

1-1 By: Pena (Senate Sponsor - Watson) H.B. No. 3060
1-2 (In the Senate - Received from the House April 26, 2007;
1-3 May 1, 2007, read first time and referred to Committee on
1-4 Jurisprudence; May 17, 2007, reported favorably by the following
1-5 vote: Yeas 5, Nays 0; May 17, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to issuance by a court of a capias or a capias pro fine.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Article 15.18, Code of Criminal Procedure, is
1-11 amended by adding Subsection (d) to read as follows:

1-12 (d) This article does not apply to an arrest made pursuant
1-13 to a capias pro fine issued under Chapter 43 or Article 45.045.

1-14 SECTION 2. Articles 17.19(b) and (c), Code of Criminal
1-15 Procedure, are amended to read as follows:

1-16 (b) In a prosecution pending before a court, if [~~if~~] the
1-17 court [~~or magistrate~~] finds that there is cause for the surety to
1-18 surrender the surety's [~~his~~] principal, the court shall issue a
1-19 [~~warrant of arrest or~~] capias for the principal. In a prosecution
1-20 pending before a magistrate, if the magistrate finds that there is
1-21 cause for the surety to surrender the surety's principal, the
1-22 magistrate shall issue a warrant of arrest for the principal. It is
1-23 an affirmative defense to any liability on the bond that:

1-24 (1) the court or magistrate refused to issue a capias
1-25 or warrant of arrest [~~or capias~~] for the principal; and

1-26 (2) after the refusal to issue the capias or warrant of
1-27 arrest, [~~or capias~~] the principal failed to appear.

1-28 (c) If the court or magistrate before whom the prosecution
1-29 is pending is not available, the surety may deliver the affidavit to
1-30 any other magistrate in the county and that magistrate, on a finding
1-31 of cause for the surety to surrender the surety's [~~his~~] principal,
1-32 shall issue a warrant of arrest [~~or capias~~] for the principal.

1-33 SECTION 3. Article 23.01, Code of Criminal Procedure, is
1-34 amended to read as follows:

1-35 Art. 23.01. DEFINITION OF A "CAPIAS". In this chapter, a
1-36 [A] "capias" is a writ that is:

1-37 (1) issued by a judge of the court having jurisdiction
1-38 of a case after commitment or bail and before trial, [~~the court~~] or
1-39 by a clerk at the direction of the judge; [~~7~~] and

1-40 (2) directed "To any peace officer of the State of
1-41 Texas", commanding the officer [~~him~~] to arrest a person accused of
1-42 an offense and bring the arrested person [~~him~~] before that court
1-43 immediately[~~7~~] or on a day or at a term stated in the writ.

1-44 SECTION 4. Article 23.031, Code of Criminal Procedure, is
1-45 amended to read as follows:

1-46 Art. 23.031. ISSUANCE OF CAPIAS IN ELECTRONIC FORM. A
1-47 district clerk, county clerk, or court may issue in electronic form
1-48 a capias for the failure of a person to appear before a court [~~7~~ ~~pay a~~
1-49 ~~fine~~] or comply with a court order.

1-50 SECTION 5. Article 23.04, Code of Criminal Procedure, is
1-51 amended to read as follows:

1-52 Art. 23.04. IN MISDEMEANOR CASE. In misdemeanor cases, the
1-53 capias or summons shall issue from a court having jurisdiction of
1-54 the case on the filing of an information or complaint. The summons
1-55 shall be issued only upon request of the attorney representing the
1-56 State and on the determination of probable cause by the judge, and
1-57 shall follow the same form and procedure as in a felony case.

1-58 SECTION 6. Article 23.05(a), Code of Criminal Procedure, is
1-59 amended to read as follows:

1-60 (a) If a forfeiture of bail is declared by a court or a
1-61 surety surrenders a defendant under Article 17.19, a capias shall
1-62 be immediately issued for the arrest of the defendant, and when
1-63 arrested, in its discretion, the court may require the defendant,
1-64 in order to be released from custody, to deposit with the custodian

2-1 of funds of the court in which the prosecution is pending current
 2-2 money of the United States in the amount of the new bond as set by
 2-3 the court, in lieu of a surety bond, unless a forfeiture is taken
 2-4 and set aside under the third subdivision of Article 22.13 [~~of this~~
 2-5 ~~code~~], in which case the defendant and the defendant's [his]
 2-6 sureties shall remain bound under the same bail.

2-7 SECTION 7. Chapter 43, Code of Criminal Procedure, is
 2-8 amended by adding Article 43.015 to read as follows:

2-9 Art. 43.015. DEFINITIONS. In this chapter:

2-10 (1) "Capias" means a writ that is:

2-11 (A) issued by a court having jurisdiction of a
 2-12 case after judgment and sentence; and

2-13 (B) directed "To any peace officer of the State
 2-14 of Texas" and commanding the officer to arrest a person convicted of
 2-15 an offense and bring the arrested person before that court
 2-16 immediately or on a day or at a term stated in the writ.

