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Warrantless Arrest Jurisdiction in Texas: An Analysis and a Proposal.

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**WARRANTLESS ARREST JURISDICTION IN TEXAS:
AN ANALYSIS AND A PROPOSAL**

GERALD S. REAMEY*
J. DANIEL HARKINS**

I.	Introduction.....	858
II.	Arrests.....	860
	A. In General.....	860
	B. Statutory Exceptions to the Warrant Requirement .	862
	1. Article 14.01(a).....	863
	2. Article 14.01(b).....	865
	3. Article 14.02.....	866
	4. Article 14.03(a)(1).....	867
	5. Article 14.03(a)(2).....	868
	6. Article 14.03(a)(3).....	869
	7. Article 14.03(c).....	871
	8. Article 14.04.....	871
	9. Article 18.16.....	871
	10. Other Miscellaneous Grants of Warrantless Arrest Authority.....	872
	C. Judicial Trend to Limit Exceptions by Jurisdiction	873
III.	Defining the Peace Officer's Jurisdiction.....	875
	A. In General.....	875
	B. City Police Officers.....	877
	1. Common Law.....	877
	2. Statutory Provisions.....	879
	3. Judicial Interpretation of Warrantless Arrest Jurisdiction.....	881
	C. Parks and Wildlife Game Wardens.....	888

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D. Campus Police	890
IV. The Court's Analysis—Using Jurisdiction to Limit Warrantless Arrest Authority	891
V. Conclusion—A Proposal For Legislative Reform	894

I. INTRODUCTION

Within the state of Texas, there exist a great number of “peace officers” who are granted a wide range of power and authority, including the power to make warrantless arrests¹ and searches pursuant to those arrests. Although the Texas Code of Criminal Procedure purports to define who is a peace officer² and the scope of his duties,³ significant ambiguity exists regarding a peace officer’s jurisdiction. This confusion is largely due to imprecise statutory language,⁴ varying judicial interpretations,⁵ and numerous overlapping, and sometimes

1. See, e.g., TEX. CODE CRIM. PROC. ANN. art. 14.01 (Vernon 1977)(peace officer may arrest without warrant for any offense committed in his presence); *id.* art. 14.03(a)(1) (Vernon Supp. 1988)(authority to arrest without warrant person found in suspicious places and under circumstances that give rise to reasonable belief that person about to commit offense); *id.* art. 14.04 (Vernon 1977)(warrantless authority upon representation by credible person that felony has been committed).

2. See *id.* art. 2.12 (Vernon Supp. 1988)(lists twenty-two categories of officials designated as peace officers). Although Article 2.12 of the Code of Criminal Procedure purports to be a comprehensive list of who is a peace officer, numerous other statutes allow for the establishment of other officials not listed in article 2.12 as a peace officer. See, e.g., TEX. EDUC. CODE ANN. § 21.483 (Vernon 1987)(security personnel of public schools can be appointed as peace officers); *id.* § 51.214 (security officials for medical corporations); *id.* § 88.103 (Vernon Supp. 1988)(Texas Forest Service employees may be commissioned as peace officers).

3. See TEX. CODE CRIM. PROC. ANN. art. 2.13 (Vernon 1977)(duty to preserve peace within jurisdiction).

4. Compare *id.* art. 2.13 (peace officer's power limited to preserving peace “within his jurisdiction”; however, no definition of “jurisdiction” provided) with *id.* art. 14.01(b) (peace officer has warrantless arrest authority for “any offense committed in his presence or within his view”). None of the statutes granting a peace officer the power to make a warrantless arrest ever limits that authority to his jurisdiction or to the situation where the officer is in the exercise of his duties. Cf. *id.* arts. 14.01(b), 14.02 (Vernon 1977) & art. 14.03 (Vernon Supp. 1988).

5. Compare *Love v. State*, 687 S.W.2d 469, 477 (Tex. App.—Houston [1st Dist.] 1985, pet. ref'd)(city police officers' jurisdiction confined to city limits) with *Angel v. State*, 740 S.W.2d 727, 736 (Tex. Crim. App. 1987)(city police officers have countywide jurisdiction); compare also *Preston v. State*, 700 S.W.2d 227, 230 (Tex. Crim. App. 1985)(Section 153 of Uniform Act Regulating Traffic does not confer statewide authority on all peace officers to enforce provisions of act) with *Hurley v. State*, 155 Tex. Crim. 315, 316, 234 S.W.2d 1006, 1007 (1950)(TEX. PENAL CODE ANN. art. 803 (repealed), now Section 153 of Uniform Act Regulating Traffic, empowers any peace officer arrest without warrant for any traffic offense committed in his presence), *overruled*, *Angel v. State*, 740 S.W.2d 727, 732 (Tex. Crim. App. 1987).

conflicting, statutes.⁶ For example, while some cases have held or implied that a peace officer has statewide authority to make warrantless arrests for offenses committed within his presence or view,⁷ other cases limit both the peace officer's authority and status to a narrowly circumscribed geographical area.⁸

Although the ramifications of a broad or narrow interpretation of a peace officer's arrest authority impact several areas of law,⁹ the most critical and often litigated concern is the legality of warrantless arrests and searches incident to those arrests, and, ultimately, the admissibility of evidence obtained subsequent to an unlawful arrest.¹⁰ To ad-

6. Compare TEX. CODE CRIM. PROC. ANN. art. 14.01(a) (Vernon 1977)(authorizes peace officer to arrest without warrant for "offenses against the public peace") with *id.* art. 14.03(c) (authorizes warrantless arrest for violations of title 9, chapter 42, Texas Penal Code).

7. See, e.g., *Buse v. State*, 435 S.W.2d 530, 532 (Tex. Crim. App. 1968)(under TEX. CODE CRIM. PROC. ANN. art. 14.01(b), peace officer has statewide authority to make arrest), *overruled*, *Angel v. State*, 740 S.W.2d 727, 736 (Tex. Crim. App. 1987); *Hurley v. State*, 155 Tex. Crim. 315, 316, 234 S.W.2d 1006, 1007 (1950)(peace officer has authority to make arrest for drunk driving anywhere in state), *overruled*, *Angel v. State*, 740 S.W.2d 727, 732 (Tex. Crim. App. 1987).

8. See, e.g., *Preston v. State*, 700 S.W.2d 227, 229 (Tex. Crim. App. 1985)(campus peace officer's authority limited to "property under the control and jurisdiction of the institutions of higher education or otherwise in the performance of his duties")(quoting TEX. EDUC. CODE ANN. § 51.203 (Vernon 1987)); *Christopher v. State*, 639 S.W.2d 932, 937 (Tex. Crim. App. 1982)(opinion on rehearing)(each peace officer's authority limited to "his jurisdiction"; thus, a game warden has authority as peace officer only while in state park or at historic site); *Weeks v. State*, 132 Tex. Crim. 524, 526-27, 106 S.W.2d 275, 276 (1937)(city peace officer's authority confined to limits of city), *overruled*, *Angel v. State*, 740 S.W.2d 727, 736 (Tex. Crim. App. 1987).

9. Whether a person is accorded peace officer status throughout the state is of considerable importance when a "peace officer" is charged with the offense of unlawfully carrying weapons. See TEX. PENAL CODE ANN. § 46.02 (Vernon 1974). Since this offense is not applicable to a "peace officer," it is important to know whether a person commissioned as a peace officer is a peace officer for all purposes. See *id.* § 46.03(a)(6) (Vernon Supp. 1988). Most of the case law on this point, while not often cited, holds that a peace officer is only a peace officer within his jurisdiction, and thus, outside that jurisdiction the officer has no more authority to carry a weapon than does any other citizen. See, e.g., *Jones v. State*, 91 Tex. Crim. 240, 243, 238 S.W. 661, 662 (1922)(officer's authority to carry weapon exists only where in actual discharge of official duties); *Ransom v. State*, 73 Tex. Crim. 442, 444, 165 S.W. 932, 933 (1914)(officers' right to carry arms with impunity limited to prescribed territory where employed); *Ray v. State*, 44 Tex. Crim. 158, 159, 70 S.W. 23, 24 (1902)(officer is "peace officer" only while in his own "bailiwick"). In *Ray v. State*, the court upheld a conviction of a Fort Worth peace officer who was charged with unlawfully carrying a weapon while in the city of San Antonio. See *Ray*, 44 Tex. Crim. at 159, 70 S.W. at 24. The basis of the court's opinion is that a peace officer is only a peace officer while in the confines of his own bailiwick. See *id.* "Bailiwick" is defined as "[a] territorial segment over which a bailiff or sheriff has jurisdiction; not unlike a county in today's governmental divisions." BLACK'S LAW DICTIONARY 129 (5th ed. 1979).

10. See, e.g., *Christopher v. State*, 639 S.W.2d 932, 937 (Tex. Crim. App. 1982)(opinion

dress this concern, this article will describe the confusion and conflict that exists concerning the scope of a peace officer's arrest jurisdiction by reviewing the various statutory grants of authority and the judicial interpretations of those statutes. The article then analyzes the current state of Texas law in light of policy considerations and suggests ways in which competing needs, legislation, and case law may be effectively reconciled.

II. ARRESTS

A. *In General*

The courts in Texas begin with the general premise that the constitutions of Texas¹¹ and of the United States,¹² as well as the laws of Texas,¹³ require that all arrests be made pursuant to a warrant.¹⁴ Acceptance of this premise by the Texas Legislature is evidenced by its enactment of limited exceptions to the warrant requirement.¹⁵ Texas courts have interpreted these statutes as requiring that a warrant be obtained before an arrest is made, unless one of the limited statutory exceptions applies.¹⁶ This has come to mean that the right to arrest

on rehearing)(evidence admissible when obtained as a result of defendant's arrest by game warden for speeding), *overruled on other grounds*, Preston v. State, 700 S.W.2d 227, 230 (Tex. Crim. App. 1985); Irwin v. State, 147 Tex. Crim. 6, 7-8, 177 S.W.2d 970, 974 (1944)(same), *overruled on other grounds*, Angel v. State, 740 S.W.2d 727, 735-36 (Tex. Crim. App. 1987); Weeks v. State, 132 Tex. Crim. 524, 526-27, 106 S.W.2d 275, 275 (1937)(same), *overruled on other grounds*, Angel v. State, 740 S.W.2d 727, 736 (Tex. Crim. App. 1987); *see also* United States v. Garcia, 676 F.2d 1086, 1087 (5th Cir.)(challenging admissibility of evidence obtained by alleged illegal arrest by game warden), *vacated on other grounds*, 462 U.S. 1127 (1982); Love v. State, 687 S.W.2d 469, 470 (Tex. App.—Houston [1st Dist.] 1985, pet. ref'd)(challenging evidence obtained when defendant arrested and searched by Pasadena city police while in city limits of Houston).

11. *See* TEX. CONST. art. I, § 9 ("people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches").

12. *See* U.S. CONST. amend. IV (right to be free from unreasonable searches and seizures).

13. *See* TEX. CODE CRIM. PROC. ANN. arts. 14.01-02 (Vernon 1977) & art. 14.03 (Vernon Supp. 1988) & art. 14.04 (Vernon 1977)(lists statutory exceptions to general rule that all arrests must be made pursuant to warrant).

14. *See, e.g.*, Rental v. State, 656 S.W.2d 487, 490 (Tex. Crim. App. 1983)(peace officer must always obtain arrest warrant whenever possible); Hogan v. State, 631 S.W.2d 159, 161 (Tex. Crim. App. 1982)(same); Hardison v. State, 597 S.W.2d 355, 357 (Tex. Crim. App. 1980)(same).

15. *See* TEX. CODE CRIM. PROC. ANN. ch. 14 (Vernon 1977 & Supp. 1988); *id.* art. 18.16 (Vernon 1977).

16. *See, e.g.*, Randall v. State, 656 S.W.2d 487, 490 (Tex. Crim. App. 1983)(arrest illegal because article 14.04 exceptions not met); Hogan v. State, 631 S.W.2d 159, 161 (Tex. Crim.

without warrant in Texas is granted only by statute.¹⁷ Texas courts have expressly held that warrantless arrests are “per se unreasonable,”¹⁸ burdening the state to establish the legality of the warrantless arrest.¹⁹ The overriding principle behind the courts’ approach is that an arrest made without warrant threatens the constitutional right to be free from unreasonable searches and arrests.²⁰ A warrantless arrest bypasses the safeguards provided by the warrant procedure, including the review and objective determination by a detached magistrate of whether probable cause exists to justify the arrest.²¹ The warrantless arrest procedure substitutes an after-the-fact judicial assessment of the reasonableness of the arrest or search, which may be, or appear to be, influenced by the existence of incriminating evidence which has already been obtained.²² For these reasons, courts should strictly construe each statutory exception to the warrant requirement, and maintain the state’s burden to persuade that one of the exceptions applies.²³

Although all states are bound by the federal constitutional guaran-

App. 1982)(officers failed to show defendant tried to escape, thus, failed to meet exception); *Honeycutt v. State*, 499 S.W.2d 662, 663-34 (Tex. Crim. App. 1973)(imminent escape essential to warrantless arrest; otherwise, officers should get warrant when possible).

17. See, e.g., *Heath v. Boyd*, 141 Tex. 569, 571, 175 S.W.2d 214, 215 (1943)(warrantless arrest must be expressly authorized by statute); *Honeycutt*, 499 S.W.2d at 665 (warrantless arrest must come squarely within statutory classification); *Giacona v. State*, 164 Tex. Crim. 325, 326-27, 298 S.W.2d 587, 589 (1957), *overruled on other grounds*, *Tumlin v. State*, 171 Tex. Crim. 512, 513, 351 S.W.2d 242, 243 (1961)(warrantless arrest controlled only by statute).

18. See, e.g., *McVea v. State*, 635 S.W.2d 429, 432 (Tex. Crim. App. 1982)(unauthorized warrantless arrest per se unreasonable); *Honeycutt*, 499 S.W.2d at 663-64 (constitutional precept that police should always obtain arrest warrants; statutory exceptions strictly construed).

