reason to believe and does believe that such witness is about to move out of the county, then said clerk shall issue an attachment for such witness to be and appear before said district court on the first day thereof to testify as a witness before the grand jury. Any witness so summoned, or attached, who shall fail or refuse to obey a subpoena or attachment, shall be punished by the court by a fine not exceeding five hundred dollars ($500) to be collected as fines and costs in other criminal cases.
Duty of Officer Receiving Subpoena	Article 24.17 The officer receiving said subpoena shall execute the same by delivering a copy thereof to each witness therein named. He shall make due return of said subpoena, showing therein the time and manner of executing the same; and if not executed, such return shall show why not executed, the diligence used to find said witness, and such information as the officer has as to the whereabouts of said witness.

Instructional Topics and Teaching Points	Things for Student To Do Things for Instructor To Do or Say
Duty of Officer Receiving Subpoena - Continued	Article 24.18 When a subpoena is returnable forthwith, the officer shall immediately serve the witness with a copy of the same; and it shall be the duty of said witness to immediately make his appearance before the court, magistrate or other authority issuing the same. If said witness makes affidavit of his inability from lack of funds to appear in obedience to said subpoena, the officer executing the same shall provide said witness, if said subpoena be issued as provided in Article 24.16, with the necessary funds or means to appear in obedience to said subpoena, taking his receipt therefor and showing in his return on said subpoena, under oath, the amount furnished to said witness, together with the amount of his fees for executing said subpoena.
Exemption from Arrest	Article 24.28 Sec. 5. 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 or the service of process, civil or criminal, in connection with matters which arose before his entrance into this State under the summons. If a person passes through this State while going to another State in obedience to a summons to attend and testify in that State or while returning therefrom, he shall not while so passing through this State be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this State under the summons.

III. APPLICATION	(Drill, illustrations, analogies, oral questions or assignments, making investigations or experiments, notetaking, making sketches, participating in discussion)

DISCUSSION

Requisites of a Capias:

1. Run in the name of "The State of Texas"
2. Name or describe the person whose arrest is ordered
3. Specify the offense of which defendant is accused
4. Name the court to which, and time when, it is returnable
5. That it be dated and attested officially by the authority issuing same.

Explain summons again and how served:

Same form as a capias except it shall summon the defendant to appear.

Served by delivering a copy to defendant personally

or

having it at his house with some person of suitable age and discretion

or

mailing it to defendant's last known address.

Capias does not lose its force if not executed and returned.

What is a subpoena?

What is a subpoena duces tecum?

How is a subpoena served?

What if you refuse to obey a subpoena?

APPLICATION - Continued

How does an Attachment differ from a subpoena?

When may Attachment be issued?

Explain the duties of an officer receiving a subpoena.

IV. VERIFICATION AND/OR EVALUATION
(Final check on students' comprehension of material presented)

TEST--True or False

1. A capias and warrant are the same thing.
2. A summons may issue instead of a capias.
3. If you receive a subpoena duces tecum, you would go to the court issuing same with the records and reports on the case in question.
4. A capias may be served by mail.
5. A summons may be served by leaving it with the defendant's wife if he is not home.
6. A subpoena or attachment may issue to serve attendance before the grand jury.
7. Failure to obey a subpoena or attachment carries a fine not exceeding $500.

V. SUMMARY (Give a brief account of each topic re-emphasizing the important points. This summary may be given at any place in the lesson the teacher feels will be profitable to the students.)

The capias may be directed to any peace officer of the State.

A summons may now be issued in place of a capias.

Capias does not lose its force if not executed and returned at the time fixed.

Definition of subpoena--important that it be obeyed.

Suggested Reading for Student:

Next Lesson is:

TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER
STANDARDS AND EDUCATION

INSTRUCTOR'S LESSON PLAN

Subject: Extradition

UNIT: Code of Criminal Procedure - Lesson # 11

AIMS: Information for the student about extradition

TEACHING AIDS:

MATERIALS:

REFERENCES: Code of Criminal Procedure

I. PREPARATION (of the learner - motivation)

Many criminals will flee the state after the commission of a crime. All officers should have at least a limited knowledge of what extradition laws cover. They grant authority to arrest with and without a warrant, and set out the procedure to be followed.

