

AN ACT

relating to issuance by a court of a *capias*, a *capias pro fine*, or an arrest warrant.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 15.18, Code of Criminal Procedure, is amended by adding Subsection (d) to read as follows:

(d) This article does not apply to an arrest made pursuant to a *capias pro fine* issued under Chapter 43 or Article 45.045.

SECTION 2. Articles 17.19(b) and (c), Code of Criminal Procedure, are amended to read as follows:

(b) In a prosecution pending before a court, if [~~If~~] the court [~~or magistrate~~] finds that there is cause for the surety to surrender the surety's [~~his~~] principal, the court shall issue a [~~warrant of arrest or~~] *capias* for the principal. In a prosecution pending before a magistrate, if the magistrate finds that there is cause for the surety to surrender the surety's principal, the magistrate shall issue a warrant of arrest for the principal. It is an affirmative defense to any liability on the bond that:

(1) the court or magistrate refused to issue a *capias* or warrant of arrest [~~or *capias*~~] for the principal; and

(2) after the refusal to issue the *capias* or warrant of arrest, [~~or *capias*~~] the principal failed to appear.

(c) If the court or magistrate before whom the prosecution is pending is not available, the surety may deliver the affidavit to

1 any other magistrate in the county and that magistrate, on a finding
2 of cause for the surety to surrender the surety's ~~[his]~~ principal,
3 shall issue a warrant of arrest ~~[or capias]~~ for the principal.

4 SECTION 3. Article 23.01, Code of Criminal Procedure, is
5 amended to read as follows:

6 Art. 23.01. DEFINITION OF A "CAPIAS". In this chapter, a
7 ~~[A]~~ "capias" is a writ that is:

8 (1) issued by a judge of the court having jurisdiction
9 of a case after commitment or bail and before trial, ~~[the court]~~ or
10 by a clerk at the direction of the judge; ~~[7]~~ and

11 (2) directed "To any peace officer of the State of
12 Texas", commanding the officer ~~[him]~~ to arrest a person accused of
13 an offense and bring the arrested person ~~[him]~~ before that court
14 immediately~~[7]~~ or on a day or at a term stated in the writ.

15 SECTION 4. Article 23.031, Code of Criminal Procedure, is
16 amended to read as follows:

17 Art. 23.031. ISSUANCE OF CAPIAS IN ELECTRONIC FORM. A
18 district clerk, county clerk, or court may issue in electronic form
19 a capias for the failure of a person to appear before a court~~[7, pay a~~
20 ~~fine7]~~ or comply with a court order.

21 SECTION 5. Article 23.04, Code of Criminal Procedure, is
22 amended to read as follows:

23 Art. 23.04. IN MISDEMEANOR CASE. In misdemeanor cases, the
24 capias or summons shall issue from a court having jurisdiction of
25 the case on the filing of an information or complaint. The summons
26 shall be issued only upon request of the attorney representing the
27 State and on the determination of probable cause by the judge, and

1 shall follow the same form and procedure as in a felony case.

2 SECTION 6. Article 23.05(a), Code of Criminal Procedure, is
3 amended to read as follows:

4 (a) If a forfeiture of bail is declared by a court or a
5 surety surrenders a defendant under Article 17.19, a capias shall
6 be immediately issued for the arrest of the defendant, and when
7 arrested, in its discretion, the court may require the defendant,
8 in order to be released from custody, to deposit with the custodian
9 of funds of the court in which the prosecution is pending current
10 money of the United States in the amount of the new bond as set by
11 the court, in lieu of a surety bond, unless a forfeiture is taken
12 and set aside under the third subdivision of Article 22.13 [~~of this~~
13 ~~code~~], in which case the defendant and the defendant's [~~his~~
14 sureties shall remain bound under the same bail.