19. See, e.g., *McVea*, 635 S.W.2d at 432 (state’s burden to prove legality of warrantless arrest); *Hooper v. State*, 533 S.W.2d 762, 767 (Tex. Crim. App. 1976)(burden on state to prove warrantless arrest legality).

20. See, e.g., *Beck v. Ohio*, 379 U.S. 89, 97 (1964)(warrantless arrests bypass safeguards provided by probable cause requirement); *Wong Sun v. United States*, 371 U.S. 471, 479-80 (1963)(constitutionality of arrests more reliable when police must obtain warrant); *Honeycutt*, 499 S.W.2d at 663-64 (Tex. Crim. App. 1973)(warrants provide constitutional safeguards).

21. See *Honeycutt*, 499 S.W.2d at 664 n.1 (warrantless arrest bypasses prior judicial determination of probable cause).

22. See *Beck*, 379 U.S. at 96 (objective of probable cause circumvented by warrantless arrest); *Honeycutt*, 499 S.W.2d at 664 n.1 (warrantless arrest bypasses prior judicial determination of probable cause).

23. See, e.g., *Heath v. Boyd*, 141 Tex. 569, 572-573, 175 S.W.2d 214, 216 (1943)(warrantless arrest exceptions noted); *Honeycutt*, 499 S.W.2d at 664 n.2, 665 (warrantless arrest exceptions arise from necessity); *Giacona v. State*, 164 Tex. Crim. 325, 327, 298 S.W.2d 587, 589 (1957), *overruled on other grounds*, *Tumlin v. State*, 171 Tex. Crim. 512, 513, 351 S.W.2d 242, 243 (1961)(arrest without warrant requires more than mere suspicion or belief).

tee that citizens be free from unreasonable searches or seizures, Texas has historically gone further than many other states by statutorily forbidding the state to use evidence obtained as a result of an illegal arrest or search.²⁴ Thus, for example, before evidence obtained from a warrantless arrest will be admitted, the state must prove the existence and applicability of an exception to the warrant requirement.²⁵

B. *Statutory Exceptions to the Warrant Requirement*

The Texas Legislature has acknowledged that certain circumstances, usually grounded in exigency,²⁶ justify the use of arrest powers even though a warrant has not been issued. Although some of the exceptions are precisely worded and have been subject to strict interpretation,²⁷ others are vaguely or loosely worded and inconsistently interpreted,²⁸ giving rise, in part, to the confusion that surrounds the limits of the Texas peace officer's geographical arrest jurisdiction.²⁹ Therefore, it is useful to briefly consider the various statutory excep-

24. See TEX. CODE CRIM. PROC. ANN. art. 38.23(a) (Vernon Supp. 1988)(statutory exclusionary rule). Even the recently enacted "good faith exception" to the Texas exclusionary rule applies only to searches made pursuant to a facially valid warrant. See *id.* art. 38.23(b). See generally DAWSON & DIX, TEXAS CRIMINAL PROCEDURE, 86-87 (1984).

25. See, e.g., Hogan v. State, 631 S.W.2d 159, 161 (Tex. Crim. App. 1982)(state must show offender about to escape for article 14.04 exception to apply); Hull v. State, 613 S.W.2d 735, 740 (Tex. Crim. App. 1981)(defendant's arrest after refusal to identify himself to police violated fourth amendment); Williams v. State, 394 S.W.2d 510, 510 (Tex. Crim. App. 1965)(arresting woman for committing no other act than walking with man held invalid).

26. See Honeycutt v. State, 499 S.W.2d 622, 664 n.2 (Tex. Crim. App. 1973)(cases of necessity exist to prevent offenders' escape).

27. See TEX. CODE CRIM. PROC. ANN. art. 14.04 (Vernon 1977); see also Beasley v. State, 728 S.W.2d 353, 353 (Tex. Crim. App. 1987)(police conduct cannot create likelihood of escape); Starling v. State, 719 S.W.2d 309, 309 (Tex. Crim. App. 1986)(going from "place to place" not proof that offender about to escape).

28. Compare TEX. CODE CRIM. PROC. ANN. art. 14.01 (Vernon 1977)(peace officer may arrest without warrant for felony or offense against public peace when offense committed in his presence) with *id.* art. 14.03(a)(1) (Vernon Supp. 1988)(peace officer may arrest persons found in suspicious places without warrant on basis of *reasonable suspicion* that person is about to, or has, committed some offense)(emphasis added).

29. The confusion surrounding the limits of a peace officer's territorial jurisdiction for arrest is exemplified by tracing the history of *Christopher v. State*, 639 S.W.2d 932, 935 (Tex. Crim. App. 1982). In *Christopher*, a panel of the Texas Court of Criminal Appeals found that article 14.01(b) of the Texas Code of Criminal Procedure creates the authority for any peace officer to make an arrest anywhere in the state for any offense committed in his view. See *id.* at 935. On motion for rehearing, the court, *en banc*, disagreed with the panel's interpretation and denied that article 14.01(b) granted general powers of arrest for any peace officer. See *id.* at 937. The court did hold, however, that article 2.12 of the Texas Code of Criminal Procedure grants statewide authority to any peace officer to make arrests for traffic violations. See *id.*

tions to the warrant requirement.³⁰

1. Article 14.01(a)

Article 14.01(a) of the Texas Code of Criminal Procedure authorizes a peace officer, or any other person, to make a warrantless arrest for any offense committed in his presence or within his view as long as the offense is classified as a felony or one "against the public peace."³¹ This provision appears to allow a warrantless arrest for these "on-view" offenses regardless of a peace officer's status or jurisdiction. It also clearly permits citizens who are not peace officers to arrest for these crimes. In fact, the standard by which the court determines whether the arrest is valid, and the evidence admissible, is whether a normal citizen would have been justified in making the arrest.³² Under this provision, then, an officer's power to arrest without a warrant outside his geographical jurisdiction seems to extend to any "on-view" offense, except for misdemeanors that are not against the public peace.³³

Despite the logical import of the statute's language, the extent to which article 14.01(a) permits a warrantless arrest outside the territorial jurisdiction of the peace officer remains unclear. Two factors contribute to this uncertainty: the jurisdictional boundaries of the arresting peace officer and a determination of whether a breach of the public peace has occurred. Regarding jurisdiction, it may be that the Texas Court of Criminal Appeals would now limit article 14.01(a)

Three years later, the court expressly overruled *Christopher*, holding that such general arrest jurisdiction does not exist. See *Preston v. State*, 700 S.W.2d 227, 230 (Tex. Crim. App. 1985).

30. For listings of the exceptions to the warrant requirement, see, *United States v. Charles*, 738 F.2d 686, 694 n.8 (5th Cir. 1984)(arrest without warrant allowed in four situations); *Heath v. Boyd*, 141 Tex. 569, 572, 175 S.W.2d 214, 216 (1943)(exceptions to warrant requirement noted).

31. Article 14.01(a) provides:

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.

TEX. CODE CRIM. PROC. ANN. art. 14.01(a) (Vernon 1977).

32. See *Romo v. State*, 577 S.W.2d 251, 253 (Tex. Crim. App. 1979)(peace officer outside jurisdiction has same authority as citizen to make warrantless arrest). Under article 14.01(a), an individual has the authority to arrest without a warrant for breach of peace committed in his presence, but is limited to the time of the offense and does not authorize the right to pursue and arrest the offender. See *Woods v. State*, 213 S.W.2d 685, 688 (Tex. Crim. App. 1948).

33. See *Heck v. State*, 507 S.W.2d 737, 740 (Tex. Crim. App. 1974)(off-duty city police officer arrested defendant outside city limits).

warrantless arrests by peace officers, acting as peace officers rather than citizens, to the officers' territorial jurisdictional boundaries.³⁴ While that interpretation would be inconsistent with the way in which article 14.01(a) has historically been construed,³⁵ it would at least be an internally consistent reading which would reconcile the treatment of peace officers in articles 14.01(a) and 14.01(b).³⁶ However, such a limitation would be practically ineffective since the creation of article 14.03(c)³⁷ which grants officers statewide warrantless arrest authority for certain offenses, thereby resolving any question about whether peace officers, like other citizens, may arrest for felony offenses outside their employment jurisdiction. It would also make little sense to limit a peace officer acting under article 14.01(a) to arrests within his jurisdiction when the same officer/citizen could act unofficially as a citizen in making a warrantless arrest pursuant to the same statute.

Even if article 14.01(a) continues to be applied to peace officers, like all other citizens, without regard to geographical limits, a second difficulty remains unresolved. For many years, the statute has provided one of the few opportunities for warrantless misdemeanor arrests in cases involving an offense against the public peace.³⁸ However, it has never been clear which offenses are "against the public peace."

This uncertainty is illustrated by *Woods v. State*,³⁹ a decision in which the Texas Court of Criminal Appeals approved a definition of "breach of the peace":

The term 'breach of the peace' is generic, and includes all violations of

34. Such a limitation is applied to arrests pursuant to article 14.01(b). See *Christopher*, 639 S.W.2d at 937 (police officer acting pursuant to article 14.01(b) limited to his jurisdiction).

35. See *Romo*, 577 S.W.2d at 253 (peace officer outside jurisdiction has same authority as any other person to make warrantless arrest under article 14.01(a)).

36. Both subsections refer to "a peace officer," but only article 14.01(a) permits the officer to arrest in any place in which "any other person" might arrest. Compare TEX. CODE CRIM. PROC. ANN. art. 14.01(a) (Vernon 1977)(authorizing any person to make warrantless arrest when "in view") and *Romo*, 577 S.W.2d at 253 (peace officer outside jurisdiction has same authority as any other person to make warrantless arrest under article 14.01(a)) with TEX. CODE CRIM. PROC. ANN. art. 14.01(b) (Vernon 1977) and *Christopher v. State*, 639 S.W.2d 932, 937 (Tex. Crim. App. 1982)(peace officer acting pursuant to article 14.01(b) limited to his jurisdiction).

37. TEX. CODE CRIM. PROC. ANN. art. 14.03(c) (Vernon Supp. 1988).

38. See *id.* art. 14.01(a); see also *Romo*, 577 S.W.2d at 253 (driving while intoxicated); *Hackett v. State*, 172 Tex. Crim. 414, 416, 357 S.W.2d 391, 392 (1962)(striking car with bottle); *Woods v. State*, 152 Tex. Crim. 338, 341, 213 S.W.2d 685, 687 (1948)(assaulting person's wife).

39. 152 Tex. Crim. 338, 213 S.W.2d 685 (1948).

the public peace or order, or decorum; in other words, it signifies the offense of disturbing the public peace or tranquility enjoyed by the citizens of a community; a disturbance of the public tranquility by any act or conduct inciting to violence or tending to provoke or excite others to break the peace; a disturbance of public order by an act of violence, or by any act likely to produce violence, or which, by causing consternation and alarm disturbs the peace and quiet of the community.⁴⁰

While it may be possible to discern broad distinctions by application of this "definition," it hardly facilitates an understanding of the statute's language to merely restate that language in various ways.

The outcome of relatively few cases has depended upon whether the offense for which the arrest was made was one against the public peace. In those in which the term was dispositive, it was decided that offenses involving a breach of the public peace included a physical assault in a public place;⁴¹ throwing a bottle from a moving vehicle where the bottle struck a police car;⁴² exposing one's genitals in a public place;⁴³ and, most recently, driving while intoxicated.⁴⁴ If there is a common thread in these cases, it is that in each instance the offense was committed in a public place. Crimes against both property and persons suffice, and the disturbance of the "peace" apparently may be accomplished by a wide variety of conduct.⁴⁵

2. Article 14.01(b)

In 1967, the legislature amended article 14.01 to authorize a peace officer to make a warrantless arrest for any offense committed within his presence or view, regardless of whether the offense is a felony or misdemeanor.⁴⁶ This amendment expanded a peace officer's arrest authority beyond that of an ordinary citizen's, enabling him to arrest

40. *Id.* at 341, 213 S.W.2d at 687 (assault on woman in public place is breach of peace).

41. *Id.*

42. *Hackett v. State*, 172 Tex. Crim. 414, 415, 357 S.W.2d 391, 392 (1962).

43. *Romine v. State*, 169 Tex. Crim. 629, 630, 336 S.W.2d 181, 182 (1919).

44. *Romo*, 577 S.W.2d at 253.

45. It has been rare for a Texas court to reject an arrest because the offense was not against the public peace. In *Head v. State*, the Texas Court of Criminal Appeals, on motion for rehearing, held that the refusal of a truck driver to obey a constable's order to drive his truck to a public scale for weighing was not an offense which breached the peace. 131 Tex. Crim. 96, 99, 96 S.W.2d 981, 982 (1936). Actually, the court concluded that the refusal was not only not a breach of the peace, but was not an offense at all because the constable was without authority to order the vehicle weighed. *Id.*

46. See Act of June 17, 1967, ch. 659, § 8, 1967 Tex. Gen. Laws 1735.

without warrant for all offenses, including misdemeanors. At least for peace officers, this dispenses with the troublesome determination of whether an on-view misdemeanor is one "against the public peace." Not surprisingly, some courts had interpreted this amendment to mean also that a peace officer has statewide authority to make a warrantless arrest for any offense committed in his presence, a reading that is not illogical since the statute is silent on the matter of jurisdiction.⁴⁷ The Court of Criminal Appeals, however, has rejected this interpretation and held that a peace officer's duties and powers are limited to maintaining peace "within his jurisdiction"⁴⁸ despite the absence of any such limitation in article 14.01(b). Thus, with respect to the article 14.01(b) grant of authority to make warrantless arrests, and almost certainly under similar general grants of such power, including perhaps article 14.01(a), the peace officer's authority is circumscribed by his geographical or territorial jurisdiction.⁴⁹ The limits of this jurisdiction must, for each kind of "peace officer," be determined by expressions of legislative intent apart from the general grant of warrantless arrest authority.⁵⁰

3. Article 14.02

A peace officer is also authorized by article 14.02 of the Texas Code of Criminal Procedure to arrest without a warrant when ordered to do so by a magistrate for a felony or breach of peace committed in the magistrate's presence.⁵¹ This provision is of limited applicability and, like article 14.01(b), fails to establish the geographical jurisdiction of the peace officer or magistrate making or authorizing the arrest.⁵²

47. See, e.g., *Green v. State*, 490 S.W.2d 826, 827 (Tex. Crim. App. 1973)(arrest outside city limits); *Buse v. State*, 435 S.W.2d 530, 532 (Tex. Crim. App. 1968)(dicta), *overruled*, *Angel v. State*, 740 S.W.2d 727, 736 (Tex. Crim. App. 1987)(arrest outside of jurisdictional limits).

