

Distinguishing the Arrest Warrant, Capias, and Capias Pro Fine

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What is the proper instrument to procure custody PRIOR TO formal charging?

1. Arrest Warrant
2. Capias
3. Capias Pro Fine

What is the proper instrument to bring the defendant in for bond forfeiture AFTER formal charging but PRIOR to judgment?

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What is the proper instrument to ENFORCE a judgment for unpaid fine and/or costs AFTER judgment and sentence?

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Overview

- General Information about Arrest Warrant
- General Information about Capias
- General Information about Capias Pro Fine

Common Ground

- What do the Arrest Warrant, the Capias, and the Capias Pro Fine have in common?

- All are “writs”
- All result in arrest
 - Which triggers 4th Amendment Protections
 - ALL Require Probable Cause



Important Differences

- How are the Arrest Warrant, the Capias, and the Capias Pro Fine Different?
 - They are triggered by different events
 - They are issued at different stages of a criminal proceeding
 - They are issued either by a “magistrate” –or- by a “judge”

As we proceed...

- Distinguish the role of your judge acting in their capacity as the municipal judge from your judge acting in their capacity as a magistrate.

What's the Distinction?

- All Judges are Magistrates
 - Not all magistrates are judges
- Judge v. Magistrate
 - Judge: city-wide jurisdiction (Class C warrants)
 - Magistrate: county-wide jurisdiction (Class B+)

What is an arrest warrant?

- Proper when:
 - Verbal order of arrest is proper
 - Officer swears under oath that another has committed an offense (probable cause affidavit)
 - CCP authorized arrest
- Art. 15, CCP

Officer executing warrant

- Take before a magistrate
 - Without unnecessary delay, but no later than 48 hours after the arrest
- Out-of-county arrest
 - Take before magistrate in county of arrest
 - Magistrate has authority to take plea, set & collect fine, grant jail credit – send paperwork and money to court with jurisdiction
- Art. 15, CCP

What is a capias?

- A written order commanding any peace officer to arrest a person accused of an offense and to bring that person before the court immediately or on a date stated in the capias
- Art. 23 capias, CCP
- Art. 43 capias, CCP

The exception!!!

- Art. 45.014 “Arrest Warrant” in municipal courts
- Effect on art. 23 capias???

Officer executing capias

- May be executed by any officer
- Return must state disposition made by officer
- If not executed, return must:
 - Document reason for non-service
 - State any info on defendant's whereabouts
- Does not lose force if not executed by time fixed in capias

What is a capias pro fine?

- A writ issued when a judgment has been entered against an adult defendant who is not in custody or when an adult defendant fails to satisfy a judgment
- CCP 45.045

JUDGMENT and DEFAULT

- Makes arrangements to pay and fails to pay
- Fails to perform community service
- Pays with a check that has insufficient funds in the bank

What Does it Do?

- Shall state the amount of the judgment and sentence and command a peace officer to bring the defendant before the court or place the defendant in jail until the defendant can be brought before the court

But before commitment to jail:

Judge must determine either that:

- defendant is not indigent and has intentionally failed to make a good faith effort to pay fine/costs –or–
- defendant is indigent and could have discharged fine/costs by community service but has failed to make a good faith effort to do so

REMEMBER!

- The purpose of the *capias pro fine* is NOT to commit a defendant to jail. Rather, its purpose is to bring the defendant before the court to show cause as to why they did not comply with the court ordered judgment

Key Points about HB 3060

- Article 15.18 (authorizing magistrates to take pleas for out of county warrants) not applicable to *capias pro fines*.
- Article 17.19 (bail): if before filing of formal charging instrument, it's an "arrest warrant;" if after filing of formal charging instrument, it's a *capias*.

Key Points about HB 3060

- Distinguishes “capias” issued prior to trial under Art. 23 from “capias” issued under Art. 43 that occurs after judgment and sentence.
- Also, codifies *Sharp v. State*, 677 S.W. 2d 513 (Tex. Crim. App. 1984).

Key Points about HB 3060

- Requires that individuals arrested on *capias pro fine* be brought immediately before the issuing court or placed in jail until the business day following the arrest.
- Court costs for a *capias pro fine* is \$50.00.

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Remember the article 45.014 exception!

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Any questions?

CONFUSED?