2-17 (2) "Capias pro fine" means a writ that is:

2-18 (A) issued by a court having jurisdiction of a
 2-19 case after judgment and sentence for unpaid fines and costs; and

2-20 (B) directed "To any peace officer of the State
 2-21 of Texas" and commanding the officer to arrest a person convicted of
 2-22 an offense and bring the arrested person before that court
 2-23 immediately.

2-24 SECTION 8. Chapter 43, Code of Criminal Procedure, is
 2-25 amended by adding Article 43.021 to read as follows:

2-26 Art. 43.021. CAPIAS OR CAPIAS PRO FINE IN ELECTRONIC FORM.
 2-27 A capias or capias pro fine may be issued in electronic form.

2-28 SECTION 9. Article 43.03, Code of Criminal Procedure, is
 2-29 amended by amending Subsection (d) and adding Subsection (e) to
 2-30 read as follows:

2-31 (d) A court may not order a defendant confined under
 2-32 Subsection (a) of this article unless the court at a hearing makes a
 2-33 written determination that:

2-34 (1) [~~determines that~~] the defendant is not indigent
 2-35 and has failed to make a good faith effort to discharge the fines
 2-36 and costs [~~or determines that the defendant wilfully refused to pay~~
 2-37 or failed to make sufficient bona fide efforts legally to acquire
 2-38 the resources to pay and enters that determination in writing in the
 2-39 court docket]; or [~~and~~]

2-40 (2) the defendant is indigent and:

2-41 (A) has failed to make a good faith effort to
 2-42 discharge the fines and costs under Article 43.09(f); and

2-43 (B) could have discharged the fines and costs
 2-44 under Article 43.09 without experiencing any undue hardship
 2-45 [~~determines that no alternative method of discharging fines and~~
 2-46 costs provided by Article 43.09 of this code is appropriate for the
 2-47 defendant].

2-48 (e) This article does not apply to a court governed by
 2-49 Chapter 45.

2-50 SECTION 10. Article 43.04, Code of Criminal Procedure, is
 2-51 amended to read as follows:

2-52 Art. 43.04. IF DEFENDANT IS ABSENT. When a judgment and
 2-53 sentence have been rendered against a defendant [~~for a fine~~] in the
 2-54 defendant's [his] absence, the court may order a capias issued for
 2-55 the defendant's [his] arrest. The sheriff shall execute the capias
 2-56 by bringing the defendant before the court or by placing the
 2-57 defendant in jail until the defendant [he] can be brought before the
 2-58 court.

2-59 SECTION 11. Article 43.05, Code of Criminal Procedure, is
 2-60 amended to read as follows:

2-61 Art. 43.05. CAPIAS PRO FINE SHALL RECITE [WHAT]. (a) A
 2-62 [~~where such~~] capias pro fine issued for the arrest and commitment of
 2-63 a defendant convicted of a misdemeanor or felony, or found in
 2-64 contempt, the penalty for which includes a fine, [~~issues, it~~] shall
 2-65 recite [~~state the rendition and amount of~~] the judgment and
 2-66 sentence[7] and command a peace officer [~~the sheriff~~] to
 2-67 immediately bring the defendant before the court.

2-68 (b) A capias pro fine authorizes a peace officer to [~~or~~]
 2-69 place the defendant [him] in jail until the business day following

3-1 the date of the defendant's arrest if the defendant cannot ~~[he can]~~
3-2 be brought before the court immediately.

3-3 SECTION 12. Article 43.06, Code of Criminal Procedure, is
3-4 amended to read as follows:

3-5 Art. 43.06. CAPIAS OR CAPIAS PRO FINE MAY ISSUE TO ANY
3-6 COUNTY. A [The] capias or capias pro fine ~~[provided for in this~~
3-7 ~~Chapter]~~ may be issued to any county in the State, and shall be
3-8 executed and returned as in other cases, but no bail shall be taken
3-9 in such cases.

3-10 SECTION 13. Article 43.07, Code of Criminal Procedure, is
3-11 amended to read as follows:

3-12 Art. 43.07. EXECUTION FOR FINE AND COSTS. In each case of
3-13 pecuniary fine, an execution may issue for the fine and costs,
3-14 though a capias pro fine was issued for the defendant; and a capias
3-15 pro fine may issue for the defendant though an execution was issued
3-16 against the defendant's [his] property. The execution shall be
3-17 collected and returned as in civil actions. When the execution has
3-18 been collected, the defendant shall be at once discharged; and
3-19 whenever the fine and costs have been legally discharged in any way,
3-20 the execution shall be returned satisfied.

3-21 SECTION 14. Article 43.09, Code of Criminal Procedure, is
3-22 amended by adding Subsection (n) to read as follows:

3-23 (n) This article does not apply to a court governed by
3-24 Chapter 45.

3-25 SECTION 15. Article 43.091, Code of Criminal Procedure, is
3-26 amended to read as follows:

3-27 Art. 43.091. WAIVER OF PAYMENT OF FINES AND COSTS FOR
3-28 INDIGENT DEFENDANTS [IN JUSTICE OR MUNICIPAL COURT]. A ~~[municipal~~
3-29 ~~court, regardless of whether the court is a court of record, or a~~
3-30 ~~justice] court~~ may waive payment of a fine or cost imposed on a
3-31 defendant who defaults in payment if the court determines that:

- 3-32 (1) the defendant is indigent; and
- 3-33 (2) each alternative method of discharging the fine or
3-34 cost under Article 43.09 would impose an undue hardship on the
3-35 defendant.

3-36 SECTION 16. Article 45.045(a), Code of Criminal Procedure,
3-37 is amended to read as follows:

3-38 (a) If the defendant is not in custody when the judgment is
3-39 rendered or if the defendant fails to satisfy the judgment
3-40 according to its terms, the court may order a capias pro fine, as
3-41 defined by Article 43.015, issued for the defendant's arrest. The
3-42 capias pro fine shall state the amount of the judgment and sentence,
3-43 and command the appropriate peace officer to bring the defendant
3-44 before the court immediately or place the defendant in jail until
3-45 the business day following the date of the defendant's arrest if the
3-46 defendant cannot [can] be brought before the court immediately.

3-47 SECTION 17. Article 45.049, Code of Criminal Procedure, is
3-48 amended by adding Subsection (g) to read as follows:

3-49 (g) A community supervision and corrections department or a
3-50 court-related services office may provide the administrative and
3-51 other services necessary for supervision of a defendant required to
3-52 perform community service under this article.

3-53 SECTION 18. Chapter 45, Code of Criminal Procedure, is
3-54 amended by adding Article 45.0491 to read as follows:

3-55 Art. 45.0491. WAIVER OF PAYMENT OF FINES AND COSTS FOR
3-56 INDIGENT DEFENDANTS. A municipal court, regardless of whether the
3-57 court is a court of record, or a justice court may waive payment of a
3-58 fine or costs imposed on a defendant who defaults in payment if the
3-59 court determines that:

- 3-60 (1) the defendant is indigent; and
- 3-61 (2) discharging the fine and costs under Article
3-62 45.049 would impose an undue hardship on the defendant.

3-63 SECTION 19. Article 45.046(a), Code of Criminal Procedure,
3-64 is amended to read as follows:

3-65 (a) When a judgment and sentence have been entered against a
3-66 defendant and the defendant defaults in the discharge of the
3-67 judgment, the judge may order the defendant confined in jail until
3-68 discharged by law if the judge at a hearing makes a written
3-69 determination [determines] that:

4-1 (1) the defendant is not indigent and has
4-2 [~~intentionally~~] failed to make a good faith effort to discharge the
4-3 fine and costs [judgment]; or

4-4 (2) the defendant is [~~not~~] indigent and:
4-5 (A) has failed to make a good faith effort to
4-6 discharge the fines and costs under Article 45.049; and
4-7 (B) could have discharged the fines and costs
4-8 under Article 45.049 without experiencing any undue hardship.

4-9 SECTION 20. Article 102.011(a), Code of Criminal Procedure,
4-10 is amended to read as follows:

4-11 (a) A defendant convicted of a felony or a misdemeanor shall
4-12 pay the following fees for services performed in the case by a peace
4-13 officer:

4-14 (1) \$5 for issuing a written notice to appear in court
4-15 following the defendant's violation of a traffic law, municipal
4-16 ordinance, or penal law of this state, or for making an arrest
4-17 without a warrant;

4-18 (2) \$50 for executing or processing an issued arrest
4-19 warrant, [~~or~~] capias, or capias pro fine with the fee imposed for
4-20 the services of:

4-21 (A) the law enforcement agency that executed the
4-22 arrest warrant or capias, if the agency requests of the court, not
4-23 later than the 15th day after the date of the execution of the
4-24 arrest warrant or capias, the imposition of the fee on conviction;
4-25 or

4-26 (B) the law enforcement agency that processed the
4-27 arrest warrant or capias, if the executing law enforcement agency
4-28 failed to request the fee within the period required by Paragraph
4-29 (A) of this subdivision;

4-30 (3) \$5 for summoning a witness;

4-31 (4) \$35 for serving a writ not otherwise listed in this
4-32 article;

4-33 (5) \$10 for taking and approving a bond and, if
4-34 necessary, returning the bond to the courthouse;

4-35 (6) \$5 for commitment or release;

4-36 (7) \$5 for summoning a jury, if a jury is summoned; and

4-37 (8) \$8 for each day's attendance of a prisoner in a
4-38 habeas corpus case if the prisoner has been remanded to custody or
4-39 held to bail.

4-40 SECTION 21. Articles 43.09(m) and 43.12, Code of Criminal
4-41 Procedure, are repealed.

4-42 SECTION 22. This Act takes effect September 1, 2007.

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