48. See *Christopher v. State*, 639 S.W.2d 932, 937 (Tex. Crim. App. 1982)(opinion on rehearing), *overruled*, *Angel v. State*, 740 S.W.2d 727, 732-36 (Tex. Crim. App. 1987); see also TEX. CODE CRIM. PROC. ANN. art. 2.13 (Vernon 1977).

49. Article 14.03(c) exemplifies an exception to the jurisdictional limitation because it expressly applies to a peace officer acting "outside his jurisdiction." TEX. CODE CRIM. PROC. ANN. art. 14.03(c) (Vernon Supp. 1988).

50. 740 S.W.2d 727, 732-34 (Tex. Crim. App. 1987)(jurisdiction consists of geographic scope of power, rights, and authority).

51. See TEX. CODE CRIM. PROC. ANN. art. 14.02 (Vernon 1977).

52. See *id.* art. 14.02.

4. Article 14.03(a)(1)

Possibly the broadest grant of warrantless arrest authority to peace officers is in article 14.03(a)(1) of the Code of Criminal Procedure.⁵³ Under this provision, a peace officer is authorized to arrest without warrant any person found in “suspicious places and under circumstances which reasonably show that such persons have been guilty of some felony or breach of peace” or that the person is about to commit “some offense.”⁵⁴ The article neither expressly limits a peace officer’s authority to act only within his jurisdiction, nor defines “suspicious places.”⁵⁵ Moreover, the statute does not require that an offense has occurred, but only that the peace officer has a reasonable suspicion that an offense is about to occur.⁵⁶

The enigma of article 14.03(a)(1) is due largely to two factors. First, superficially read, the statute appears to permit a warrantless arrest of any person found in a suspicious place or circumstance, much like a “suspicious persons ordinance” would.⁵⁷ Read more closely, it is evident that the article does not create an offense; rather, it permits a warrantless arrest for some offense defined elsewhere in law when that offense is committed in a suspicious place or under suspicious circumstances. This distinction is important in understanding article 14.03(a)(1), because it means that probable cause, apart from the suspicious circumstances accompanying the offense, must exist before any arrest may be made.⁵⁸ In short, the statute is merely an exception to the warrant requirement; it is not, and cannot constitutionally be, an exception to the probable cause requirement, at least not for a custodial arrest.⁵⁹

53. *See id.* art. 14.03(a)(1) (Vernon Supp. 1988).

54. *See id.*

55. *See id.*

56. *See id.*

57. For an example of a “suspicious persons ordinance” and its attendant constitutional infirmities, see *Howard v. State*, 617 S.W.2d 191, 192 (Tex. Crim. App. 1979).

58. Article 14.03(a)(1) specifies that the arrest be made “under circumstances which reasonably show that such persons have been guilty of some felony or breach of the peace” TEX. CODE CRIM. PROC. ANN. art. 14.03(a)(1) (Vernon Supp. 1988). If the arrest is “custodial,” the phrase “reasonably show” must mean that probable cause exists. If the “arrest” is actually a temporary detention for investigation, “reasonably show” might instead mean that reasonable suspicion exists. *Id.*

59. *Cf. Howard v. State*, 617 S.W.2d 191, 192 (Tex. Crim. App. 1979) (“suspicious persons ordinance” patently unconstitutional for giving officer unbridled discretion in determining whether account of suspect is satisfactory).

The second factor contributing to the confusion surrounding article 14.03(a)(1) is the final phrase of the statute which permits an "arrest" when circumstances reasonably show that the arrestee threatens to commit or is "about to commit some offense against the laws."⁶⁰ The legislature surely could not have meant to imply that a custodial warrantless arrest could be made for an offense not yet committed. To read the statute in that manner would be to interpret the language as permitting an unconstitutional seizure.⁶¹ Instead, the language is consistent with the United States Supreme Court's recognition that "reasonable suspicion" supports a temporary detention for investigation before an offense has actually been committed.⁶² If the legislature intended to provide statutory authority for a "Terry stop,"⁶³ its use of the word "arrest" may have sufficiently obscured that purpose to inhibit the article's orderly development along that line.⁶⁴

5. Article 14.03(a)(2)

Article 14.03 was recently expanded to give peace officers broader warrantless arrest authority when the officer has probable cause to believe that a person has committed an assault upon another person, resulting in bodily injury.⁶⁵ Prior to amendment in 1981, this warrantless arrest authority was qualified by the requirement that there be an "immediate danger" of future bodily injury.⁶⁶ This requirement effectively nullified the intended grant of warrantless arrest authority, especially in the area of domestic violence, because of the difficulty in

60. TEX. CODE CRIM. PROC. ANN. art. 14.03(a)(1) (Vernon Supp. 1988).

61. No logic exists in reading the language to cover inchoate crimes since such offenses are complete, rather than threatened, at the moment the offender commits some act, amounting to more than mere preparation, that tends but fails to effect the commission of the offense. See TEX. PENAL CODE ANN. § 15.01 (Vernon Supp. 1988); REAMEY, CRIMINAL OFFENSES AND DEFENSES IN TEXAS 23 (1987).

62. See *Terry v. Ohio*, 392 U.S. 1, 30 (1967)(unusual conduct leading police officer to reasonably conclude criminal act may be committed by armed and dangerous person).

63. See *id.*

64. In *Lara v. State*, the Texas Court of Criminal Appeals' opinion reflects uncertainty about the correct meaning of "arrest" in article 14.03. See *Lara v. State*, 469 S.W.2d 177, 179-80 (Tex. Crim. App. 1971). The initial "arrest" of the suspect in *Lara* was clearly without probable cause, but authorized by article 14.03. See *id.* The subsequent "arrest," which led to a search incident to arrest, was based on an offense committed in the presence of the officer. See *id.* at 180.

65. TEX. CODE CRIM. PROC. ANN. art. 14.03(a)(2) (Vernon Supp. 1988).

66. Act of June 11, 1981, ch. 442, § 1(b), 1981 Tex. Gen. Laws 1865.

establishing that further injury was imminent.⁶⁷ In 1985, however, the legislature amended the provision by removing the qualification that the danger of future bodily injury be “immediate.”⁶⁸ As amended, the provision significantly broadens the peace officer’s authority by permitting a warrantless arrest in all cases in which the peace officer has probable cause to believe that there has been an assault, even though the officer has not witnessed the assault, if there is “danger” of further bodily injury at some unspecified time in the future.

6. Article 14.03(a)(3)

A peace officer also has authority to arrest without a warrant when he has probable cause to believe that a person has violated a court’s protective order relating to family violence, even if the offense is not committed in his presence.⁶⁹ Formerly, there was no provision for warrantless arrest of violators of such protective orders; the 1985 amendment partially closed this gap by giving Texas police officers such authority.⁷⁰ The subsection does not specify, however, whether the arrest must be made in the territory within which the court issuing the order has jurisdiction, or whether the arresting officer must be in his own jurisdiction or commissioned to serve in an area within which the court issuing the order has jurisdiction.

7. Article 14.03(c)

In 1987, the 70th Texas Legislature directly addressed the geographic arrest jurisdiction issue by again amending article 14.03.⁷¹ Unhappily, the amendment did not materially clarify existing jurisdiction ambiguities. Instead, it merely restated, in part, what was already the law in Texas. The statute now provides that: “[a] peace officer who is outside his jurisdiction may arrest, without warrant, a person who commits an offense within the officer’s presence or view, if

67. See Reamey, *Legal Remedial Alternatives for Spouse Abuse in Texas*, 20 HOUS. L. REV. 1279, 1301 (1983)(immediate danger of further injury difficult to prove when abuser temporarily flees scene).

68. TEX. CODE CRIM. PROC. ANN. art. 14.03(a)(2) (Vernon Supp. 1988).

69. See *id.* art. 14.03(a)(3).

70. See TEX. PENAL CODE ANN. § 25.08 (Vernon Supp. 1988)(violation of court order for defendant to knowingly or intentionally commit family violence, harass or threaten family member or go to place described in protective order).

71. See Act of May 6, 1987, ch. 68, § 1, 1987 Tex. Sess. Laws 356.

the offense is a felony or a violation of title 9, chapter 42, Penal Code. . . ."⁷² This expression of arrest authority is redundant with respect to on-view felonies, since any citizen or peace officer may arrest without a warrant pursuant to article 14.01(a).⁷³ It does, however, resolve the doubt existing over whether the authority extends beyond the officer's jurisdictional confines. The redundancy may be explained by the fact that the bill enacting article 14.03(c) also amended the worker's compensation laws to include within the definition of "employee," "a peace officer employed by a political subdivision, while that peace officer is exercising authority granted under Article 14.03(c), Code of Criminal Procedure."⁷⁴ It may be assumed that the extension of worker's compensation benefits to police officers making arrests outside their employing jurisdiction would encourage those officers to exercise the authority they had long enjoyed but rarely used. There is no similarly obvious explanation for the inclusion of chapter 42 misdemeanor offenses⁷⁵ within article 14.03(c). While it may be that the legislature viewed these crimes as substantially the same as those "against the public peace," for which arrest authority also existed in article 14.01(a), referring to such offenses dissimilarly in the two articles could only confuse what was already sufficiently ambiguous statutory language.⁷⁶ If the legislature wished to abandon the "public peace" limitation in favor of one more certain, it should have done so completely by also amending articles 14.01(a), 14.02, and 14.03(a)(1).⁷⁷

72. TEX. CODE CRIM. PROC. ANN. art. 14.03(c) (Vernon Supp. 1988).

73. *See* United States v. Charles, 738 F.2d 686, 694 n.8 (5th Cir. 1984)(warrantless arrest permitted in four situations); *Heath v. Boyd*, 141 Tex. 569, 572, 175 S.W.2d 214, 216 (1948) (notes exceptions to warrant requirement).

74. Act of May 6, 1987, ch. 68, § 2, 1987 Tex. Sess. Law 356.

75. Chapter 42 of the Penal Code includes the following offenses: disorderly conduct, riot, obstructing a highway or other passageway, disrupting a meeting or procession, false alarm or report, harassment, public intoxication, desecration of a venerated object, abuse of a corpse, keeping a vicious dog, and interference with emergency communications. *See* TEX. PENAL CODE ANN. §§ 42.01-12 (Vernon 1974 & Supp. 1988).

76. *See id.* Some of the offenses contained in chapter 42, like disorderly conduct, riot, and public intoxication, are of the type that may be considered offenses "against the public peace." *See id.* §§ 42.01-02, 42.08. However, not all of the offenses fit neatly into that characterization.

77. *See* TEX. CODE CRIM. PROC. ANN. arts. 14.01(a), 14.02 (Vernon 1977) & art. 14.03(a)(1) (Vernon Supp. 1988)(each permits warrantless arrest for offenses against the public peace).

8. Article 14.04

The Code of Criminal Procedure also authorizes warrantless arrest upon the representation of a “credible person” that a felony has been committed and that the offender is about to escape.⁷⁸ This exception recognizes the exigency that exists when an offender is about to escape and the officer has reason to believe that there is no time to obtain a warrant.⁷⁹ The arresting officer need not have probable cause based upon his own personal observation. If he does, he may usually arrest under authority of article 14.01(b) or article 14.03(c).⁸⁰ Article 14.04 permits him, instead, to rely entirely upon the representation of a credible third party.⁸¹ As is true of other chapter 14 exceptions, this provision does not specify whether the reported offense must occur within the peace officer’s jurisdiction or whether the peace officer must execute the arrest within his jurisdiction.⁸² Given the difficulty in deciding whether a person is “credible,” and whether the offender might escape,⁸³ the statute should be narrowly construed to prevent its nullification of the warrant requirement.

9. Article 18.16

The most significant exception to the warrant requirement found outside chapter 14 of the Texas Code of Criminal Procedure permits a person to make a warrantless arrest to prevent the consequences of theft.⁸⁴ Since the statutory exception empowers “all persons” with warrantless arrest authority, it seems apparent that the peace officer is not restricted to arresting for theft within his jurisdiction, but instead has the same arrest authority that any other person would have.⁸⁵

78. *Id.* art. 14.04 (Vernon 1977).

79. *Id.*

80. *See id.* art. 14.01(b) (peace officer may arrest without warrant for any offense committed within his presence or view); *id.* art. 14.03(c) (Vernon Supp. 1988) (peace officer may arrest statewide for on-view felonies or violations of title 9, chapter 42, TEXAS PENAL CODE).

81. *See id.* art. 14.04.

82. *See id.*

83. *See, e.g.,* Fry v. State, 639 S.W.2d 463, 467-68 (Tex. Crim. App. 1982)(arrest justified solely on representation of victim that assailants said they were going to leave town); Hogan v. State, 631 S.W.2d 159, 161 (Tex. Crim. App. 1982)(arrest conducted by officers who delayed three hours between notification that defendant about to escape and execution of arrest, held improper warrantless arrest); Honeycutt v. State, 499 S.W.2d 662, 663 (Tex. Crim. App. 1973)(improper arrest because arrestee in bed asleep and no sign that arrestee was about to escape).

84. *See* TEX. CODE CRIM. PROC. ANN. art. 18.16 (Vernon 1977).

