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BY

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DEPUTY

ADMINISTRATIVE ORDER
REGARDING THE CLERK OF THE MAGISTRATES IN
TARRANT COUNTY, TEXAS

WHEREAS, an arrested person must be taken before a magistrate after arrest pursuant to Article 15.17 of the Texas Code of Criminal Procedure; and

WHEREAS, after taking office in 2015, the Tarrant County Criminal District Attorney initiated a review of the Tarrant County Sheriff Office's practice of not accepting an arrested person into the Tarrant County Jail until the State filed a criminal case; and

WHEREAS, until 2018, municipal courts primarily conducted Article 15.17 proceedings in Tarrant County; and

WHEREAS, in 2018, the Tarrant County Sheriff's Office began accepting persons arrested for Class A and B misdemeanor offenses and felony offenses prior to the State filing a complaint or an information; therefore, Article 15.17 proceedings largely became centralized in the Tarrant County Jail; and

WHEREAS, Tarrant County magistrates developed an individualized process for determining probable cause, setting bail and conditions of bail, consideration of pretrial release on a personal bond, and informing arrested persons of their rights; and

WHEREAS, under Article 2.09 of the Texas Code of Criminal Procedure and as used herein, magistrate includes: judges of the district courts, judges of the county criminal courts, and criminal law magistrates appointed by the judges of the district courts that give preference to criminal cases and the criminal district courts of Tarrant County; and

WHEREAS, in *Rothgery v. Gillespie County*, 554 U.S. 191, 199, 213, 128 S. Ct. 2578, 2584, 2592, 171 L.Ed.2d 366 (2008), the Supreme Court of the United States held that the Article 15.17 hearing is an arrested person's initial appearance before a magistrate and therefore "marks the start of adversary judicial proceedings" that trigger the attachment of an arrested person's Sixth Amendment right to counsel; and

WHEREAS, at an Article 15.17 proceeding, the magistrate informs the arrested person of the accusation against him and any affidavit filed therewith; and

WHEREAS, at an Article 15.17 proceeding, the magistrate informs the arrested person of his rights: the right to retain counsel, the right to remain silent, the right to have an attorney present during any interview with a peace officer or attorney representing the state, the right to terminate

an interview at any time, the right to an examining trial, and the right to request appointed counsel; and

WHEREAS, at an Article 15.17 proceeding, the magistrate informs the arrested person of the procedures for requesting appointed counsel and ensures reasonable assistance in completing the necessary forms for requesting appointed counsel is provided; and

WHEREAS, at an Article 15.17 proceeding, the magistrate informs the arrested person that he is not required to make a statement and that any statement made by him may be used against him; and

WHEREAS, in addition to the aforementioned judicial duties, the magistrate makes a probable cause determination at an Article 15.17 proceeding (*see Gerstein v. Pugh*, 420 U.S. 103, 113-14, 95 S. Ct. 854, 863, 43 L.Ed.2d 54 (1975) (“[A] policeman’s on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of crime, and for a brief period of detention to take the administrative steps incident to arrest[,] ... [but] the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest”)); and

WHEREAS, upon finding probable cause that the arrested person committed a criminal offense(s), the magistrate sets bail at an Article 15.17 proceeding; and

WHEREAS, the magistrate may impose terms and conditions of bail at an Article 15.17 proceeding; and

WHEREAS, if a person is arrested for an offense involving family violence or an offense under Section 20A.02 (trafficking of persons), 20A.03 (continuous trafficking of persons), 22.011 (sexual assault), 22.012 (indecent assault), 22.021 (aggravated sexual assault), or 42.072 (stalking) of the Texas Penal Code, the magistrate may issue an order for emergency protection on the magistrate’s own motion or on the request of the victim, guardian of the victim, peace officer, or state’s attorney at an Article 15.17 proceeding; and

WHEREAS, if a person is arrested for an offense involving family violence and the victim sustained serious bodily injury or the offense involved a deadly weapon, the magistrate shall issue an order of emergency protection at an Article 15.17 proceeding; and

WHEREAS, if a magistrate issues an order of emergency protection at an Article 15.17 proceeding, the clerk of the court shall send a copy of the order to the victim at the victim’s last known address as soon as possible but not later than the next business day after the order is issued unless the magistrate or clerk lack the necessary information to ensure service and enforcement; and

WHEREAS, an Article 15.17 proceeding produces records, including, but not limited to, a probable cause affidavit, probable cause determination, arrest warrant and affidavit, magistrate

warning, conditions of bail, personal bond, order of emergency protection, and Article 16.22 mental health order; and

WHEREAS, in Tarrant County, no court clerk currently takes custody of and maintains all the records from an Article 15.17 proceeding; and

WHEREAS, the office of district clerk was created by Article V, Section 9 of the Texas Constitution; and