II. PRESENTATION

Instructional Topics and Teaching Points	Things for student to do Things for instructor to do or say
Delivered Up	(READ LAW) Article 51.01. A person in any other State of the United States charged with treason or any felony who shall flee from justice and be found in this State shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.
Aid in Arrest	Under Article 51.02, all peace officers shall give aid in the arrest and detention of a fugitive from another state.....that he may be held subject to a requisition by the Governor of the state from which he fled.
Warrant	By authority of Article 15.03, a magistrate may issue a warrant of arrest directing a peace officer to apprehend and bring the accused before him, after a complaint is made.
Complaint	The complaint is sufficient if it contains: 1. The name of the person accused. 2. The state from which he fled. 3. The offense committed by accused. 4. That he has fled to this state from the state where the offense was committed. 5. That the act alleged to have been committed by the accused is in violation of the penal law of the state from which he fled.
Bail or Commitment	When accused is taken before the magistrate and he hears proof and is satisfied that the accused did what he is charged

II. PRESENTATION (Continued)

Instructional Topics and Teaching Points	Things for student to do Things for instructor to do or say
Bail or Commitment - Continued	with in another state, he shall 1. Require of him a bail to appear before him at a specified time. 2. If default of bail, he may commit the defendant to jail to await requisition of the Governor.
What Would Show He Is Charged	A properly certified transcript of an indict ment against the accused is sufficient to show he is charged.
Time of Commitment	One arrested under the provisions of this title shall not be committed or held to bail for longer than ninety (90) days.
Second Arrest	Article 51.08. A person who has once been arrested under the provisions of this title and discharged under the provisions of the preceding Article or by habeas corpus shall not be again arrested upon a charge of the same offense, except by a warrant from the Governor of this State.
Governor May Demand Fugitive	Article 51.09. When the Governor deems it proper to demand a person who has committed an offense in this State and has fled to another State, he may commission any suitable person to take such requisitio The accused, if brought back to the State, shall be delivered up to the sheriff to the county in which it is alleged he has committed the offense.
Uniform Criminal Extradition Act	Provides that it is the duty of the Governor to have arrested and delivered up to the Executive Authority of any other state any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this State.

Instructional Topics and Teaching Points	Things for student to do Things for instructor to do or say
Uniform Criminal Extradition Act -Continued	
	Governor may investigate--He can call upon the Secretary of State, Attorney General or any prosecuting officer to investigate or assist. If Governor decides the demand shall be complied with, he will issue a warrant of arrest. Such warrant shall authorize the police officer, or person to whom directed, to arrest the accused at any time and place, and Commands the aid of all peace officers and other persons in the execution of the warrant. Every such peace officer or other person empowered to make the arrest shall have the same authority in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them.
Rights of Accused	No person arrested upon such warrant shall be delivered over to the demanding agency until he is taken before a judge of a Court of Record. Judge shall fix a reasonable time to allow him to apply for a writ of habeas corpus. Penalty for non-compliance - Guilty of misdemeanor and fined not more than $1,000, nor imprisoned for more than 6 months, or both.
Transporting Prisoners	Any officer having the prisoner in custody many, when necessary, confine the prisoners in the jail of any county or city through which he may pass.

Instructional Topics and Teaching Points	Things for student to do Things for instructor to do or say
Transporting Prisoners - Cont'd.	While being transported from a state through this State to the demanding state after requisition, such prisoner shall not be entitled to demand a new requisition while in this State.
Arrest Prior to Requisition	Whenever any person in this State shall be charged on the oath of an credible person before any judge or magistrate of this State-- with the commission of any crime in any other state, having fled from justice, OR with having been convicted of a crime in that state and having escaped from confinement, OR having broken the terms of his bail, probation or parole, OR whenever complaint shall have been made before any judge or magistrate in this State, setting forth on the affidavit of any credible person in another state that a crime has been committed in such state and the accused has been charged in such state with the commission of the crime, has fled, OR having been convicted in that state, escaped from confinement, OR broken the terms of his bail, probation or parole and is believed to be in this State, the judge shall issue a warrant directed to any peace officer. The above does not cover a person who was not present in the demanding state when the crime was committed and has not fled therefrom.
Arrest Without Warrant	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

II. PRESENTATION - Continued

Instructional Topics and Teaching Points	Things for student to do ··Things for instructor to do or say
Arrest Without Warrant - Continued	When such arrest is made, 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.
Governor's Warrants	Governor may recall his warrant of arrest or may issue another warrant whenever he deems it proper. Each warrant issued by the Governor shall expire and be of no force and effect when not executed within one year from the date thereof.
Waiver of Extradition	Any person arrested in this state who is charged with having committed any crime in another state, or is alleged to have escaped from confinement or broken the terms of his bail, probation, or parole, may waive the issuance and service of the warrant, and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge or any court of record within this State, a writing which states that he consents to return to the demanding state.

III. APPLICATION (drill, illustrations, analogies, oral questions or assignments, making investigations or experiments, notetaking, making sketches, participating in discussion)

1. You are working a burglary case and have identified the criminal. You learn that he has moved from this State to Mississippi. Describe how you would effect the arrest and return of the suspect.

2. You are informed of a criminal living in your city. You learn he is wanted by another state for murder and armed robbery. How would you effect the arrest?

IV. VERIFICATION AND/OR EVALUATION
(Final check on students' comprehension of material presented)

True or False

1. A man arrested under the provisions of this title shall not be held to bail over 90 days.

2. The Governor of Texas would issue a warrant of arrest if he decides the demand shall be complied with.

3. Rights of Habeas Corpus do not apply in extradition.

4. An officer can make arrest when he has reasonable information that accused is charged with a crime in another state.

V. SUMMARY (Give a brief account of each topic re-emphasizing the important points. This summary may be given at any place in the lesson the teacher feels will be profitable to the students)

Arrest with Warrant -

Arrest without Warrant -

Waiver of Extradition -

Suggested Reading for Student:

The Next Lesson Is:

LACE D. BEASLEY
CUTIVE DIRECTOR

TEXAS COMMISSION
ON
LAW ENFORCEMENT OFFICER
STANDARDS AND EDUCATION

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AMENDMENTS IN THE CODE OF CRIMINAL PROCEDURE
As Passed May 1967 (S.B. 145)
Effective As Of August 28, 1967

The following is prepared to acquaint law enforcement officers with the amendments made in the 1965 revision of the Code of Criminal Procedure. Article 1.14 of The Code of Criminal Procedure is amended to read as follows:

Article 1.14--WAVER OF RIGHTS:

The defendant, in a criminal prosecution for any offense, may waive any rights secured him by law except the right of trial by jury in a capital felony case in which the state has made known in open court, in writing at least 15 days prior to trial, that it will seek the death penalty. No case in which the state seeks the death penalty shall be tried until 15 days after such notice is given. When the state makes known to the court in writing in open court that it will not seek the death penalty in a capital case, the defendant may enter a plea of guilty, nolo contendere, or not guilty before the court, and waive trial by jury as provided in Article 1.13; and in such case, under no circumstance, may the death penalty be imposed. Under the 1965 revision, the defendant could only plead guilty in a capital case. This amendment allows him to plead either guilty,

not guilty, or nolo contendere before the court if the state has made known in writing and in open court 15 days prior to the trial that the death penalty will not be sought.

Article 1.15 of The Code of Criminal Procedure is amended to read as follows:

Article 1.15: JURY IN FELONY

No person can be convicted of a felony except upon the verdict of a jury duly rendered and recorded, unless in felony cases less than capital, or in capital cases where the state has waived the death penalty the defendant, upon entering a plea, has in open court in person waived his right of trial by jury in writing; provided, however, that it shall be necessary for the state to introduce evidence into the record showing the guilt of the defendant and said evidence shall be accepted by the court as the basis for its judgement and in no event shall a person charged be convicted upon his plea without sufficient evidence to support the same. The evidence may be stipulated if the defendant in such case consents in writing, in open court, to waive the appearance, confrontation, and cross-examination of witnesses, and further consents to the introduction of testimony by affidavits, written statements of witnesses, and any other documentary evidence in support of the judgement of the court. Such waiver and consent must be approved by the court in writing, and be filed, with all of such evidence, in the file of the papers of the cause.

Article 2.03, Subsection (b), of The Code of Criminal Procedure is amended to read as follows:

Article 2.03--NEGLECT OF DUTY:

* *

(b) It is the duty of the trial court, the attorney representing the accused, the attorney representing the state and all peace officers to so conduct themselves as to insure a fair trial for both the state and the defendant, not impair the presumption of innocence, and at the same time afford the public the benefits of a free press.

Subsec. (b) amended by Acts 1967, 60th Leg., p. 1733, ch. 659, para. 3, eff. Aug. 28, 1967.

Article 2.07 of The Code of Criminal Procedure is amended to read as follows:

Article 2.07--ATTORNEY PRO TEM

(a) Whenever any district or county attorney is disqualified in any case the judge of the court in which it is pending may appoint any district attorney or county attorney or other competent attorney to perform the duties of the prosecuting attorney in such case. If such appointed attorney is another district or county attorney no oath or other act of qualification shall be required of him, but the prosecution of such case shall be deemed as additional to his normal duties. If the appointed attorney is not a district or county attorney, he will be required only to file an oath of office for

CONTINUED

1 OF 2

that particular case with the clerk of the court.

(b) Any attorney so appointed (other than a district attorney or county attorney) shall be paid the same amount and in the same manner as an attorney appointed to represent an indigent person.

Article 2.12--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.

This amendment adds constables and their deputies, investigators for district attorneys, criminal district attorneys and county attorneys, and each member of an arson investigating unit of a city, county or the state to the list of peace officers in the State of Texas.

The Code of Criminal Procedure was amended by adding a new Article to read as follows:

Article 2.24--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.

This gives an officer authority to require a witness to identify himself, and if he refuses, the officer may take the witness before a magistrate. This article gives the magistrate authority to demand bond or commit the witness to jail if he still refuses to identify himself. Nothing here authorizes the officer to commit the person to jail without first taking him before a magistrate.

The word forthwith as used in this article means the same as immediately.

Article 14.01 of The Code of Criminal Procedure is amended to read as follows:

Article 14.01--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.

Item (b) was added by the 60th Legislature. Before this was added, a question arose as to whether or not a traffic arrest was legal. Mendosa vs. U.S. (C.A. 1966) 365 F. 2d 60 held that it was legal to arrest for an improper turn and failure to display a proper driver's license. This amendment leaves no room for quibbling.

Article 14.03 of The Code of Criminal Procedure is amended to read as follows:

Article 14.03--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.

This article was formerly entitled "Authority of Municipality" and gave authorities of towns and cities power to enact a city ordinance giving municipal officers authority to arrest without warrant persons found in places and under circumstances as mentioned in Article 14.03.

This amendment gives "ANY PEACE OFFICER" this authority.

Article 14.06 of The Code of Criminal Procedure is amended to read as follows:

> Article 14.06--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.

Here the word "immediately" has been changed to read "without unnecessary delay".

Article 15.16 of the Code of Criminal Procedure is amended to read as follows:

> Article 15.16--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.

Here again the change is in the wording "without necessary delay" instead of "immediately".

Attorney General's Opinion--1965, No. C588: When a defendant is arrested at night, this article requires that he be taken before a magistrate no sooner than the opening of the magistrate's office during the daylight hours.

Article 15.17 of the Code of Criminal Procedure is amended to read as follows:

Article 15.17--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 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.

This article contains what is commonly called the Miranda Warning.

The words "in clear language" were added to the above article. Also new are the clauses informing a defendant of his right to have an attorney present during any interview with peace officers or attorneys representing the state and his right to end the interview at any time.

Article 15.26 of The Code of Criminal Procedure is amended to read as follows:

Article 15.26--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.

Heretofore it was required that the arresting officer, in making an arrest under warrant, have the warrant in his possession and exhibit it if requested

by the accused. Now the officer shall make known the authority under which the arrest is made and shall exhibit the warrant of arrest as soon as possible.

Article 17.11 of The Code of Criminal Procedure is amended to read as follows:

Article 17.11--HOW BAIL BOND IS TAKEN

Section 1. Every court, judge, magistrate or other officer taking a bail bond shall require evidence of the sufficiency of the security offered; but in every case, one surety shall be sufficient, if it be made to appear that such surety is worth at least double the amount of the sum for which he is bound, exclusive of all property exempted by law from executior, and of debts or other encumbrances; and that he is a resident of this state, and has property therein liable to execution worth the sum for which he is bound.

Section 2. Provided, however, any person who has signed as a surety on a bail bond and is in default thereon shall thereafter be disqualified to sign as a surety so long as he is in default on said bond. It shall be the duty of the clerk of the court wherein such surety is in default on a bail bond, to notify in writing the sheriff, chief of police, or other peace officer, of such default. A surety shall be deemed in default from the time the trial court enters its final judgment on the scire facias until such judgment is satisfied or set aside.

Article 27.02 of The Code of Criminal Procedure is amended to read as follows:

Article 27.02--DEFENDANT'S PLEADINGS

On the part of the defendant, the following are the only pleadings:

1. The motion to set aside the indictment or information;
2. A special plea setting forth one or more facts as cause why the defendant ought not to be tried upon the accusation presented against him;
3. An exception to the indictment or information for some matter of form or substance;
4. A plea of guilty;
5. A plea of not guilty;
6. A plea of nolo contendere. The legal effect of such plea shall be the same as that of a plea of guilty, but the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based;
7. Defendant's application for probation, if any; and
8. Defendant's election, if any, to have the jury assess the punishment if he is found guilty.

Article 27.14 of The Code of Criminal Procedure is amended to read as follows:

Article 27.14--PLEA OF GUILTY OR NOLO CONTENDERE IN MISDEMEANOR

A plea of "guilty" or a plea of "nolo contendere" in a misde-

meanor case may be made either by the defendant or his counsel in open court; in such case, the defendant or his counsel may waive a jury, and the punishment may be assessed by the court either upon or without evidence, at the discretion of the court. In a misdemeanor case arising out of a moving traffic violation for which the maximum possible punishment is by fine only, payment of a fine, or an amount accepted by the court constitutes a finding of guilty in open court, as though a plea of nolo contendere had been entered by the defendant.

Originally this was worded so that "the punishment might be assessed either upon or without evidence, at the discretion of the defendant". The Honorable John F. Onion, Jr. commented on this as follows:

"Whether evidence is heard in such cases is now within the discretion of the defendant rather than the court, even though the defendant is not required to be present if his attorney is there to enter his plea. This surely must have been a typographical error."

This amendment clarifies this situation and places the hearing, or not hearing, of evidence and the assessing of the punishment at the discretion of the court.

Article 38.22 of The Code of Criminal Procedure is amended to read as follows:

Article 38.22--WHEN ORAL AND WRITTEN CONFESSIONS SHALL BE USED

1. The oral or written confession of a defendant made while

the defendant was in jail or other place of confinement or in the custody of an officer shall be admissible if:

(a) it be shown to be the voluntary statement of the accused taken in the presence of an examining court in accordance with law; or

(b) it be made in writing and signed by the accused, and show that the accused has at some time prior to the making thereof received from the person to whom the statement is made the warning set out in Subsection (c) (1), (2) and (3) below or received from the magistrate the warning provided in Article 15.17 and shows the time, date, and place of the warning and the name of the person or magistrate who administered the warning; or

(c) it be made in writing to some person who has warned the defendant from whom the statement is taken that:

(1) he has the right to have a lawyer present to advise him either prior to any questioning or during any questioning,

(2) if he is unable to employ a lawyer, he has the right to have a lawyer appointed to counsel with him prior to or during any questioning, and

(3) he has the right to remain silent and not make any statement at all and that any statement he makes may be used in evidence against him at his trial. The defendant must knowingly, intelligently, and voluntarily waive these rights prior to and during the making of the statement,

(d) if a written statement is taken and if the defendant is unable to write his name and signs the statement by making his mark, such statement shall not be admitted in evidence, unless it be witnessed by some person other than a peace officer, who shall sign the same as witness,

(e) it be made orally and the defendant makes a statement of facts or circumstances that are found to be true, which conduce to establish his guilt, such as the finding of secreted or stolen property, or the instrument with which he states the offense was committed.

(f) Nothing contained herein shall preclude the admissibility of any statement made by the defendant in open court at his trial or at his examining trial in compliance with Articles 16.03 and 16.04 or of any statement that is the res gestae of the arrest or of the offense.

2. In all cases where a question is raised as to the voluntariness of a confession or statement, the court must make an independent finding in the absence of the jury as to whether the confession or statement was made under voluntary conditions. If the confession or statement has been found to have been voluntarily made and held admissible as a matter of law and fact by the court in a hearing in the absence of the jury, the court must enter an order stating its findings, which order shall be filed among the papers of the cause. Such order shall not be exhibited to the jury nor the finding thereof made known to the jury in any manner. Upon the finding by the judge as a matter of law and fact that the confession or statement was voluntarily made, evidence pertaining to such matter may be submitted to the jury and it shall be instructed that unless the jury believes beyond a reasonable doubt that the confession or statement was voluntarily made, the jury shall not consider such statement or confession for any purpose nor any evidence obtained as a result thereof. In any case where a motion to suppress the statement or confession has been filed and evidence has been submitted to the court on this issue, the court within its discretion may reconsider such evidence in his finding that the statement or confession was voluntarily made and the same evidence submitted to the court at the hearing on the motion to suppress shall be made a part of the record

the same as if it were being presented at the time of trial. However, the state of the defendant shall be entitled to present any new evidence on the issue of the voluntariness of the statement or confession prior to the court's final ruling and order stating its findings.

3. When the issue is raised by the evidence, the trial judge shall appropriately instruct the jury, generally, on the law pertaining to such statement or confession.

Article 39.02 of The Code of Criminal Procedure is amended to read as follows:

Article 39.02--DEPOSITIONS FOR DEFENDANT

Depositions of witnesses may be taken by the defendant. When the defendant desires to take the deposition of a witness, he shall, by himself or counsel, file with the clerk of the court in which the case is pending an affidavit stating the facts necessary to constitute a good reason for taking the same, and an application to take the same. Provided that upon the filing of such application, and after notice to the attorney for the state, the courts shall hear the application and determine if good reason exists for taking the deposition. Such determination shall be based on the facts made known at the hearing and the court, in its judgment, shall grant or deny the application on such facts.

Article 39.03 of The Code of Criminal Procedure is amended to read as follows:

Article 39.03--OFFICERS WHO MAY TAKE THE DEPOSITION

Upon the filing of such an affidavit and application, the court shall appoint, order or designate one of the following persons before whom such deposition shall be taken:

1. A district judge
2. A county judge
3. A notary public
4. A district clerk
5. A county clerk.

Such order shall specifically name such person and the time when and place where such deposition shall be taken. Failure of a witness to respond thereto, shall be punishable by contempt by the court. Such deposition shall be oral or written, as the court shall direct.

Article 39.07 of The Code of Criminal Procedure is amended to read as follows:

Article 39.07--CERTIFICATE

Where depositions are taken under commission in criminal actions, the officer or officers taking the same shall certify that the person deposing is the identical person named in the commission; or, if they cannot certify to the identity of the witness, there shall be an affidavit of some person attached

to the deposition proving the identity of such witness, and the officer or officers shall certify that the person making the affidavit is known to them.

Article 45.04 of The Code of Criminal Procedure is amended to read as follows:

Article 45.04--SERVICE OF PROCESS

Section 1. All process issuing out of a corporation court may be served and shall be served when directed by the court, by a policeman or marshal of the city, or town or village within which it is situated, under the same rules as are provided by law for the service by sheriffs and constables of process issuing out of the justice court, so far as applicable.

Section 2. The policeman or marshal may serve all process issuing out of a corporation court anywhere in the county in which the city, town or village is situated in more than one county, the policeman or marshal may serve the process throughout those counties.

Section 3. A defendant is entitled to at least one day's notice of any complaint against him, if such time is demanded.

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