85. *See id.*

The only qualifications to this statute are that the person making the arrest must have "reasonable ground to suppose the property to be stolen"; the arrest be openly made; and the arrested person be taken before a magistrate "without delay."⁸⁶

10. Other Miscellaneous Grants of Warrantless Arrest Authority

Various other provisions and statutes throughout the Code of Criminal Procedure and Revised Civil Statutes authorize peace officers to make warrantless arrests in particular situations. For example, articles 8.04 and 8.07 of the Code of Criminal Procedure authorize peace officers to arrest without warrant if necessary to disperse riots,⁸⁷ or to prevent unlawful assembly or disturbances.⁸⁸

Likewise, section 153 of the Uniform Act Regulating Traffic on Highways provides that a peace officer may arrest without warrant any person found committing a violation of any provision of the act.⁸⁹ Until recently the courts had interpreted this provision to mean that any peace officer, regardless of his jurisdiction, has statewide authority to arrest for traffic offenses created by the act.⁹⁰ However, in *Pres-*

86. *See id.* The statute does not define "delay," but it seems unlikely that even substantial delay will result in the exclusion of subsequently obtained evidence unless the defendant can demonstrate harm or prejudice. *See Dimery v. State*, 240 S.W.2d 293, 295 (Tex. Crim. App. 1951).

87. *See* TEX. CODE CRIM. PROC. ANN. art. 8.04 (Vernon 1977). Arresting without warrant to disperse riot is authorized by article 14.01(a) since a riot is an "offense against the public peace." *See id.* art. 14.01(a). Moreover, riot is an offense within title 9, chapter 42 of the Texas Penal Code. *See* TEX. PENAL CODE ANN. § 42.02 (Vernon 1974). Therefore, an officer may arrest without warrant for the offense anywhere within the state. *See* TEX. CODE CRIM. PROC. ANN. art. 14.03(c) (Vernon Supp. 1988).

88. *See* TEX. CODE CRIM. PROC. ANN. art. 8.07 (Vernon 1977). These offenses, like riot, are "against the public peace" and may be the basis for a warrantless arrest by peace officers or other persons. *See id.* 14.01(a). They may also fall within chapter 42 of the Penal Code. *See* TEX. PENAL CODE ANN. § 42.05 (Vernon 1974); *see also* TEX. CODE CRIM. PROC. ANN. art. 14.03(c) (Vernon Supp. 1988).

89. *See* TEX. REV. CIV. STAT. ANN. art. 6701d, § 153 (Vernon 1977).

90. *See, e.g.,* *Christopher v. State*, 639 S.W.2d 932, 937 (Tex. Crim. App. 1982)(opinion on rehearing)(Parks and Wildlife game warden has authority to arrest speeding violator even though offense took place outside state park boundary), *overruled*, *Preston v. State*, 700 S.W.2d 227, 230 (Tex. Crim. App. 1985); *Dillard v. State*, 550 S.W.2d 45, 53 (Tex. Crim. App. 1977)(opinion on rehearing)(peace officer has authority to arrest for any speeding violation committed in his presence); *Hurley v. State*, 155 Tex. Crim. 315, 316, 234 S.W.2d 1006, 1007 (1950)(article 803, Vernon's Ann. P.C. (repealed), now TEX. REV. CIV. STAT. ANN. art. 6701d, § 153 "authorizes any peace officer in the State to make an arrest of an offender, whenever and wherever the violation takes place in his view; and to do so without a warrant of

ton v. State,⁹¹ the Court of Criminal Appeals expressly held that a specially commissioned peace officer, such as a campus police officer or parks and wildlife game warden, has no authority to make traffic arrests outside the confines of his territorial jurisdiction.⁹² Implicitly, the court left open the question of whether, for example, a city police officer would have that authority, although there is no apparent reason to treat such officers differently.⁹³

C. Judicial Trend to Limit Exceptions by Jurisdiction

In light of the numerous exceptions to the warrant requirement, it is obvious that the requirement that all arrests be made pursuant to a warrant may be easily circumvented. Each application of an exception to the warrant requirement represents an instance in which a prior judicial determination of sufficient probable cause to justify an encroachment upon a person's liberty has been bypassed.⁹⁴ Nevertheless, exigencies often require that an arrest be made without the safeguards of the warrant process.⁹⁵ Although the legislature may have intended to allow only limited exceptions to the warrant requirement, the ambiguous wording of these statutory provisions has led some courts to believe that the exceptions actually expand a peace officer's authority and jurisdiction.⁹⁶ The most recent judicial decisions, however, tend to narrowly construe these grants of authority.⁹⁷ In *Christopher v. State*,⁹⁸ for example, the court emphasized that the statutory

arrest")(emphasis added), *overruled*, *Angel v. State*, 740 S.W.2d 727, 732 (Tex. Crim. App. 1987).

91. 700 S.W.2d 227, 230 (Tex. Crim. App. 1985).

92. *See Preston*, 700 S.W.2d at 230 (expressly overruling holding in *Christopher*).

93. By implication, the court distinguished between specially commissioned peace officers, such as police officers and game wardens, and other nonspecially commissioned peace officers. *See id.* The court, however, did not define which peace officers are "specially commissioned" and which are not. *See id.*

94. *See, e.g., Beck v. Ohio*, 379 U.S. 89, 96 (1964); *Wong Sun v. United States*, 371 U.S. 471, 479 (1963); *Honeycutt v. State*, 499 S.W.2d 662, 664-65 (Tex. Crim. App. 1973).

95. *See Honeycutt*, 499 S.W.2d at 664 n.2.

96. *See, e.g., Green v. State*, 490 S.W.2d 826, 827 (Tex. Crim. App. 1973); *Buse v. State*, 435 S.W.2d 530, 532 (Tex. Crim. App. 1968)(dicta), *overruled*, *Angel v. State*, 740 S.W.2d 727, 732 (Tex. Crim. App. 1987).

97. *See, e.g., Preston v. State*, 700 S.W.2d 227, 229-30 (Tex. Crim. App. 1985)(section 153 of Uniform Act Regulating Traffic does not expand peace officer's jurisdiction); *Christopher*, 639 S.W.2d at 937 (opinion on rehearing)(article 14.01(b) of Code of Criminal Procedure does not expand peace officer's jurisdiction); *Love v. State*, 687 S.W.2d 469, 478 (Tex. App.—Houston [1st Dist.] 1985, pet. ref'd)(city police officer's jurisdiction extends to city limits).

98. 639 S.W.2d 932, 937 (Tex. Crim. App. 1982)(opinion on rehearing).

exceptions to the warrant requirement simply delineate the circumstances under which an arrest can be made without warrant.⁹⁹ These statutes, the court held, neither delineate who is a peace officer nor expand his jurisdiction.¹⁰⁰ Rather, articles 2.12 and 2.13 of the Code of Criminal Procedure simply confer the status of "peace officer."¹⁰¹ The court noted that article 2.13 specifically limits the peace officer to "preserve the peace *within his jurisdiction*."¹⁰² Moreover, the specific statutes which define a particular peace officer's jurisdiction prevail over the general grants of statutory authority defining exceptions to the warrant requirement.¹⁰³ Therefore, to determine whether a warrantless arrest was pursuant to one of the exceptions, it first must be determined whether the peace officer was within his statutorily defined territorial jurisdiction. If the officer was not, it would seem that the officer would have no more arrest authority than an ordinary citizen.¹⁰⁴ If the warrantless arrest does not fall squarely within one of the statutory exceptions, all evidence obtained from that arrest must be suppressed as a product of an illegal arrest, even if it is made by a citizen rather than by an agent of the state.¹⁰⁵

99. *See id.*

100. *See id.*

101. *See id.*; *see also* TEX. CODE CRIM. PROC. ANN. arts. 2.12, 2.13 (Vernon 1977).

102. *See* Christopher v. State, 639 S.W.2d 932, 937 (Tex. Crim. App. 1982)(opinion on rehearing), *overruled on other grounds*, Preston v. State, 700 S.W.2d 227, 230 (Tex. Crim. App. 1985); *see also* TEX. CODE CRIM. PROC. ANN. art. 2.13 (Vernon 1977)(powers and duties of peace officers).

103. *See* Christopher, 639 S.W.2d at 937. Under the Texas Code Construction Act, if a general provision conflicts with a special or specific provision, then the two provisions are to be construed so as to give effect to both, and if the conflict is irreconcilable, then the specific provision controls over the general. *See* TEX. GOV'T CODE ANN. § 311.026 (Vernon 1988).

104. *See* Romo v. State, 577 S.W.2d 251, 252-53 (Tex. Crim. App. 1979). In *Romo*, a peace officer for the lake patrol arrested the defendant for driving while intoxicated. Upon challenge to the legality of the arrest, the court, acknowledging that the peace officer was outside his jurisdiction, used the test of whether an ordinary citizen would have been justified in making the arrest. *See id.* at 252-53. The court held that the arrest was legal because it was an offense against the public peace committed in the presence of the arresting person, and under article 14.01(a), therefore, the arrest was valid. *See id.* An officer would now also be empowered to arrest without warrant anywhere within the state for felonies or violations of title 9, chapter 42 of the Penal Code. *See* TEX. CODE CRIM. PROC. ANN. art. 14.03(c) (Vernon Supp. 1988).

105. *See, e.g.*, Hill v. State, 641 S.W.2d 543, 544 (Tex. Crim. App. 1982); Irvin v. State, 563 S.W.2d 920, 924 (Tex. Crim. App. 1978). Even though the exclusionary rule embodied in the fourth amendment of the federal constitution does not require exclusion of evidence obtained by an illegal search which is conducted by a nongovernmental entity, article 38.23 of the Texas Code of Criminal Procedure requires exclusion of evidence obtained by "an officer or other person" in violation of any laws or provisions of the Constitutions of the State of Texas

III. DEFINING THE PEACE OFFICER'S JURISDICTION

A. *In General*

Before defining a peace officer's jurisdiction, it is important to ascertain who can be "peace officers." Although article 2.12 of the Texas Code of Criminal Procedure enumerates the various persons who are peace officers,¹⁰⁶ the list is not exclusive.¹⁰⁷ Throughout the

or the United States. *See Hill*, 643 S.W.2d at 419, *aff'd*, 641 S.W.2d 543 (Tex. Crim. App. 1982); *see also* TEX. CODE CRIM. PROC. ANN. art. 38.23(a) (Vernon Supp. 1988).

106. *See* TEX. CODE CRIM. PROC. ANN. art. 2.12 (Vernon Supp. 1988).

The following are peace officers: 1) sheriffs and their deputies; 2) constables and deputy constables; 3) marshals or police officers of an incorporated city, town, or village; 4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety; 5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices; 6) law enforcement agents of the Alcoholic Beverage Commission; 7) each member of an arson investigating unit of a city, county, or state; 8) any private person specially appointed to execute criminal process; 9) officers commissioned by the governing board of any state institution of higher education, public junior college or the Texas State Technical Institute; 10) officers commissioned by the State Purchasing and General Services Commission; 11) law enforcement officers commissioned by the Parks and Wildlife Commission; 12) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state that operates an airport served by a Civil Aeronautics Board certified air carrier; 13) municipal park and recreational patrolmen and security officers; 14) security officers commissioned as peace officers by the State Treasurer; 15) officers commissioned by a water control and improvement district under Section 51.132, Water Code; 16) officers commissioned by a board of trustees under Chapter 341, Acts of the 57th Legislature, Regular Session, 1961 (article 1187f, Vernon's Texas Civil Statutes); 17) investigators commissioned by the Texas State Board of Medical Examiners; 18) officers commissioned by the board of managers of the Dallas County Hospital District under section 16, Chapter 266, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4494n, Vernon's Texas Civil Statutes); 19) county park rangers commissioned under Article 6869d-1, Revised Statutes; 20) stewards and judges employed by the Texas Racing Commission; 21) officers commissioned by the Texas State Board of Pharmacy; and 22) officers commissioned by the governing body of a metropolitan rapid transit authority under Section 12, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973, or by a regional transportation authority under Section 10, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979.

Id.

107. An amendment in 1985 to the Commission on Law Enforcement Officer Standards and Education evidences the legislature's awareness that this list is not exclusive. *Compare* TEX. REV. CIV. STAT. ANN. art. 4413 (29aa), § 6(h) (Vernon Supp. 1986)(" 'peace officer,' for the purposes of this Act, means any person employed or appointed as a peace officer under law, including *but not limited to* a person so designated by Article 2.12 Code of Criminal Procedure, 1965, or by Section 51.212 or 51.214 Education Code")(emphasis added)(repealed) *with id.* art. 4413 (29aa), § 6(h)(Vernon 1976)(superseded)(" 'peace officer,' for the purposes of this Act, means *only* a person designated by article 2.12, Code of Criminal Procedure, 1965 and by Section 51.212 Texas Education Code")(emphasis added). The fact that article 2.12 is not exclusive has also been recognized by the Attorney General, who opined that reserve dep-

Code of Criminal Procedure and Texas Revised Civil Statutes, other persons are designated peace officers and are given the same duties and powers as those listed in article 2.12.¹⁰⁸ The most significant of these, in terms of numbers of arrests made, are city police officers, parks and wildlife game wardens, and campus police. The case law dealing with these peace officers' jurisdiction illuminates the difficulties involved with the issue of arrest jurisdiction, and indicates the analysis upon which the courts rely.¹⁰⁹

Article 2.13 of the Code of Criminal Procedure defines generally the duties and powers of a peace officer.¹¹⁰ Among other duties and powers, the article provides that the peace officer is to "preserve peace within his jurisdiction," and to make warrantless arrests "in every case where he is authorized by law."¹¹¹ Article 2.13 does not, therefore, define a peace officer's geographical jurisdiction; rather, it generally creates duties and powers which are applicable to all peace officers listed in article 2.12 of the Code of Criminal Procedure or elsewhere.¹¹²

To determine the specific territorial jurisdiction of these peace officers, it is necessary to look to the particular statute which creates their office.¹¹³ The Code Construction Act¹¹⁴ requires that where a

uty sheriffs and constables, adult and juvenile probation officers and part-time peace officers are all included within the meaning of the term "peace officer." See Op. Tex. Att'y Gen. No. M.W.-54 (1979).