15 SECTION 7. Chapter 43, Code of Criminal Procedure, is
16 amended by adding Article 43.015 to read as follows:

17 Art. 43.015. DEFINITIONS. In this chapter:

18 (1) "Capias" means a writ that is:

19 (A) issued by a court having jurisdiction of a
20 case after judgment and sentence; and

21 (B) directed "To any peace officer of the State
22 of Texas" and commanding the officer to arrest a person convicted of
23 an offense and bring the arrested person before that court
24 immediately or on a day or at a term stated in the writ.

25 (2) "Capias pro fine" means a writ that is:

26 (A) issued by a court having jurisdiction of a
27 case after judgment and sentence for unpaid fines and costs; and

1 (B) directed "To any peace officer of the State
2 of Texas" and commanding the officer to arrest a person convicted of
3 an offense and bring the arrested person before that court
4 immediately.

5 SECTION 8. Chapter 43, Code of Criminal Procedure, is
6 amended by adding Article 43.021 to read as follows:

7 Art. 43.021. CAPIAS OR CAPIAS PRO FINE IN ELECTRONIC FORM.
8 A capias or capias pro fine may be issued in electronic form.

9 SECTION 9. Article 43.03, Code of Criminal Procedure, is
10 amended by amending Subsection (d) and adding Subsection (e) to
11 read as follows:

12 (d) A court may not order a defendant confined under
13 Subsection (a) of this article unless the court at a hearing makes a
14 written determination that:

15 (1) ~~[determines that]~~ the defendant is not indigent
16 and has failed to make a good faith effort to discharge the fines
17 and costs ~~[or determines that the defendant wilfully refused to pay~~
18 ~~or failed to make sufficient bona fide efforts legally to acquire~~
19 ~~the resources to pay and enters that determination in writing in the~~
20 ~~court docket]; or ~~and]~~~~

21 (2) the defendant is indigent and:

22 (A) has failed to make a good faith effort to
23 discharge the fines and costs under Article 43.09(f); and

24 (B) could have discharged the fines and costs
25 under Article 43.09 without experiencing any undue hardship
26 ~~[determines that no alternative method of discharging fines and~~
27 ~~costs provided by Article 43.09 of this code is appropriate for the~~

1 ~~defendant~~].

2 (e) This article does not apply to a court governed by
3 Chapter 45.

4 SECTION 10. Article 43.04, Code of Criminal Procedure, is
5 amended to read as follows:

6 Art. 43.04. IF DEFENDANT IS ABSENT. When a judgment and
7 sentence have been rendered against a defendant [~~for a fine~~] in the
8 defendant's [~~his~~] absence, the court may order a capias issued for
9 the defendant's [~~his~~] arrest. The sheriff shall execute the capias
10 by bringing the defendant before the court or by placing the
11 defendant in jail until the defendant [~~he~~] can be brought before the
12 court.

13 SECTION 11. Article 43.05, Code of Criminal Procedure, is
14 amended to read as follows:

15 Art. 43.05. CAPIAS PRO FINE SHALL RECITE [~~WHAT~~]. (a) A
16 [~~where such~~] capias pro fine issued for the arrest and commitment of
17 a defendant convicted of a misdemeanor or felony, or found in
18 contempt, the penalty for which includes a fine, [~~issues, it~~] shall
19 recite [~~state the rendition and amount of~~] the judgment and
20 sentence[~~r~~] and command a peace officer [~~the sheriff~~] to
21 immediately bring the defendant before the court.

22 (b) A capias pro fine authorizes a peace officer to [~~or~~]
23 place the defendant [~~him~~] in jail until the business day following
24 the date of the defendant's arrest if the defendant cannot [~~he can~~]
25 be brought before the court immediately.

26 SECTION 12. Article 43.06, Code of Criminal Procedure, is
27 amended to read as follows:

1 Art. 43.06. CAPIAS OR CAPIAS PRO FINE MAY ISSUE TO ANY
2 COUNTY. A [~~The~~] capias or capias pro fine [~~provided for in this~~
3 ~~Chapter~~] may be issued to any county in the State, and shall be
4 executed and returned as in other cases, but no bail shall be taken
5 in such cases.

