

By: Pena

H.B. No. 3060

A BILL TO BE ENTITLED

AN ACT

relating to issuance by a court of a capias or a capias pro fine.

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) 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. If a 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 any other magistrate in the county and that magistrate, on a finding of cause for the surety to surrender the surety's [~~his~~] principal,

1 shall issue a warrant of arrest [~~or capias~~] for the principal.

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

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

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

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

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

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

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

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

27 SECTION 6. Article 23.05(a), Code of Criminal Procedure, is

1 amended to read as follows:

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

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

15 Art. 43.015. DEFINITIONS. In this chapter:

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

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

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

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

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

26 (B) directed "To any peace officer of the State
27 of Texas" and commanding the officer to arrest a person convicted of

1 an offense and bring the arrested person before that court
2 immediately or on a day or at a term stated in the writ.

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

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

7 SECTION 9. Article 43.03, Code of Criminal Procedure, is
8 amended by adding Subsection (e) to read as follows:

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

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

13 Art. 43.04. IF DEFENDANT IS ABSENT. When a judgment and
14 sentence have been rendered against a defendant [~~for a fine~~] in the
15 defendant's [~~his~~] absence, the court may order a capias issued for
16 the defendant's [~~his~~] arrest. The sheriff shall execute the capias
17 by bringing the defendant before the court or by placing the
18 defendant in jail until the defendant [~~he~~] can be brought before the
19 court.

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

22 Art. 43.05. CAPIAS PRO FINE SHALL RECITE [~~WHAT~~]. (a) A
23 [Where such] capias pro fine issued for the arrest and commitment of
24 a defendant convicted of a misdemeanor or felony, or found in
25 contempt, the penalty for which includes a fine, [issues, it] shall
26 recite [~~state the rendition and amount of~~] the judgment and
27 sentence[~~7~~] and command a peace officer [~~the sheriff~~] to

1 immediately bring the defendant before the court.

2 (b) A capias pro fine authorizes a peace officer to [or]
3 place the defendant [~~him~~] in jail until the defendant appears [~~he~~
4 ~~can be brought~~] before the court.

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

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

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

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

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

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

27 SECTION 15. Article 43.091, Code of Criminal Procedure, is

1 amended to read as follows:

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

7 (1) the defendant is indigent; and

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

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

13 (a) If the defendant is not in custody when the judgment is
14 rendered or if the defendant fails to satisfy the judgment
15 according to its terms, the court may order a capias pro fine, as
16 defined by Article 43.015, issued for the defendant's arrest. The
17 capias pro fine shall state the amount of the judgment and sentence,
18 and command the appropriate peace officer to bring the defendant
19 before the court or place the defendant in jail until the defendant
20 can be brought before the court.

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

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

27 SECTION 18. Chapter 45, Code of Criminal Procedure, is

1 amended by adding Article 45.0491 to read as follows:

2 Art. 45.0491. WAIVER OF PAYMENT OF FINES AND COSTS FOR
3 INDIGENT DEFENDANTS. A municipal court, regardless of whether the
4 court is a court of record, or a justice court may waive payment of a
5 fine or costs imposed on a defendant who defaults in payment if the
6 court determines that:

7 (1) the defendant is indigent; and

8 (2) discharging the fine and costs under Article
9 45.049 would impose an undue hardship on the defendant.

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

12 (a) When a judgment and sentence have been entered against a
13 defendant and the defendant defaults in the discharge of the
14 judgment, the judge may order the defendant confined in jail until
15 discharged by law if the judge determines that:

16 (1) the defendant is not indigent and has
17 [intentionally] failed to make a good faith effort to discharge the
18 fine and costs [judgment]; or

19 (2) the defendant is [not] indigent but has failed to
20 make a good faith effort to discharge the fine and costs under
21 Article 45.049, unless a court has determined that discharging the
22 fine and costs under that article would impose an undue hardship on
23 the defendant.

24 SECTION 20. 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, or capias pro fine with the fee imposed for
8 the services of:

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

14 (B) the law enforcement agency that processed the
15 arrest warrant or capias, if the executing law enforcement agency
16 failed to request the fee within the period required by Paragraph
17 (A) of this subdivision;

18 (3) \$5 for summoning a witness;

19 (4) \$35 for serving a writ not otherwise listed in this
20 article;

21 (5) \$10 for taking and approving a bond and, if
22 necessary, returning the bond to the courthouse;

23 (6) \$5 for commitment or release;

24 (7) \$5 for summoning a jury, if a jury is summoned; and

25 (8) \$8 for each day's attendance of a prisoner in a
26 habeas corpus case if the prisoner has been remanded to custody or
27 held to bail.

1 SECTION 21. Articles 43.02, 43.09(m), and 43.12, Code of
2 Criminal Procedure, are repealed.

3 SECTION 22. This Act takes effect September 1, 2007.