108. See, e.g., TEX. EDUC. CODE ANN. § 21.483 (Vernon 1987)(campus security personnel for public schools); *id.* § 51.212 (Vernon 1987)(security officers at private institutions); *id.* § 88.103 (Vernon Supp. 1988)(security officers of Texas Forest Services of Texas A&M University System); see also TEX. CODE CRIM. PROC. ANN. art. 2.121 (Vernon Supp. 1988)(railroad peace officers).

109. See, e.g., *Angel v. State*, 740 S.W.2d 727 (Tex. Crim. App. 1987)(city police officers); *Christopher v. State*, 639 S.W.2d 932 (Tex. Crim. App. 1982)(game wardens), *overruled*, *Preston v. State*, 700 S.W.2d 227 (Tex. Crim. App. 1985)(campus police).

110. See TEX. CODE CRIM. PROC. ANN. art. 2.13 (Vernon 1977).

111. See *id.* art. 2.13 (emphasis added).

112. See *id.*

113. See, e.g., *United States v. Garcia*, 676 F.2d 1086, 1091 (5th Cir.), *vacated on other grounds*, 462 U.S. 1127 (1982); *Preston v. State*, 700 S.W.2d 227, 230 (Tex. Crim. App. 1985); *Christopher v. State*, 639 S.W.2d 932, 937 (Tex. Crim. App. 1982)(opinion on rehearing), *overruled on other grounds*, *Preston v. State*, 700 S.W.2d 227, 230 (Tex. Crim. App. 1985); see also *Love v. State*, 687 S.W.2d 469, 474-75 (Tex. App.—Houston [1st Dist.] 1985, pet. ref'd).

114. See TEX. GOV'T CODE ANN. § 311.001-.032 (Vernon 1988). This code is applicable to the Texas Code of Criminal Procedure. See, e.g., *United States v. Garcia*, 676 F.2d 1086, 1087, 1091 n.16 (5th Cir.), *vacated on other grounds*, 462 U.S. 1127 (1982); *Ex parte Harrell*, 542 S.W.2d 169, 172 (Tex. Crim. App. 1976); *Cuellar v. State*, 521 S.W.2d 277, 279 (Tex. Crim. App. 1975).

general statutory provision conflicts with a specific one, the two provisions, if possible, are to be construed so as to give effect to both provisions.¹¹⁵ However, if the two provisions cannot be harmonized, then the specific provision controls.¹¹⁶ Therefore, in determining a peace officer's jurisdiction, the general statutes defining a peace officer's duties and powers, including those statutes granting an officer warrantless arrest authority, must be harmonized with the specific statutes defining the nature and extent of his power and authority.¹¹⁷

B. *City Police Officers*

1. Common Law

The Texas common law¹¹⁸ gave a peace officer no official power or general arrest authority outside the geographical jurisdiction in which he was employed.¹¹⁹ The Texas Court of Criminal Appeals has recognized that both common law and statutory law limit a peace officer's authority to his own "bailiwick" or geographical jurisdiction.¹²⁰ Furthermore, the court has held that a peace officer is a peace officer only while in his jurisdiction; when the officer leaves that jurisdiction, he can neither perform the functions of his office, nor carry arms with

115. See TEX. GOV'T CODE ANN. § 311.026 (Vernon 1988).

116. See *id.*

117. See, e.g., *Garcia*, 676 F.2d 1086, 1091-92 (article 12.102 of Parks and Wildlife Code controls over general grant of authority to make warrantless arrest in article 14.03 of Code of Criminal Procedure). The Texas Court of Criminal Appeals held that the specific provisions of the Parks and Wildlife Code must control over the general grants of authority in article 14.01(b) of the Code of Criminal Procedure, because to hold otherwise would "render meaningless all specific grants of authority." See *Christopher*, 639 S.W.2d at 937.

118. See TEX. CIV. PRAC. & REM. CODE ANN. § 5.001 (Vernon 1986)(retains common law not inconsistent with laws and constitutions of United States or Texas).

119. See, e.g., *Buse v. State*, 435 S.W.2d 530, 532 (Tex. Crim. App. 1968), *overruled*, *Angel v. State*, 740 S.W.2d 727, 736 (Tex. Crim. App. 1987); *Irwin v. State*, 147 Tex. Crim. 6, 177 S.W.2d 970, 973 (1944), *overruled*, *Angel v. State*, 740 S.W.2d 727, 735-36 (Tex. Crim. App. 1987); *Weeks v. State*, 132 Tex. Crim. 524, 106 S.W.2d 275, 275 (1937), *overruled*, *Angel v. State*, 740 S.W.2d 727, 736 (Tex. Crim. App. 1987). See generally 2 RULING CASE LAW, *Arrests* § 27 (1914). Other jurisdictions are in accord with this holding as well. See, e.g., *McCaslin v. McCord*, 116 Tenn. 690, 94 S.W. 79, 82 (1906).

120. See *Weeks v. State*, 132 Tex. Crim. 524, 526-27, 106 S.W.2d 275, 276 (1937)(article 999 and common law limit city police officer's authority to area within city limits), *overruled*, *Angel v. State*, 740 S.W.2d 727, 736 (Tex. Crim. App. 1987); see also *Henson v. State*, 120 Tex. Crim. 176, 179, 49 S.W.2d 463, 464 (1932)(public policy favors limiting warrantless arrest authority of peace officer to boundaries of city limits). But see *Newburn v. Durham*, 88 Tex. 288, 289, 31 S.W. 195, 196 (1895)(held laws of Texas, enabling city marshal with same jurisdiction as sheriff, abrogate common law restriction to confines of city limits).

impunity.¹²¹ The only exception recognized in common law to the general rule restricting an officer's authority to his geographical jurisdiction is "hot pursuit."¹²² In *Minor v. State*,¹²³ the Texas Court of Criminal Appeals held that if a police officer legally initiates the pursuit of an offender while inside the limits of his city (i.e., within his jurisdiction), he may continue the pursuit outside the corporate limits if necessary to effectuate the arrest.¹²⁴ The court emphasized that this exception is available only when pursuit or arrest is initiated within the city limits.¹²⁵ Any further abrogation of the general common law rule limiting arrest authority to an officer's bailiwick, the courts have said, must be by legislative enactment.¹²⁶

These common law rules remain relevant because, unless a statute expressly overrules or expands the common law rule, the rules of common law apply and govern.¹²⁷ Therefore, to more accurately define the contours of a police officer's jurisdiction, one must first determine whether the statutory provisions defining his authority abrogate the common law rule.

121. See, e.g., *Jones v. State*, 91 Tex. Crim. 240, 242, 238 S.W. 661, 662 (1922); *Ransom v. State*, 73 Tex. Crim. 442, 444, 165 S.W. 932, 933 (1914); *Ray v. State*, 44 Tex. Crim. 158, 158-59, 70 S.W. 23, 24 (1902).

122. See, e.g., *Buse v. State*, 435 S.W.2d 530, 532 (Tex. Crim. App. 1968), *overruled on other grounds*, *Angel v. State* 740 S.W.2d 727, 736 (Tex. Crim. App. 1987); *Minor v. State*, 153 Tex. Crim. 242, 249, 219 S.W.2d 467, 471 (1949)(Hawkins, J., dissenting); *Love v. State*, 687 S.W.2d 469, 471 (Tex. App.—Houston [1st Dist.] 1985, pet. ref'd).

123. 153 Tex. Crim. 242, 219 S.W.2d 467 (1949).

124. See *id.* at 274, 219 S.W.2d at 470. *But see id.* at 248, 219 S.W.2d at 470-71 (Hawkins, J., dissenting)(advocates that any exception to common law rule limiting peace officers' jurisdiction to within city limits should be legislatively mandated).

125. See *id.* at 472 (opinion on rehearing); see also *Hurley v. State*, 155 Tex. Crim. 315, 316, 234 S.W.2d 1006, 1007 (1950)(hot pursuit exception not available where peace officer initiated pursuit outside city limits), *overruled on other grounds*, *Angel v. State*, 740 S.W.2d 727, 732 (Tex. Crim. App. 1987).

126. See, e.g., *Newburn v. Durham*, 88 Tex. 288, 289, 31 S.W. 195, 196 (1895); *Hurley v. State*, 155 Tex. Crim. 315, 317, 234 S.W.2d 1006, 1008 (1950), *overruled on other grounds*, *Angel v. State*, 740 S.W.2d 727, 732 (Tex. Crim. App. 1987); *Weeks v. State*, 132 Tex. Crim. 524, 524, 106 S.W.2d 275, 275 (1937), *overruled on other grounds*, 740 S.W.2d 727, 736 (Tex. Crim. App. 1987). As noted in the text and notes accompanying the discussion of article 14.03(c), the Texas Legislature has expanded an officer's warrantless arrest authority to encompass the entire state for felony offenses and violations of title 9, chapter 42 of the Texas Penal Code where those crimes occur in the presence or view of the arresting officer. See TEX. CODE CRIM. PROC. ANN. art. 14.03(c) (Vernon Supp. 1988); see also *supra* notes 71-77 and accompanying text.

127. See *Love v. State*, 687 S.W.2d 469, 471 (Tex. App.—Houston [1st Dist.] 1985, pet. ref'd); see also TEX. CIV. PRAC. & REM. CODE ANN. § 5.001 (Vernon 1986)(common law governs if not inconsistent with laws or constitution).

2. Statutory Provisions

Until September 1, 1987, articles 998 and 999 of the Texas Revised Civil Statutes provided for the appointment of city police officers and outlined their powers and jurisdiction.¹²⁸ Due to the imprecise wording of these statutes, however, especially in regard to the officers' jurisdiction, there was significant confusion among courts as to the effect of these provisions.¹²⁹ Article 998, for example, bestowed on city police officers the same powers, authority, and jurisdiction as city marshals.¹³⁰ The statute, though, neglected to define the extent of that jurisdiction, or even what "jurisdiction" meant in that context. Article 999, which defined the duties and powers of city marshals, endowed city marshals with "like power, authority, and jurisdiction as the sheriff."¹³¹ The sheriff, in turn, had "jurisdiction" over the entire county.¹³² A cursory reading of these articles could lead to the understanding that a city police officer had countywide jurisdiction. However, it was unclear whether "jurisdiction" referred to the territorial boundaries within which the sheriff may arrest. The 70th Texas Legislature, as part of its continuing effort to codify the statutes of Texas, moved articles 998 and 999 to the new Local Government Code.¹³³ In doing so, it attempted to simplify the form of article 998 by outlining the provisions found in the existing law.¹³⁴ Section 341.001 of the new code now reads, in part: "[a] police officer has: (1) the powers, rights, and jurisdiction of a marshal of a Type A general-law municipality; and (2) other powers and duties prescribed by the governing body."¹³⁵ The marshal of such a municipality possesses "the same power and jurisdiction as the county sheriff to execute war-

128. See TEX. REV. CIV. STAT. ANN. arts. 998, 999 (Vernon Supp. 1987)(repealed 1987).

129. Compare *Love v. State*, 687 S.W.2d 469, 477 (Tex. App.—Houston [1st Dist.] 1985, pet. ref'd)(legislature did not grant city police officers countywide warrantless arrest authority) with *Angel v. State*, 740 S.W.2d 727, 736 (Tex. Crim. App. 1987)(legislature granted all city police officers countywide arrest authority) and *Lopez v. State*, 652 S.W.2d 512, 513 (Tex. App.—Houston [1st Dist.] 1983), *rev'd on other grounds*, No. 509-83 (Tex. Crim. App., March 28, 1984)(not yet reported)(State's motion for rehearing pending).

130. See TEX. REV. CIV. STAT. ANN. art. 998 (Vernon Supp. 1987)(repealed 1987).

131. See *id.* art. 999 (emphasis added)(repealed 1987).

132. See TEX. CODE CRIM. PROC. ANN. art. 2.17 (Vernon 1977).

133. See TEX. LOCAL GOV'T CODE ANN. ch. 341 (Vernon 1988).

• 134. Compare TEX. REV. CIV. STAT. ANN. art. 998 (Vernon Supp. 1987)(repealed 1987) with TEX. LOCAL GOV'T CODE ANN. § 341.001 (Vernon 1988).

135. TEX. LOCAL GOV'T CODE ANN. § 341.001(e) (Vernon 1988).

rants, to prevent and suppress crime, and to arrest offenders."¹³⁶ Reformation and codification of the prior language has obviously not resolved the ambiguities existing in prior law. "Jurisdiction," as used in section 341.001(e), remains undefined, and its meaning may be even further obscured by the conjoining of "powers, rights, and jurisdiction" with "other powers and duties." Furthermore, the term is not clarified by section 341.021(e), the subsection relating the "jurisdiction" of a marshal to that of a sheriff.¹³⁷ Section 341.001(e), moreover, applies only to "Type A general-law municipalities,"¹³⁸ a designation previously unknown in Texas law.¹³⁹ While Type A municipalities appear to be the most common, provision is also made for Type B,¹⁴⁰ Type C,¹⁴¹ home-rule municipalities,¹⁴² and special-law municipalities.¹⁴³ The fractionalization of municipalities in the new Local Government Code was unfortunately accompanied by fractionalization of the treatment of police officers within those municipalities. For example, no provision is made for a Type B general-law municipality to maintain a police force;¹⁴⁴ only marshals are permitted,¹⁴⁵ and the marshal's "power" is the same as that a "constable has within a precinct."¹⁴⁶ No reference is made in the new code to the territorial jurisdiction within which the marshal of a Type B municipality may exercise his authority. Type C general-law municipalities may "appoint police officers," and the governing body may "define the duties of the officers," but nothing is said, directly or by reference to the authority of another officer, about the territory within which such police may arrest.¹⁴⁷ Even less is said about the officers of a home-rule municipality. The entire legislative expression on the subject is that, "[a] home-rule municipality may provide for a police de-

136. *Id.* § 341.021(e).

