

Procedural Law Changes Legislative Update 2007 80th Regular Legislature

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Before We Get Started...

- **Let's Make It Clear What Did NOT Change:**
 1. No DSC or Deferred Disposition for CDL Holders
 - Even if They Are in Their Personal Motor Vehicles!!
 2. There is Still no Pre-Trial Diversion for Chapter 45 Courts!!!!
 - That Would be "Masking" under Federal Guidelines!!!
 3. The Loop Hole in Article 42.12 is Still Available in County Court for CDL Holders
 - If You are in a Non-Record Court, You still have at Least Another 2 Years of "Leap Frog Appeals" Coming Your Way!!
 - