

# From Arrest to Judgment

(sort of...)

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GILLESPIE, KENDALL, AND KERR COUNTIES



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# The Arrest

# The Arrest

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## On View

- 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 a felony or against public peace**.
- A **peace officer** may arrest an offender **without a warrant** for **any offense** committed in his **presence or within his view**.
  - In certain circumstances a peace officer can arrest a person without a warrant for offenses not committed in his presence or view. Examples = family violence, certain felony cases, or offenses involving breach of the peace

## Arrest Warrant

- Issued by a magistrate based on probable cause.

## Indictment

- Returned by a Grand Jury.
- In order for a person to be formally charged with a felony in Texas, they **must** have been indicted by a Grand Jury.

# Search Warrant

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- Who keeps the original of the search warrant?
- CCP Art. 18.15:

“The magistrate shall keep a record of all the proceedings had before him in cases of search warrants, and shall certify the same and ***deliver them to the clerk of the court having jurisdiction of the case***, before the next term of said court, and accompany the same with all the original papers relating thereto, including the certified schedule of the property seized.”

What happens if Ronnie wants a bond reduction before he is indicted or is in jail for longer than 90 days without being indicted?

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Could file a motion to reduce bond in JP court

Writ of Habeas Corpus could be filed asking the district court to order his release either on a surety bond he can afford or on a personal bond.

- This invokes the district court jurisdiction
- The Writ is a civil action, and would therefore be filed with a civil cause number

Could also request an examination  al

# Grand Jury Selection

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The district judge directs that 20 – 125 prospective grand jurors be selected and summoned, with return on summons, in the same manner as for selection and summons of panels for the trial of civil cases in district court.

What happens if less than sixteen people show up?

- The district judge is supposed to then order the sheriff to summon such additional number of person as “may be deemed necessary to constitute a grand jury of twelve persons and four alternates.”
- However, the judge has to instruct the sheriff not to summon people who do not “possess the qualifications prescribed by law.” ????????

# Grand Jury Process

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- Comprised of twelve grand jurors and four alternates
- Is a secret proceeding
  - Who can be present in the room? Grand jurors, bailiffs, prosecutors, witnesses who are testifying, interpreters, and court reporters
- The Grand Jury records the cases by keeping a minute book
  - Minute book is kept by the clerk (in our jurisdiction)
  - No mention of the minute book in the Code of Criminal Procedure
  - Is it also secret? – Highly Likely
- 9 affirmative votes = indictment

# The Indictment

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- The formal charging instrument in felony cases
- Has to be signed by the Grand Jury foreman (presiding juror)
- Does NOT have to say “feloniously”
- What if there is a defect with the form of the indictment?????
  - Not to worry, an indictment is not insufficient by reason of any defect of form which does not prejudice the substantial rights of the defendant.



# The Indictment

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CCP Art. 21.011:

A judge or clerk of the court is authorized to receive for filing purposes an information, indictment or complaint...or related document in electronic form...IF:

1. The indictment complies with the requirements that would apply if the indictment were filed in hardcopy form;
2. The clerk of the court has the means to electronically store the indictment for the statutory period of record retention;
3. The judge or clerk is able to reproduce the document in hard-copy form on demand; and
4. The clerk is able to display or otherwise make the document available in electronic form to the public at no charge.

# The Capias and Summons

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A capias shall issue by the district clerk upon each indictment for felony presented, after bail has been set or denied by the judge...

- However, the prosecutor may request that a summons be issued instead of a capias
  - What happens if the defendant fails to appear?
  - Then a capias is issued

A summons should be in the same form as the capias, except that it (obviously) summons the defendant to appear before the court at the stated time and place.

- Summons has to be served on the defendant by delivering a copy to him personally or by leaving it at his house with a person “of suitable age and discretion” or by mailing it to the defendant’s last known address.
- Summons are useful in some instances like:
  - Motions to revoke bond
  - Some motions to adjudicate/proceed/revoke probation
  - The inevitable “sick defendant”

# Service of the Indictment

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If the defendant is in custody, or as soon as he is arrested (on the *capias*), the clerk shall make a certified copy of the indictment, deliver it to the sheriff, with a writ directing the sheriff to deliver the indictment to the defendant.

- Sheriff is then SUPPOSED to return the writ to the clerk showing how he served the defendant...

What if the defendant is out on bail?