137. *See id.*

138. *See id.* § 341.001; *see also id.* § 5.001 (definition of Type A general-law municipality).

139. For the definitions of various type municipalities, see TEX. LOCAL GOV'T CODE ANN. ch. 5 (Vernon 1988).

140. *See id.* § 5.002.

141. *See id.* § 5.003.

142. *See id.* § 5.004.

143. *See id.* § 5.005.

144. *See generally id.* §§ 341.001-.903.

145. *See id.* § 341.022.

146. *See id.* § 341.022(a).

147. *See id.* § 341.002.

partment.”¹⁴⁸ This disparate treatment of city police officers confuses an already obscure legislative intent regarding territorial arrest jurisdiction. This is especially troubling in light of the difficulty courts have experienced in untangling the relatively simple legislative intent knot created by previous statutes.

3. Judicial Interpretation of Warrantless Arrest Jurisdiction

The Texas Court of Criminal Appeals recently concluded that the interweaving of loosely worded statutes, specifically articles 998 and 999, evidences the legislature’s intent to expand the common law jurisdiction of city police officers to the entire county.¹⁴⁹ In *Angel v. State*,¹⁵⁰ the court considered the arrest jurisdiction of Tomball city police officers who observed a suspect operating what was later determined to be a stolen road paving machine outside the city limits of Tomball, but within Harris County.¹⁵¹ Relying on the warrantless arrest authority conferred by article 6701d, section 153 of the Uniform Act Regulating Traffic on Highways and article 14.01(b) of the Code of Criminal Procedure, the court concluded that the officers’ initial arrest for operation of road paving equipment at night without lights was justified notwithstanding the fact that it occurred outside the limits of the city in which the officers were employed.¹⁵² The reasoning of Judge Campbell in *Angel* is relatively straightforward and, in many respects, quite consistent with the traditional approach to the issue. Statewide arrest jurisdiction for city police officers is not established by either article 14.01(b) or section 153.¹⁵³ Authority to arrest outside the geographical confines of the entity employing the officer, therefore, must come from specific statutory expressions of “jurisdiction” or be controlled by a judicially recognized exception to the common law rule limiting city officers to their “bailiwick.”¹⁵⁴ In the case of city police officers, the “legislative expression of a peace officer’s

148. *Id.* § 341.003.

149. *See Angel v. State*, 740 S.W.2d 727, 736 (Tex. Crim. App. 1987); *Lopez v. State*, 652 S.W.2d 512, 513 (Tex. App.—Houston [1st Dist.] 1983), *rev’d on other grounds*, No. 509-83 (Tex. Crim. App., March 28, 1984)(not yet reported)(state’s motion for rehearing pending).

150. 740 S.W.2d 727 (Tex. Crim. App. 1987).

151. *See id.* at 728 (Tomball is within Harris County).

152. *See id.* at 731.

153. *See id.* at 732.

154. *See id.*; *see also Preston v. State*, 700 S.W.2d 227, 229 (Tex. Crim. App. 1985). The continuing recognition of common law as a source of jurisdictional definition strongly suggests the vitality of the “hot pursuit” exception.

jurisdiction" was, at the time of the decision, found in articles 998 and 999 of the Texas Revised Civil Statutes.¹⁵⁵ Since article 998 provided that city officers have the same "powers, rights, authority and jurisdiction" as city marshals,¹⁵⁶ and since article 999 conferred on city marshals the same "power, authority, and jurisdiction" as the sheriff,¹⁵⁷ it followed that city police officers could arrest anywhere within the territorial jurisdiction of the sheriff.¹⁵⁸ In other words, city officers, like sheriffs, enjoyed countywide arrest jurisdiction.

The validity of the conclusion of this syllogistic reasoning depends upon its underlying premises. Specifically, as Judge Campbell's opinion recognized, the outcome depended upon whether "jurisdiction," as that word was used in articles 998 and 999, connoted a territorial limitation rather than a description of the city marshal's/sheriff's powers of office.¹⁵⁹ Articles 998 and 999 determined territorial jurisdiction for city police officers only if "jurisdiction," as used in those statutes, referred to "the limits or territory within which authority may be exercised."¹⁶⁰ The *Angel* court's decision, that "jurisdiction" referred to territorial limitations, was supported for Judge Campbell by the fact that using the term to mean "power, rights and authority" would be redundant, inasmuch as those words were used in conjunction with "jurisdiction" in articles 998 and 999.¹⁶¹ Moreover, Judge Campbell found this reading "more logical" in the context of the statutes.¹⁶²

The redundancy argument is a strained one. The legislative drafters are not so consistently economical in their word choice that the interpretation of a term should depend upon whether it may be largely redundant; nor should it be assumed that the use is redundant

155. See *Angel v. State*, 740 S.W.2d 727, 732-34 (Tex. Crim. App. 1987). As noted, articles 998 and 999 have been changed and recodified. See TEX. LOCAL GOV'T CODE ANN. ch. 341 (Vernon 1988); see also *supra* notes 128-148 and accompanying text. However, this aspect of the *Angel* decision is important because the police authority of most municipalities continues to be governed by statutory language substantially similar to that interpreted by the *Angel* court.

156. TEX. REV. CIV. STAT. ANN. art. 998 (Vernon Supp. 1987)(repealed 1987).

157. *Id.* art. 999 (Vernon Supp. 1987)(repealed 1987).

158. *Angel*, 740 S.W.2d at 732-36.

159. See *id.* at 732-34.

160. See *id.* at 733 (quoting Webster's New Collegiate Dictionary definition of "jurisdiction").

161. See *id.* at 734.

162. *Id.*

merely because overlap exists in the descriptive words of the statute.¹⁶³ Using the court's reasoning in interpreting article 999, it is interesting to note that "jurisdiction," as used in article 998, must actually have meant "powers, rights, and authority." This definition logically attaches because article 998, in a passage crucial to the court's decision in *Angel*, stated, "[s]uch (police) officers shall have like powers, rights, authority and jurisdiction as are by said title vested in city marshals."¹⁶⁴ The following sentence in article 998 read, "Such police officers may serve all process issuing out of a corporation court anywhere in the county in which the city, town or village is situated."¹⁶⁵ If the preceding sentence meant, as the court asserted, that city police officers have the same territorial "jurisdiction" as city marshals (and, in turn, sheriffs), then the subsequent sentence describing the places in which they may serve process was redundant. And, of course, the legislature would not do a useless thing.¹⁶⁶

The "context argument" suffers similarly. Judge Campbell illustrated his argument in *Angel* by quoting the language in article 999 that "[f]or the purpose of executing all writs and process issued from the corporation court, the *jurisdiction* of the marshal extends to the *boundaries of the county* in which the corporation court is situated."¹⁶⁷ This passage, with emphasis added in the court's opinion, was apparently intended to demonstrate that "jurisdiction," as used in article 999, referred to the "boundaries of the county." However, it would be at least as logical to read "jurisdiction" in this context to mean the "powers, rights, and authority" of the marshal.

Upon closer scrutiny of these statutes, and of a connected statute, there emerges a legislative intent which is more in keeping with the established common law rule. Neither of the statutes defining the du-

163. Judge Campbell noted that the court would not presume the legislature has done a useless act. See *id.* at 734 n.17. Of course, the act would be "useless" only if the meaning of "jurisdiction" against which Judge Campbell argued is the one intended by the legislature.

164. TEX. REV. CIV. STAT. ANN. art. 998 (Vernon Supp. 1987)(repealed 1987); see also *Angel*, 740 S.W.2d at 733.

165. TEX. REV. CIV. STAT. ANN. art. 998 (Vernon Supp. 1987)(repealed 1987).

166. *Angel*, 740 S.W.2d at 734 n.17 (emphasis added). This reasoning is admittedly as "strained" as the redundancy argument made in support of the court's decision, a fact that demonstrates the difficulty in confidently construing the legislative intent respecting territorial jurisdiction of city police officers. This argument remains intact despite the codification of articles 998 and 999. See TEX. LOCAL GOV'T CODE ANN. §§ 341.001(e), (f) (Vernon 1988).

167. *Angel*, 740 S.W.2d at 734 (emphasis in opinion).

ties and powers of city police officers expressly granted countywide arrest jurisdiction.¹⁶⁸ Instead, article 999 expressly stated that city officers "shall be active in quelling riots, disorder, and disturbance of the peace within the city limits."¹⁶⁹ Further, as previously noted, article 999 expressly expanded the city officer's jurisdiction to the boundaries of the county for the purpose of executing writs and process issued from the corporation court, but was silent as to any other expansion of his jurisdiction.¹⁷⁰ This is implicit evidence of the legislature's intent to adopt the common law rule limiting the city police officer's geographical jurisdiction to the city's limits in all respects other than for executing writs and process.¹⁷¹

Moreover, the statement that the city police shall "have, possess and execute like powers, authority and jurisdiction as the sheriff,"¹⁷² can be read, perhaps more logically, to refer to the types of duties and powers of the officers rather than to any geographic boundaries.¹⁷³ The ambiguity of the quoted language is attributable to the variety of meanings attached to "jurisdiction." While the word may indicate the territorial area in which powers may be exercised, it may also describe the kind of authority a peace officer or court may exercise.¹⁷⁴

168. See TEX. REV. CIV. STAT. ANN. arts. 998, 999 (Vernon Supp. 1987)(repealed 1987).

169. See *id.* art. 999 (emphasis added)(repealed 1987).

170. See *id.*

171. See *Love v. State*, 687 S.W.2d 469, 476 (Tex. App.—Houston [1st Dist.] 1985, pet. ref'd).

172. See TEX. REV. CIV. STAT. ANN. art. 999 (Vernon Supp. 1987)(emphasis added)(repealed 1987).

173. See *Love*, 687 S.W.2d at 477. On original submission in *Minor v. State*, Presiding Judge Hawkins of the Texas Court of Criminal Appeals wrote in dissent:

As we understand it, the main opinion is based largely upon the holding of our Supreme Court in *Newburn v. Durham* At the time said case was decided, Art. 363, R.C.S. [Vernon's Ann. Civ. St. art. 999], among other things, provided that, ". . . in the prevention and suppression of crime and arrest of offenders he (the city marshal or police officer) shall have, possess and execute like power, authority and jurisdiction as the sheriff of a county under the laws of the state." The Supreme Court construed this language to give to city officers the same authority to arrest and—to the same extent—as that which the sheriff had. I am doubtful about this construction. It would, it occurs to me, be more in keeping with other holdings of our court to have construed the statute to mean that within the limits of the municipality the authority of the city officers was the same as that of the sheriff in his county.

Minor v. State, 153 Tex. Crim. 242, 249, 219 S.W.2d 467, 471 (1949)(Hawkins, J., dissenting).

174. For example, "jurisdiction" may refer to subject matter jurisdiction, a limitation on the kind of case in which a court has power to act. Taken in a similar sense and applied to peace officers, describing "jurisdiction" as like that possessed by a sheriff would limit the of-

The existence of article 999b¹⁷⁵ at the time *Angel* was decided supports construing “powers, authority and jurisdiction” as a limitation on kind of authority rather than a territorial prerogative. The statute provided for the establishment of an interlocal law enforcement assistance program, strongly suggesting that the legislature intended to limit a city police officer’s jurisdiction to the boundaries of the city limits. Article 999b provided that neighboring municipalities may agree to the establishment of an interlocal assistance program whereby peace officers have arrest authority in two or more municipalities.¹⁷⁶ In pertinent part, the statute provided that “a law enforcement officer employed by a . . . municipality . . . covered by an agreement authorized by this section may make arrests outside the . . . municipality . . . in which he is employed, but within the area covered by the agreement.”¹⁷⁷ This provision necessarily implied that absent an express agreement between municipalities a city police officer’s jurisdiction was limited by the boundaries of the city limits.¹⁷⁸ If read in this fashion, the law in Texas adheres to the common law rule that the city police officer’s arrest authority is limited to the boundaries of the city, absent the operation of some statutory exception like article 999b.¹⁷⁹

The decision in *Angel* has certainly not permanently settled the question of a city police officer’s territorial jurisdiction, even if new statutory warrant exceptions are disregarded.¹⁸⁰ In part, this is be-

ficer’s warrantless arrest authority to cases of the same kind for which a sheriff could arrest without warrant.

175. See TEX. REV. CIV. STAT. ANN. art. 999b (Vernon Supp. 1987)(repealed 1987). Article 999b has subsequently been codified in substantially the same form. See TEX. LOCAL GOV’T CODE ANN. § 362.002 (Vernon 1988).

176. See TEX. REV. CIV. STAT. ANN. art. 999b, § 2 (repealed 1987).

177. *Id.* art. 999b, § 3 (repealed 1987). This language has been retained, virtually unchanged, in Section 362.002 of the Local Government Code. See TEX. LOCAL GOV’T CODE ANN. § 362.002 (Vernon 1988). Section 362.002 now reads, in pertinent part, “[a] law enforcement officer employed by a . . . municipality . . . that is covered by the agreement may make an arrest outside the . . . municipality . . . in which the officer is employed but within the area covered by the agreement.” *Id.* § 362.002 (c).

178. See *Love v. State*, 687 S.W.2d 469, 476-77 (Tex. App.—Houston [1st Dist.] 1985, pet. ref’d).

179. See, e.g., *Irwin v. State*, 147 Tex. Crim. 6, 11, 177 S.W.2d 970, 973 (1944), *overruled on other grounds*, *Angel v. State*, 740 S.W.2d 727, 735-36 (Tex. Crim. App. 1987); *Weeks v. State*, 132 Tex. Crim. 524, 526, 106 S.W.2d 275, 275 (1937), *overruled on other grounds*, *Angel v. State*, 740 S.W.2d 727, 736 (Tex. Crim. App. 1987); *Henson v. State*, 120 Tex. Crim. 176, 178-79, 49 S.W.2d 463, 465 (1932); see also *Love*, 687 S.W.2d at 471-77.