WHEREAS, under Section 51.303(a) of the Texas Government Code, the “clerk of a district court has custody of and shall carefully maintain and arrange the records relating to or lawfully deposited in the clerk’s office[;]” and

WHEREAS, under Section 51.303(b)(1) of the Texas Government Code, the district clerk shall “record the acts and proceedings of the court[;]” and

WHEREAS, in a criminal proceeding, the district clerk shall “receive and file all papers” and “perform all other duties imposed on the clerk by law” under Article 2.21(a)(1) and (6) of the Texas Code of Criminal Procedure; and

WHEREAS, as the Texas Court of Criminal Appeals explained in *In re Lowe*, WR-25,679-15, 2014 WL 5421278, at *1 (Tex. Crim. App. Oct. 8, 2014) (op., not designated for publication), the district clerk has “a ministerial duty to ‘receive and file all papers’ in a criminal proceeding[;]” and

WHEREAS, “criminal proceeding” is not defined in the Texas Code of Criminal Procedure; and

WHEREAS, in contrast to the phrase “criminal proceeding,” the Texas Code of Criminal Procedure specifies that “[a] criminal action is prosecuted in the name of the State of Texas against the accused, and is conducted by some person acting under the authority of the State, in accordance with its laws” in Article 3.02; and

WHEREAS, we have found no Texas case interpreting the meaning of “criminal proceeding” as used in Article 2.21 of the Texas Code of Criminal Procedure; and

WHEREAS, pursuant to Section 311.011(a) of the Texas Government Code, statutorily undefined terms which have not acquired an established legal meaning should be “read in context and construed according to the rules of grammar and common usage[;]” and

WHEREAS, pursuant to Article 3.01 of the Texas Code of Criminal Procedure, “[a]ll words, phrases and terms” used in the Code “are to be taken and understood in their usual acceptation in common language, except where specifically defined” in the Code; and

WHEREAS, “criminal proceeding” has not acquired a “technical or particular meaning” as used in Article 2.21 that constrains its meaning to only proceedings that occur after the state files a criminal case; and

WHEREAS, “[t]he term ‘proceeding’ is a very broad nomenclature” as the Court of Criminal Appeals noted in *Tigner v. State*, 928 S.W.2d 540, 543 (Tex. Crim. App. 1996); and

WHEREAS, in *Tigner*, 928 S.W.2d at 545, the Court of Criminal Appeals observed the phrase “criminal proceeding” is “facially very broad[;]” and

WHEREAS, Black’s Law Dictionary 1241 (8th ed. 2004) defines “proceeding” as “1. The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment. 2. Any procedural means for seeking redress from a tribunal or agency. 3. An act or step that is part of a larger action. 4. The business conducted by a court or other official body; a hearing[;]” and

WHEREAS, Black’s Law Dictionary 1241 (8th ed. 2004) defines “criminal proceeding” as “[a] proceeding instituted to determine a person’s guilt or innocence or to set a convicted person’s punishment; a criminal hearing or trial[;]” and

WHEREAS, an examining trial, which may occur before the state files a criminal case, is referred to as a criminal proceeding in Article 2.01 of the Texas Code of Criminal Procedure; and

WHEREAS, a hearing on a pretrial application for a writ of habeas corpus, which may occur before the state files a criminal case, is referred to as a criminal proceeding in Article 2.01 of the Texas Code of Criminal Procedure; and

WHEREAS, in numerous instances, the Tarrant County District Clerk accepts records prior to the State filing a criminal case; and

WHEREAS, the Tarrant County District Clerk currently takes custody of and maintains all orders of emergency protection, on both misdemeanor and felony offenses, issued by a Tarrant County magistrate at an Article 15.17 proceeding; and

WHEREAS, the Tarrant County District Clerk currently takes custody of and maintains all arrest warrants, and any affidavit presented in support of the issuance of a warrant, signed by a Tarrant County magistrate, and, beginning immediately when a warrant is executed, makes the warrant and affidavit available for public inspection in the district clerk’s office during normal business hours pursuant Article 15.26 of the Texas Code of Criminal Procedure; and

WHEREAS, the Tarrant County District Clerk currently takes custody of and maintains search warrants, and any affidavit presented in support of the issuance of a warrant, signed by a Tarrant County magistrate, and, except as provided in Article 18.011, “the affidavit becomes public information when the search warrant for which the affidavit was presented is executed,” and the

district clerk makes a copy of the affidavit available for public inspection in the district clerk's office during normal business hours pursuant Article 18.01(b) of the Texas Code of Criminal Procedure; and

WHEREAS, under Article 32.01 of the Texas Code of Criminal Procedure, the Tarrant County District Clerk currently takes custody of and maintains motions to discharge an arrested person's bail filed by a surety when an indictment or information is not presented against the arrested person within the statutorily defined period; and