6 SECTION 13. Article 43.07, Code of Criminal Procedure, is
7 amended to read as follows:

8 Art. 43.07. EXECUTION FOR FINE AND COSTS. In each case of
9 pecuniary fine, an execution may issue for the fine and costs,
10 though a capias pro fine was issued for the defendant; and a capias
11 pro fine may issue for the defendant though an execution was issued
12 against the defendant's [~~his~~] property. The execution shall be
13 collected and returned as in civil actions. When the execution has
14 been collected, the defendant shall be at once discharged; and
15 whenever the fine and costs have been legally discharged in any way,
16 the execution shall be returned satisfied.

17 SECTION 14. Article 43.09, Code of Criminal Procedure, is
18 amended by adding Subsection (n) to read as follows:

19 (n) This article does not apply to a court governed by
20 Chapter 45.

21 SECTION 15. Article 43.091, Code of Criminal Procedure, is
22 amended to read as follows:

23 Art. 43.091. WAIVER OF PAYMENT OF FINES AND COSTS FOR
24 INDIGENT DEFENDANTS [~~IN JUSTICE OR MUNICIPAL COURT~~]. A [~~municipal~~
25 ~~court, regardless of whether the court is a court of record, or a~~
26 ~~justice~~] court may waive payment of a fine or cost imposed on a
27 defendant who defaults in payment if the court determines that:

1 (1) the defendant is indigent; and

2 (2) each alternative method of discharging the fine or
3 cost under Article 43.09 would impose an undue hardship on the
4 defendant.

5 SECTION 16. Article 45.045(a), Code of Criminal Procedure,
6 is amended to read as follows:

7 (a) If the defendant is not in custody when the judgment is
8 rendered or if the defendant fails to satisfy the judgment
9 according to its terms, the court may order a capias pro fine, as
10 defined by Article 43.015, issued for the defendant's arrest. The
11 capias pro fine shall state the amount of the judgment and sentence,
12 and command the appropriate peace officer to bring the defendant
13 before the court immediately or place the defendant in jail until
14 the business day following the date of the defendant's arrest if the
15 defendant cannot [~~can~~] be brought before the court immediately.

16 SECTION 17. Article 45.049, Code of Criminal Procedure, is
17 amended by adding Subsection (g) to read as follows:

18 (g) A community supervision and corrections department or a
19 court-related services office may provide the administrative and
20 other services necessary for supervision of a defendant required to
21 perform community service under this article.

22 SECTION 18. Chapter 45, Code of Criminal Procedure, is
23 amended by adding Article 45.0491 to read as follows:

24 Art. 45.0491. WAIVER OF PAYMENT OF FINES AND COSTS FOR
25 INDIGENT DEFENDANTS. A municipal court, regardless of whether the
26 court is a court of record, or a justice court may waive payment of a
27 fine or costs imposed on a defendant who defaults in payment if the

1 court determines that:

2 (1) the defendant is indigent; and

3 (2) discharging the fine and costs under Article
4 45.049 would impose an undue hardship on the defendant.

5 SECTION 19. Article 45.046(a), Code of Criminal Procedure,
6 is amended to read as follows:

7 (a) When a judgment and sentence have been entered against a
8 defendant and the defendant defaults in the discharge of the
9 judgment, the judge may order the defendant confined in jail until
10 discharged by law if the judge at a hearing makes a written
11 determination [~~determines~~] that:

12 (1) the defendant is not indigent and has
13 [~~intentionally~~] failed to make a good faith effort to discharge the
14 fine and costs [~~judgment~~]; or

15 (2) the defendant is [~~not~~] indigent and:

16 (A) has failed to make a good faith effort to
17 discharge the fines and costs under Article 45.049; and

18 (B) could have discharged the fines and costs
19 under Article 45.049 without experiencing any undue hardship.

20 SECTION 20. Article 102.011(a), Code of Criminal Procedure,
21 is amended to read as follows:

22 (a) A defendant convicted of a felony or a misdemeanor shall
23 pay the following fees for services performed in the case by a peace
24 officer:

25 (1) \$5 for issuing a written notice to appear in court
26 following the defendant's violation of a traffic law, municipal
27 ordinance, or penal law of this state, or for making an arrest

1 without a warrant;

2 (2) \$50 for executing or processing an issued arrest
3 warrant, ~~or~~ capias, or capias pro fine with the fee imposed for
4 the services of:

5 (A) the law enforcement agency that executed the
6 arrest warrant or capias, if the agency requests of the court, not
7 later than the 15th day after the date of the execution of the
8 arrest warrant or capias, the imposition of the fee on conviction;
9 or

10 (B) the law enforcement agency that processed the
11 arrest warrant or capias, if the executing law enforcement agency
12 failed to request the fee within the period required by Paragraph
13 (A) of this subdivision;

14 (3) \$5 for summoning a witness;

15 (4) \$35 for serving a writ not otherwise listed in this
16 article;

17 (5) \$10 for taking and approving a bond and, if
18 necessary, returning the bond to the courthouse;

19 (6) \$5 for commitment or release;

20 (7) \$5 for summoning a jury, if a jury is summoned; and

21 (8) \$8 for each day's attendance of a prisoner in a
22 habeas corpus case if the prisoner has been remanded to custody or
23 held to bail.

24 SECTION 21. Article 102.011(a), Code of Criminal Procedure,
25 is amended to read as follows:

26 (a) A defendant convicted of a felony or a misdemeanor shall
27 pay the following fees for services performed in the case by a peace

1 officer:

2 (1) \$5 for issuing a written notice to appear in court
3 following the defendant's violation of a traffic law, municipal
4 ordinance, or penal law of this state, or for making an arrest
5 without a warrant;

6 (2) \$50 for executing or processing an issued arrest
7 warrant or *capias*, with the fee imposed for the services of:

8 (A) the law enforcement agency that executed the
9 arrest warrant or *capias*, if the agency requests of the court, not
10 later than the 15th day after the date of the execution of the
11 arrest warrant or *capias*, the imposition of the fee on conviction;
12 or

13 (B) the law enforcement agency that processed the
14 arrest warrant or *capias*, if:

15 (i) the arrest warrant or *capias* was not
16 executed; or

17 (ii) the executing law enforcement agency
18 failed to request the fee within the period required by Paragraph
19 (A) of this subdivision;

20 (3) \$5 for summoning a witness;

21 (4) \$35 for serving a writ not otherwise listed in this
22 article;

23 (5) \$10 for taking and approving a bond and, if
24 necessary, returning the bond to the courthouse;

25 (6) \$5 for commitment or release;

26 (7) \$5 for summoning a jury, if a jury is summoned;

27 and

1 (8) \$8 for each day's attendance of a prisoner in a
2 habeas corpus case if the prisoner has been remanded to custody or
3 held to bail.

4 SECTION 22. Articles 43.09(m) and 43.12, Code of Criminal
5 Procedure, are repealed.

6 SECTION 23. The change in law made by this Act applies only
7 to a fee imposed for the execution or processing of a warrant or
8 capias issued for an offense committed on or after the effective
9 date of this Act. A fee imposed for the execution or processing of a
10 warrant or capias issued for an offense committed before the
11 effective date of this Act is covered by the law in effect when the
12 offense was committed, and the former law is continued in effect for
13 that purpose. For purposes of this section, an offense is committed
14 before the effective date of this Act if any element of the offense
15 occurs before that date.

16 SECTION 24. This Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I certify that H.B. No. 3060 was passed by the House on April 26, 2007, by the following vote: Yeas 136, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3060 on May 23, 2007, by the following vote: Yeas 147, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3060 was passed by the Senate, with amendments, on May 21, 2007, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor