

House Bill 3060
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

(1) issued by a judge of the court having jurisdiction of a case after commitment or bail and before trial, [the court]

or by a clerk at the direction of the judge; [;] and

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

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

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

Same as House version.

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

Art. 23.04. IN MISDEMEANOR CASE. In misdemeanor cases, the capias or summons shall issue from a court having jurisdiction of the case on the filing of an information or complaint. The summons shall be issued only upon request of the attorney representing the

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State and on the determination of probable cause by the judge, and shall follow the same form and procedure as in a felony case.

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

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

Same as House version.

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

Art. 43.015. DEFINITIONS. In this chapter:

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

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

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

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

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

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

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

SECTION 8. Chapter 43, Code of Criminal Procedure, is amended by adding Article 43.021 to read as follows:
Art. 43.021. CAPIAS OR CAPIAS PRO FINE IN ELECTRONIC FORM. A capias or capias pro fine may be issued in electronic form.

Same as House version.

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

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

(1) ~~[determines that]~~ the defendant is not indigent and has failed to make a good faith effort to discharge the fines and costs [or determines that the defendant wilfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay and enters

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~~that determination in writing in the court docket]; or~~
~~[and]~~

(2) the defendant is indigent and:

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

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

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

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

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

Same as House version.

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

Art. 43.05. CAPIAS PRO FINE SHALL RECITE [WHAT]. (a) A [Where such] capias pro fine issued for

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the arrest and commitment of a defendant convicted of a misdemeanor or felony, or found in contempt, the penalty for which includes a fine, [issues, it] shall recite [state the rendition and amount of] the judgment and sentence[;] and command a peace officer [the sheriff] to immediately bring the defendant before the court.

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

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

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

Same as House version.

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

Art. 43.07. EXECUTION FOR FINE AND COSTS. In each case of pecuniary fine, an execution may issue for the fine and costs, though a capias pro fine was issued for the defendant; and a capias pro fine may issue for the defendant though an execution was issued against the

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defendant's ~~[his]~~ property. The execution shall be collected and returned as in civil actions. When the execution has been collected, the defendant shall be at once discharged; and whenever the fine and costs have been legally discharged in any way, the execution shall be returned satisfied.

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

Same as House version.

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

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

Same as House version.

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

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

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

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

Same as House version.

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

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

Same as House version.

SECTION 18. Chapter 45, Code of Criminal Procedure, is amended by adding Article 45.0491 to read as follows: Art. 45.0491. WAIVER OF PAYMENT OF FINES AND COSTS FOR INDIGENT DEFENDANTS. A municipal court, regardless of whether the court is a

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court of record, or a justice court may waive payment of a fine or costs imposed on a defendant who defaults in payment if the court determines that:

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

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

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

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

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

(a) A defendant convicted of a felony or a misdemeanor shall pay the following fees for services performed in the

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

(a) A defendant convicted of a felony or a misdemeanor shall pay the following fees for services performed in the

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case by a peace officer:

- (1) \$5 for issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance, or penal law of this state, or for making an arrest without a warrant;
- (2) \$50 for executing or processing an issued arrest warrant, ~~or~~ **or** capias, or capias pro fine with the fee imposed for the services of:
 - (A) the law enforcement agency that executed the arrest warrant or capias, if the agency requests of the court, not later than the 15th day after the date of the execution of the arrest warrant or capias, the imposition of the fee on conviction; or
 - (B) the law enforcement agency that processed the arrest warrant or capias, if

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

- (3) \$5 for summoning a witness;
- (4) \$35 for serving a writ not otherwise listed in this article;
- (5) \$10 for taking and approving a bond and, if necessary, returning the bond to the courthouse;
- (6) \$5 for commitment or release;
- (7) \$5 for summoning a jury, if a jury is summoned; and
- (8) \$8 for each day's attendance of a prisoner in a habeas corpus case if the prisoner has been remanded to custody or held to bail.

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case by a peace officer:

- (1) \$5 for issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance, or penal law of this state, or for making an arrest without a warrant;
- (2) \$50 for executing or processing an issued arrest warrant or capias, with the fee imposed for the services of:
 - (A) the law enforcement agency that executed the arrest warrant or capias, if the agency requests of the court, not later than the 15th day after the date of the execution of the arrest warrant or capias, the imposition of the fee on conviction; or
 - (B) the law enforcement agency that processed the arrest warrant or capias, if:

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

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

- (3) \$5 for summoning a witness;
- (4) \$35 for serving a writ not otherwise listed in this article;
- (5) \$10 for taking and approving a bond and, if necessary, returning the bond to the courthouse;
- (6) \$5 for commitment or release;
- (7) \$5 for summoning a jury, if a jury is summoned; and
- (8) \$8 for each day's attendance of a prisoner in a habeas corpus case if the prisoner has been remanded to custody or held to bail.

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(See SECTION 20 above.)

SECTION 20. Same as SECTION 20 of House version, but see SECTION __ directly above. (Floor Amendment 1 changed Article 102.011(a) without striking SECTION 20.)

No equivalent provision.

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

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

Same as House version.

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

Same as House version.