- Then it is not necessary to serve him/her with a copy of the indictment, but the clerk shall on request deliver a copy to the defendant and his lawyer at the “earliest time possible.”
  - Problem???
  - Defendant’s never move....
  - Defendant’s are always responsible about staying on top of their legal woes
  - Bonding companies always keep track of their clients and make sure they make every court appearance
  - A lawyer is always appointed

# The Arraignment

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CCP Art. 26.02: “An arraignment takes place for the purpose of fixing his identity and *hearing his plea.*”

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**ARRESTED**



**BUD WEISSER**



**Mister  
Love**

**SEX OFFENDER ARRESTED**  
CHARGED WITH FAILING TO REPORT

**5**  
WLWT.COM

**ARRESTED**



**CRYSTAL METHENY**



# The Arraignment

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## Waiver:

- The defendant's attorney may file a waiver of arraignment...
  - Problems??!!!!??
    - What if the defendant is out on bond when he is arrested and then his attorney files a waiver?
      - No worries, the defense attorney will notify the defendant.... Right?! ...because defense lawyer and defendant **always** communicate
    - No service of indictment and no court appearance = recipe for his case falling off the docket OR a hard to prove (if not impossible) failure to appear charge OR a difficult bond forfeiture.
    - Could potentially jam up the docket
    - Blame game
  - ***...and the clerk of the court may not require the presence of the defendant as a condition of accepting the waiver.*** CCP Art. 26.011

# How about this for sentencing....

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A judge MAY order the sentencing hearing of a defendant convicted of an offense involving possession, manufacturing, or delivering controlled substances to be held at....

## *a High School*

IF

1. The Judge thinks the sentencing hearing would have educational value to the students due to the nature of the offense and its consequences
2. The defendant agrees
3. The school administration agrees
4. Appropriate measures are taken to ensure safety of the students (what could possible go wrong???)
5. And the defendant still gets a fair hearing.

# The Judgment

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- Becomes final 30 days after the Judge imposes or suspends sentence in open court  
UNLESS:
  - A motion for new trial is filed OR
    - Must be filed no later than 30 days after sentence is imposed
  - A notice of appeal is filed
    - Must be filed no later than 30 days after sentence is imposed...unless...

If a motion for new trial is filed then it must be ruled on within 75 days after imposing or suspending sentence in open court.

- What if the Judge does not rule on the motion for new trial?
  - Then the motion is automatically denied after 75 days.
  - This is a common way defense lawyers extend their appellate deadlines.
  - A notice of appeal must be filed 90 days after the day sentence is imposed or suspended IF a motion for new trial is filed.

# Findings in the Judgment

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- Finding that the offense was committed because of bias of prejudice:
  - Judge shall make an affirmative finding on the judgment IF:
    - the trier of fact (judge or jury) determines beyond a reasonable doubt that the defendant intentionally selected the victim or the victim's property
    - as a result of the defendant's bias or prejudice against a group identified by race, color disability, religion, national origin or ancestry, age, gender, or sexual preference
  
- Code of Criminal Procedure Art. 42.014

# How does this affect you?

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## CCP Art. 2.211

- A clerk of a district or court
- In which an affirmative finding based on bias or prejudice is requested
- **Shall** report the request to the Texas Judicial Council
- Along with a statement as to whether the request was granted by the court
- If so, whether the affirmative finding was entered in the judgment
- The clerk **shall** make the report not later than the 30<sup>th</sup> day after the date judgment is entered.
  
- Code of Criminal Procedure Art. 2.211

# Notice of Certain Offenses

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- Judgment affecting Officer or Jailer:
  - If a law enforcement officer is charge with a felony
  - and the court knows that person is a law enforcement officer
  - and the court convicts and places that person on probation
  - then the ***clerk of the court shall*** send the Texas Commission on Law Enforcement the license number of the person and a certified copy of the court's judgment

Code of Criminal Procedure Art. 42.011

# Notice of Certain Offenses

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- If a teacher (person who holds a teaching certificate) is convicted or granted deferred probation:
  - For an offense under Title 5 of the Penal Code (Offense Against Persons)
  - For an offense that requires them to register as a sex offender AND
  - The victim is under 18 years of age
- No later than the 5<sup>th</sup> days after the person is convicted or granted deferred probation
- The ***clerks shall*** provide written notice to the State Board for Educator Certification of the person's conviction or deferred probation including the offense
- Code of Criminal Procedure Art. 42.018

# Notice of Certain Offenses

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- If a person who is licensed by the Texas Department of Insurance is convicted or granted deferred probation for an offense involving theft or fraud
- The clerk of the court *shall* provide to the Texas Department of Insurance written notice of the person's conviction or deferred probation, including the offense.
- Code of Criminal Procedure Art. 42.0181

# Notice of Certain Offenses

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- If the defendant is an active-duty member of the military and he is convicted or placed on deferred probation for:
  - Offense involving family violence
  - Or an offense against a person
- ***As soon as possible*** after the date of conviction or deferred probation:
  - The ***clerk shall*** provide written notice of the conviction or deferred probation to the staff judge advocate at the Joint Force Headquarters or the provost marshal of the military installation to which the defendant is assigned with the intent that the commanding officer will be notified
- Code of Criminal Procedure Art. 42.0183

# Errors in the Judgment

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## Nunc Pro Tunc Judgment:

- Limited to clerical errors and errors in time credit
- A clerical error in a judgment may be correct at anytime
- The correction must reflect the judgment that was actually rendered but that for some reason was not properly entered into the record



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# Q & A



# Thank You!

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