WHEREAS, under Article 32.01 of the Texas Code of Criminal Procedure, a defendant detained in custody or held to bail may file a writ or motion with the Tarrant County District Clerk seeking dismissal of the prosecution and discharge from bail if an indictment or an information is not filed within the statutorily defined period; and

WHEREAS, the Tarrant County Criminal District Attorney's Office currently files a "NOTICE TO COURT – *Case not Presented by Law Enforcement*" with the Tarrant County District Clerk, for both misdemeanor and felony offenses, when an arrested person remains in the custody of the Tarrant County Sheriff for a certain period and a law enforcement agency has not presented a case to the district attorney's office; and

WHEREAS, as used in Article 2.21 of the Texas Code of Criminal Procedure, the phrase "criminal proceeding" does not limit a district clerk to only accept records after the state has filed a criminal case; and

WHEREAS, Article 15.17 magistration is a required proceeding for all persons arrested for allegedly committing a criminal offense under Texas law; and

WHEREAS, Article 2.21 of the Texas Code of Criminal Procedure and Sections 51.303 and 51.304 of the Texas Government Code give the district clerk the statutory authority to take custody of and maintain records from an Article 15.17 proceeding; and

WHEREAS, on September 8, 2020, in Court Order Number 133652, the Tarrant County Commissioners Court approved the addition of two positions to the Tarrant County District Clerk's Office to process documents on unfiled cases as they relate to criminal offenses.

NOW, THEREFORE, pursuant to the agreement and resolution of the undersigned judges of the District Courts Trying Criminal Cases of Tarrant County the following is ORDERED:

1. Upon the effective date of this order, the Tarrant County District Clerk ("District Clerk") shall serve as clerk of proceedings on unfiled criminal cases; and
2. Following an Article 15.17 proceeding, the criminal courts administration staff shall provide, if applicable to the case, the following to the District Clerk:

- a. Probable Cause Affidavit
 - b. Probable Cause Determination;
 - c. Arrest Warrant;
 - d. Arrest Warrant Affidavit;
 - e. Magistrate Warning;
 - f. Conditions of Bail;
 - g. Personal Bond;
 - h. Order of Emergency Protection;
 - i. Firearm Warning;
 - j. Article 16.22 Mental Health Order;
 - k. Article 16.22 Written Report, to be filed under seal; and
 - l. Any other record designated by a magistrate.
3. When a felony case is filed in a district court, the District Clerk shall continue to serve as clerk for the felony case.
 4. When a Class A or Class B misdemeanor case is filed in a county criminal court, the District Clerk shall transfer the file to the County Clerk who shall thereafter serve as clerk for the misdemeanor case.
 5. When a Class C misdemeanor is filed in a justice court, the District Clerk shall transfer the file to the clerk of the justice court upon request of the justice court.
 6. Any deviation from this order may occur only if authorized by a Tarrant County magistrate.
 7. This order becomes effective for all proceedings before a Tarrant County magistrate on or after December 1, 2020.

Signed and entered on the 9 day of November 2020 except as otherwise indicated at specific signatures below.

Elizabeth Beach

Elizabeth Beach (Nov 9, 2020 08:09 CST)

HONORABLE ELIZABETH H. BEACH
CRIMINAL DISTRICT COURT NO. 1

Robb Catalano

Robb Catalano (Nov 9, 2020 11:16 CST)

HONORABLE ROBB CATALANO
CRIMINAL DISTRICT COURT NO. 3

Wayne Salvant

Wayne Salvant (Nov 11, 2020 10:38 CST)

HONORABLE WAYNE F. SALVANT
CRIMINAL DISTRICT COURT NO. 2

mike thomas

mike thomas (Nov 9, 2020 14:31 CST)

HONORABLE MIKE THOMAS
CRIMINAL DISTRICT COURT NO. 4

Chris Wolfe

Chris Wolfe (Nov 11, 2020 11:58 CST)

HONORABLE CHRIS WOLFE
213th JUDICIAL DISTRICT COURT

Mollee Westfall

Mollee Westfall (Nov 9, 2020 08:57 CST)

HONORABLE MOLLEE WESTFALL
371st JUDICIAL DISTRICT COURT

George Gallagher

George Gallagher (Nov 9, 2020 08:01 CST)

HONORABLE GEORGE GALLAGHER
396th JUDICIAL DISTRICT COURT

David C. Hagerman

David C. Hagerman (Nov 9, 2020 09:54 CST)

HONORABLE DAVID C. HAGERMAN
297th JUDICIAL DISTRICT COURT

Scott Wisch

Scott Wisch (Nov 9, 2020 09:03 CST)

HONORABLE SCOTT WISCH
372nd JUDICIAL DISTRICT COURT

R. Gonzalez Jr.

HONORABLE RUBEN GONZALEZ, JR.
432nd JUDICIAL DISTRICT COURT