180. For example, in the time since the Tomball officers arrested Silas Angel, the legisla-

cause the *Angel* decision is of uncertain precedential value. Four of the judges dissented on the jurisdiction issue,¹⁸¹ one judge concurred without opinion,¹⁸² and three judges concurred with Judge Campbell on the jurisdiction issue and dissented to his decision on a standing issue.¹⁸³ *Angel* is also suspect because it construed articles 998 and 999 to determine the legislative intent regarding arrest jurisdiction. As discussed above, these statutes have been repealed, and similar, but somewhat different, provisions adopted as part of the Local Government Code.¹⁸⁴ This latest expression of legislative intent will prove even more difficult to construe. The increased difficulty with the new code provisions is caused by the segregation of city types.¹⁸⁵ Some kinds of municipalities apparently are authorized to have marshals, but not police officers,¹⁸⁶ while others are permitted to have police, but no reference is made to whether their "jurisdiction" is like that of a marshal or sheriff.¹⁸⁷ Yet other cities may have police with authority apparently like that granted by articles 998 and 999.¹⁸⁸

This confusion suggests several observations about legislative intent and territorial jurisdiction. First, it may be that the legislature did not intend to address the territorial aspect of arrest jurisdiction at all in articles 998 and 999, a possibility that is supported by the existence of a rather extensive body of common law on the issue, none of which was clearly overruled by prior statutes. If this surmise is correct, the decision in *Angel* is wrong. It is also possible that the *Angel* court was correct in its interpretation of articles 998 and 999,¹⁸⁹ and that the legislature merely wanted to distinguish in its new code between municipal officers with countywide jurisdiction and those with unspeci-

ture has provided statutory statewide arrest jurisdiction for all peace officers in whose presence or view a felony or violation of the Texas Penal Code, title 9, chapter 42, is committed. See TEX. CODE CRIM. PROC. ANN. art. 14.03(c) (Vernon Supp. 1988).

181. Judges Duncan, Miller, Clinton, and Teague dissented. See *Angel*, 740 S.W.2d at 736, 739-49.

182. Judge White concurred separately without opinion. See *id.* at 736.

183. Judges McCormick, Onion, and Davis concurred in part and dissented in part. See *id.* at 736-39.

184. See TEX. LOCAL GOV'T CODE ANN. §§ 341.001-.903 (Vernon 1988).

185. *Id.*

186. See *id.* § 341.022 (Vernon 1988)(no provision made for police for Type B general-law municipalities).

187. See *id.* §§ 341.002, 341.003 (Type C general-law and home-rule municipalities).

188. See *id.* §§ 341.001, 341.021.

189. That is, if some unknown number of the judges who concurred in the result were in agreement with Judge Campbell.

fied territorial jurisdiction. However, this seems highly improbable in light of the fact that the government code is completely silent on the territorial limits of two classes of city officers. There is no obvious reason why some city police would have arrest jurisdiction extending throughout the county while others would not, or at least would not have that authority stated in the same indirect way attributed to Type A municipality officers.¹⁹⁰

While Type A municipality police are governed by statutory language most similar to that previously found in articles 998 and 999, even those officers may now have different territorial jurisdiction than that recognized in *Angel v. State*.¹⁹¹ Section 341.001(e) of the Texas Local Government Code provides that “[a] police officer has: (1) the powers, rights, and jurisdiction of a marshal of a Type A general-law municipality; and (2) other powers and duties prescribed by the governing body.”¹⁹² The position of the court in *Angel* that “powers, rights, authority and jurisdiction”¹⁹³ in article 998 embodied expressions of territorial jurisdiction as well as control,¹⁹⁴ would seem to dictate that section 341.001(e) be interpreted in the same way. However, subsection (e) concludes by recognizing that police officers have the “other powers and duties” given them by the city’s governing body.¹⁹⁵ The conjunction of these subsections suggests that the “powers, rights, authority and jurisdiction” bestowed in the first was considered a subset of the “other powers and duties” referenced in the second. If so, the legislature, in this latest expression of its intent, arguably read “jurisdiction” as synonymous with “powers and duties,” rather than as a reference to the territorial boundaries within which such powers could be exercised.

190. The explanation cannot lie in the difference in training or qualifications of officers in different kinds of cities since those matters are uniform throughout the state. See TEX. GOV'T CODE ANN. ch. 415 (Vernon 1988).

191. Compare TEX. LOCAL GOV'T CODE ANN. § 341.001(e) (Vernon 1988)(powers, rights and jurisdiction of police officer congruent to marshal of Type A municipality) with TEX. REV. CIV. STAT. ANN. arts. 998, 999 (Vernon 1963)(repealed Vernon Supp. 1987)(police officers given same powers, rights, and authority as city marshal to arrest without warrant all violators of public peace); see *Angel v. State*, 740 S.W.2d 727, 734 (Tex. Crim. App. 1987)(interpreting articles 998 and 999 as authorizing city police officers to arrest without warrant anywhere in county in which they are employed).

192. TEX. LOCAL GOV'T CODE ANN. § 341.001(e) (Vernon 1988).

193. See TEX. REV. CIV. STAT. ANN. art. 998 (Vernon Supp. 1987).

194. *Angel*, 740 S.W.2d at 733-34.

195. TEX. LOCAL GOV'T CODE ANN. § 341.001(e)(2) (Vernon 1988) (emphasis added).

Finally, the recent codifications continued the possibility of an interlocal assistance agreement formerly found in article 999b.¹⁹⁶ As in prior law, section 341.002 of the Texas Local Government Code provides that “[a] law enforcement officer employed by a . . . municipality . . . that is covered by the agreement may make an arrest outside the . . . municipality . . . in which the officer is employed but within the area covered by the agreement.”¹⁹⁷ This language certainly suggests, as did that of the predecessor statute, that the legislature considered a municipal police officer’s arrest authority to be bound by the limits of his employing city. In any event, the net result of the codification of statutes on which *Angel* was decided, as well as article 999b, is a considerably less certain definition of the territorial arrest jurisdiction of municipal police officers. Due to clearer expressions of legislative intent in the statutes creating their office, the difficulty in deciding the issue for other kinds of officers is far less acute.

C. *Parks and Wildlife Game Wardens*

The office of parks and wildlife game warden was statutorily created.¹⁹⁸ It did not exist at common law, and therefore it is governed exclusively by statute.¹⁹⁹ Prior to 1983, the Parks and Wildlife Code provided that game wardens had the “powers, privileges, and immunities of peace officers while in state parks, on historical sites, or in fresh pursuit of those violating the law in a state park or historic site.”²⁰⁰ Further, a game warden had the same authority as a sheriff to arrest for any “violations of the laws relating to game, fish, and birds.”²⁰¹ These provisions were interpreted as limiting the game warden’s jurisdiction geographically to state parks and historic sites, and limiting his jurisdiction functionally to enforcing the laws relating to game, fish, and birds.²⁰² Additionally, the statutes expressly codi-

196. *See id.* § 341.002.

197. *Id.* § 341.002(c).

198. TEX. PARKS & WILD. CODE ANN. § 11.019 (Vernon Supp. 1988).

199. *See id.*

200. *Id.* § 11.918(b) (Vernon 1976)(repealed).

201. *Id.* § 12.102(a) (repealed).

202. *See United States v. Garcia*, 676 F.2d 1086, 1090 (5th Cir.), *vacated on other grounds*, 462 U.S. 1127 (1982); *see also Christopher v. State*, 639 S.W.2d 932, 940-41 (Tex. Crim. App. 1982)(opinion on rehearing)(Clinton, J., dissenting)(opinion adopted in *Preston v. State*, 700 S.W.2d 227, 230 (Tex. Crim. App. 1985)).

fied the common law "hot pursuit" exception.²⁰³

A panel of the Texas Court of Criminal Appeals, in *Christopher v. State*,²⁰⁴ recognized two other exceptions to a game warden's jurisdiction. First, the court held that article 14.01(b) of the Code of Criminal Procedure enables a game warden, by virtue of his peace officer status, to arrest without warrant for any offense committed in his view, even if the warden is not in a state park.²⁰⁵ This panel holding was expressly overruled on rehearing.²⁰⁶ The court sitting en banc held instead that article 14.01(b) was not intended to create "a *general* power for *any* peace officer to arrest without warrant."²⁰⁷ Rather, as a part of chapter 14, it merely delineates an exception to the warrant requirement when an officer is effecting an arrest within his jurisdiction."²⁰⁸ Somewhat surprisingly, the court also held on rehearing that section 153 of the Uniform Act Regulating Traffic empowers a game warden, because of his peace officer status, to make a warrantless arrest of any person violating any provision of that Act in his presence.²⁰⁹ Section 153 was distinguished from article 14.01(b) on the grounds that the former "expressly" grants arrest powers to "any" peace officer, evidencing the legislature's intent to extend that authority beyond the usual territorial boundaries of the officer.²¹⁰ The distinction was hardly persuasive because the only difference between the two statutes is that section 153 authorizes a warrantless arrest by "[a]ny peace officer . . . ," while article 14.01(b) permits exactly the same thing by "[a] peace officer"²¹¹ In barely over three years, the holding in *Christopher* recognizing statewide arrest jurisdiction for traffic offenses was overruled in *Preston v. State*.²¹² Thus, before the 1983 amendment to the Parks and Wildlife Code, a game warden's jurisdiction was functionally and geographically limited by the word-

203. See TEX. PARKS & WILD. CODE ANN. § 11.019(b) (Vernon 1976)(peace officer has authority to arrest while in "fresh pursuit" of violator).

204. 639 S.W.2d 932 (Tex. Crim. App.), *modified on rehearing*, 639 S.W.2d 932 (Tex. Crim. App. 1982)(opinion on rehearing).

205. See *id.* at 935.

206. See *id.* at 937.

207. See *id.* (emphasis in opinion).

208. See *id.*

209. See *id.*

210. See *id.*

211. Compare TEX. CODE CRIM. PROC. ANN. art. 14.01(b) (Vernon 1977)(emphasis added) with TEX. REV. CIV. STAT. ANN. art. 6701d, § 153 (Vernon 1977)(emphasis added).

212. 700 S.W.2d 227, 230 (Tex. Crim. App. 1985).

ing of the statute creating the office, as was the jurisdiction of every other "specially created" peace officer.²¹³

In 1983, the Texas Legislature amended the Parks and Wildlife Code and significantly expanded the game warden's authority.²¹⁴ Presently, section 11.019(d) permits a peace officer commissioned by the director of the Parks and Wildlife Commission to "arrest without a warrant any person *in this state* found in the act of violating any law."²¹⁵ On the face of the statute, the clear intent of the legislature was to expand the game warden's authority and jurisdiction to the boundaries of the state. This grant of authority contradicts the common understanding that a game warden is appointed to enforce the Parks and Wildlife Code, not the Uniform Act Regulating Traffic, Penal Code, or other statutes unrelated to parks and wildlife. The statute certainly demonstrates, however, the way in which the legislature can express its intent respecting territorial jurisdiction.

D. *Campus Police*

The Texas Education Code provides for the commissioning of campus police as peace officers.²¹⁶ The various statutes providing for the establishment of campus police officers generally contain language to the effect that a peace officer is "vested with all powers, privileges, and immunities of peace officers while on the property under the control and jurisdiction of the institution."²¹⁷ This language has generally been construed as a clear limitation of a campus peace officer's authority to the confines of the campus.²¹⁸ In *Preston v. State*,²¹⁹ the

213. *Id.*; see *Christopher*, 639 S.W.2d at 938-39 (opinion on rehearing)(Clinton, J., dissenting), *overruled on other grounds*, *Preston v. State*, 700 S.W.2d 227, 230 (Tex. Crim. App. 1985).

214. Compare TEX. PARKS & WILD. CODE ANN. § 11.019 (Vernon 1976) with *id.* (Vernon Supp. 1988)(giving game wardens authority coextensive with sheriffs, and authority for warrantless arrests).

215. See TEX. PARKS & WILD. CODE ANN. § 11.019(d) (Vernon Supp. 1988)(emphasis added). The statute also provides that, "[l]aw enforcement officers commissioned by the director have the same powers, privileges, and immunities as peace officers *coextensive with the boundaries of this state.*" *Id.* § 11.019(b) (emphasis added).

216. See, e.g., TEX. EDUC. CODE ANN. § 21.483 (Vernon Supp. 1986)(peace officers commissioned by school districts); *id.* § 51.203 (Vernon 1972)(campus security for state institutions of higher education); *id.* § 51.212 (security officers at private institutions of higher education).

217. See, e.g., *id.* §§ 51.203, 51.212 (Vernon 1987).

218. See, e.g., *Preston v. State*, 700 S.W.2d 227, 229 (Tex. Crim. App. 1985); Op. Tex. Att'y Gen. No. J.M.-239 (1984)(peace officers for school districts); Op. Tex. Att'y Gen. No.

court rejected the state's argument that a campus peace officer has warrantless arrest authority for a traffic violation that occurs off the campus of the institution.²²⁰ The court emphasized that a police officer's authority to act as a peace officer is limited by the statute defining his jurisdiction.²²¹ Further, the court rejected the argument that a campus peace officer's jurisdiction was expanded in any way by section 153 of the Uniform Act Regulating Traffic.²²² However, the court in *Preston* recognized that the common law "hot pursuit" exception would apply to a campus police officer's jurisdiction in the proper fact situation.²²³

Concerning the meaning of the statutory phrase "property under the control and jurisdiction of the institution,"²²⁴ the Texas Attorney General has opined that this extends the authority of campus police to facilities leased by such institutions for the times that the institution maintains control over the facility.²²⁵ For example, a civic center rented or leased by a university for the purpose of school basketball games would be "property under the control and jurisdiction" of the school, at least while it is controlled by the institution.²²⁶ Therefore, a campus police officer for the institution is vested with all powers and authority of a peace officer while on those premises during the university function.²²⁷

IV. THE COURT'S ANALYSIS—USING JURISDICTION TO LIMIT WARRANTLESS ARREST AUTHORITY

At least until the *Angel* decision, case law evidenced the courts' tendency to use geographical jurisdiction to limit the peace officer's

M.W.-537 (1982)(warrantless arrest authority of campus peace officer at university functions off campus).

219. 700 S.W.2d 227, 230 (Tex. Crim. App. 1985).

220. *See id.* at 230 (overruling *Christopher v. State*, 639 S.W.2d 932, 937 (Tex. Crim. App. 1982)(opinion on rehearing)).

221. *See id.* at 229 (jurisdiction of campus peace officer for state institution governed by section 51.203 of Texas Education Code).

222. *See id.* at 230.

223. *See id.* at 229 (under hot pursuit doctrine, if peace officer initiates pursuit within jurisdiction, he may continue pursuit into another jurisdiction). Under the facts of *Preston*, the hot pursuit exception was held not to apply because the pursuit was not initiated while on the campus of the institution. *Id.*

224. *See, e.g.*, TEX. EDUC. CODE ANN. §§ 51.203, 51.205, 51.212 (Vernon 1987).

225. *See Op. Tex. Att'y Gen. No. M.W.-537* (1982).

226. *See id.*

227. *See id.*

authority, especially in the area of warrantless arrests. This approach reflected the common law understanding that a peace officer is such only within his own geographical jurisdiction.²²⁸ When faced with a challenge to the legality of a warrantless arrest on the grounds that the peace officer was outside his jurisdiction, a court should first determine whether the particular officer falls within the definition of "peace officer" established by article 2.12 of the Code of Criminal Procedure,²²⁹ or by some other statute.²³⁰ Since the statutory exceptions to the arrest warrant requirement do not generally operate to expand a peace officer's authority beyond his jurisdiction,²³¹ the court must then determine from other legislative sources the geographic boundaries of a particular peace officer's authority. For example, a city police officer's jurisdiction may extend to the county limits,²³² a campus peace officer's jurisdiction extends to the boundaries of the campus,²³³ and a county sheriff's jurisdiction extends to the boundaries of the county.²³⁴ Since the legislature has the authority to extend or limit this jurisdiction,²³⁵ it is therefore necessary to examine the statutes that specifically define the geographic or functional jurisdic-

228. See, e.g., *Weeks v. State*, 132 Tex. Crim. 524, 526-27, 106 S.W.2d 275, 276 (1937), *overruled*, *Angel v. State*, 740 S.W.2d 727, 736 (Tex. Crim. App. 1987); *Henson v. State*, 120 Tex. Crim. 176, 177, 49 S.W.2d 463, 464 (1932); *Ransom v. State*, 73 Tex. Crim. 442, 444, 165 S.W. 932, 933 (1914); see also 2 RULING CASE LAW, *Arrests* § 27 (1914).

229. See TEX. CODE CRIM. PROC. ANN. art. 2.12 (Vernon Supp. 1988).

230. See, e.g., TEX. EDUC. CODE ANN. § 21.483 (Vernon 1987) (campus security for public schools); *id.* § 51.212 (security officers at private institutions of higher education); *id.* § 51.214 (security officers for medical corporations).

231. See, e.g., *Preston v. State*, 700 S.W.2d 227, 230 (Tex. Crim. App. 1985)(section 153 of Uniform Act Regulating Traffic does not expand peace officer's territorial arrest jurisdiction); *Christopher v. State*, 639 S.W.2d 932, 937 (Tex. Crim. App. 1982)(opinion on rehearing)(article 14.01(b) of Texas Code of Criminal Procedure does not expand peace officer's jurisdiction).

232. See *Angel*, 740 S.W.2d at 736 (Tex. Crim. App. 1987). This assumes that the city officer is employed by a Type A general-law jurisdiction and that the court would interpret section 341.001(e) of the Local Government Code in the same way it interpreted articles 998 and 999 in *Angel*. As noted in text accompanying footnote 31, a city police officer may have statewide arrest jurisdiction in some circumstances. See, e.g., TEX. CODE CRIM. PROC. ANN. art. 14.03(c) (Vernon Supp. 1988)(on-view felonies and violations of title 9, chapter 42 of the Penal Code); *id.* art. 18.16 (preventing the consequences of theft); *id.* art. 14.01(a) (on-view felonies and offenses against the public peace).

233. See *Preston*, 700 S.W.2d at 230.

234. See *Angel*, 740 S.W.2d at 733; TEX. CODE CRIM. PROC. ANN. art. 2.17 (Vernon 1977).

235. See, e.g., *Hurley v. State*, 155 Tex. Crim. 315, 317, 234 S.W.2d 1006, 1008 (1950), *overruled on other grounds*, *Angel v. State*, 740 S.W.2d 727, 732 (Tex. Crim. App. 1987); *Love v. State*, 687 S.W.2d 469, 478 (Tex. App.—Houston [1st Dist.] 1985, pet. ref'd).

tion of a particular peace officer.²³⁶ For example, with regard to peace officers of the Parks and Wildlife Commission, the legislature has extended their jurisdiction to the boundaries of the state.²³⁷ Conversely, the legislature has expressly limited the authority of railroad peace officers.²³⁸ Upon determining a peace officer's geographical or functional jurisdiction,²³⁹ the court can then determine the validity of the arrest. If the arrest is made outside the peace officer's jurisdiction, the arrest is presumptively illegal.²⁴⁰ If, however, the peace officer initiated pursuit while within the boundaries of his jurisdiction, but did not effectuate the arrest until outside those boundaries, the arrest may be valid under the "hot pursuit" exception to a peace officer's jurisdiction.²⁴¹ If this exception is inapplicable, then the peace officer would have the powers and authority granted any non-officer in making a citizen's arrest, as well as the authority conferred by article 14.03(c).²⁴² This authority to arrest extends to on-view felonies,²⁴³ on-view violations of title 9, chapter 42 of the Texas Penal Code,²⁴⁴ other offenses "against the public peace,"²⁴⁵ and theft offenses.²⁴⁶

The complexity of the current rules, to the extent that rules can be discerned, is demonstrated by considering the arrest authority of one of the kinds of peace officer addressed in this article. A city police officer of a Type A general-law municipality may execute a warrant-

236. See *United States v. Garcia*, 676 F.2d 1086, 1089-90 (5th Cir.) (analyzing functional and geographical jurisdiction of game wardens), *vacated on other grounds*, 462 U.S. 1127 (1982); see also *Christopher v. State*, 639 S.W.2d 932, 939-41 (Tex. Crim. App. 1982) (opinion on rehearing) (Clinton, J., dissenting) (opinion adopted in *Preston v. State*, 700 S.W.2d 227, 230 (Tex. Crim. App. 1985)) (outlines geographical jurisdictions of various peace officers).

237. See TEX. PARKS & WILD. CODE ANN. § 11.019(b) (Vernon Supp. 1988).

238. See TEX. CODE CRIM. PROC. ANN. art. 2.121(c) (Vernon Supp. 1988) (railroad peace officers have no authority to issuing traffic citations under TEX. REV. CIV. STAT. ANN. art. 6687(b) (Vernon 1977 & Supp. 1988) or under TEX. REV. CIV. STAT. ANN. art. 6701(d) (Vernon 1977 & Supp. 1988)).

239. The status of the entity for which the officer works may also be significant. See *Angel*, 740 S.W.2d at 739-45 (Clinton, J., dissenting).

240. See, e.g., *Weeks v. State*, 132 Tex. Crim. 524, 526, 106 S.W.2d 275, 275-76 (1937), *overruled on other grounds*, *Angel v. State*, 740 S.W.2d 727, 736 (Tex. Crim. App. 1987); *Henson v. State*, 120 Tex. Crim. 176, 178-79, 49 S.W.2d 463, 465 (1932).

241. See, e.g., *Minor v. State*, 153 Tex. Crim. 242, 247, 219 S.W.2d 467, 470 (1949).

242. See, e.g., *Romo v. State*, 577 S.W.2d 251, 252 (Tex. Crim. App. 1979) (peace officer outside jurisdiction has same authority as citizen to make warrantless arrest); see TEX. CRIM. PROC. CODE ANN. art. 14.03(c) (Vernon Supp. 1988).

243. See TEX. CODE CRIM. PROC. ANN. art. 14.03(c) (Vernon Supp. 1988).

244. *Id.*

245. See *id.* arts. 14.01(a), 14.02 (Vernon 1977) & art. 14.03(a)(1) (Vernon Supp. 1988).

246. See *id.* art. 18.16 (Vernon 1977).

less arrest in the following areas outside the municipal boundaries for the types of offenses indicated:

- (a) "on-view" felonies—statewide jurisdiction;²⁴⁷
- (b) "on-view" misdemeanors which breach the public peace—statewide jurisdiction;²⁴⁸
- (c) "on-view" misdemeanor violations of Title 9, Chapter 42 of the Texas Penal Code—statewide jurisdiction;²⁴⁹
- (d) theft offenses (misdemeanor or felony—need not be "on-view")—statewide jurisdiction;²⁵⁰
- (e) all "on-view" offenses in which "hot pursuit" begins within municipal boundaries, and capture and arrest occurs outside those boundaries—potential statewide jurisdiction.²⁵¹

In all other cases, a city police officer's warrantless arrest authority is apparently confined to the county in which the employing municipality is located.²⁵²

V. CONCLUSION—A PROPOSAL FOR LEGISLATIVE REFORM

As is abundantly clear from the foregoing summary, a city police officer's territorial jurisdiction for arrest purposes is an issue unduly and unnecessarily complicated by the court's tracing of ambiguous statutory provisions, and the potential for a similar result exists for other kinds of peace officers. If any doubt exists about whether the legislature intended the result reached in *Angel*, the significant policy interests served by adhering to an interpretation consistent with Texas common law surely militate in favor of a return to the relative simplicity and logic of that position. For example, confining a city police officer's arrest authority to his "bailiwick" would be consistent with common law, and arguably consistent with the Local Government Code as well. Expansions of this arrest jurisdiction should be accomplished only by clear expressions of legislative intent as was recently

247. See *id.* art. 14.01(a) (Vernon 1977) & art. 14.03(c) (Vernon Supp. 1988).

248. See *id.* art. 14.01(a) (Vernon 1977).

249. See *id.* art. 14.03(c) (Vernon Supp. 1988).

250. See *id.* art. 18.16.

251. See *Minor v. State*, 153 Tex. Crim. 242, 247, 219 S.W.2d 467 (1949).

252. See *Angel v. State*, 740 S.W.2d 727, 236 (Tex. Crim. App. 1987). Note again that this presupposes that the arresting officer is from a Type A municipality, and an interpretation of the Local Government Code which coincides with the court's reading of articles 998 and 999 in *Angel*.

done, for instance, by enacting article 14.03(c).²⁵³ The adoption of the Local Government Code presents the Texas Court of Criminal Appeals an opportunity to reconsider not only the proper interpretation of the vague "jurisdiction" language, but also the wisdom of an expansion of the city officer's arrest authority beyond the limits of his employing entity.

The 71st Texas Legislature will enjoy a similar opportunity. It could eliminate much of the confusion surrounding the territorial arrest jurisdiction issue by specifying in article 2.13 of the Code of Criminal Procedure that Texas peace officers have warrantless arrest authority only on property owned or governed by the entity by which they are employed unless such authority is expressly expanded or limited by statute. Such a general statement of authority in article 2.13 would control over all but the specific grants of power contained in legislation creating and defining the particular office in question. Specific expressions already exist in Texas law regarding some kinds of peace officers.²⁵⁴ The Texas Education Code, for example, clearly delineates the areas in which peace officers commissioned under its authority may exercise their "powers, privileges, and immunities."²⁵⁵ The difficult statutory construction problems reflected by the *Angel* decision are notably lacking in decisions interpreting the territorial jurisdiction of campus police officers.²⁵⁶ With respect to municipal police, the legislature should also amend chapter 341 of the Local Government Code to provide, as in article 2.13, that unless statutory exceptions are created, city police officers are limited in the exercise of their warrantless arrest authority to the confines of the municipality for which they work. This would affect neither the "hot pursuit" exception, the statewide arrest authority provided by article 14.03(c) of the Code of Criminal Procedure, nor the court's prior interpretations of articles 14.01(a) (citizen's arrest for felonies and offenses against the public peace) or 18.16 (preventing the consequences of theft). It would, however, avoid the likelihood that language used in the Local

253. See TEX. CODE CRIM. PROC. ANN. art. 14.03(c) (Vernon Supp. 1988).

254. See, e.g., TEX. PARKS & WILD. CODE ANN. § 11.019(d) (Vernon Supp. 1988)(game wardens have statewide arrest jurisdiction for any offense); TEX. CODE CRIM. PROC. ANN. art. 2.121(c) (Vernon Supp. 1988)(railroad officers have no authority to issue citations for traffic violations that occur in their view or on railroad property).

255. See TEX. EDUC. CODE ANN. §§ 51.203, 51.212 (Vernon 1987).

256. See, e.g., *Preston v. State*, 700 S.W.2d 227 (Tex. Crim. App. 1985); Op. Tex. Att'y Gen. No. J.M.-239 (1984); Op. Tex. Att'y Gen. No. J.M.-537 (1982).

Government Code will be interpreted to provide different territorial arrest limits for officers of different types of municipalities. It would also simplify the court's task of determining the effect on city officers' territorial jurisdiction of subsequently enacted statutes. Moreover, carefully restricting warrantless arrests preserves the important role of prior judicial review of warrant applications. These relatively modest changes would bring a clarity and certainty to Texas arrest law that does not now exist. This is especially desirable when the stakes are individual liberty and effective law enforcement.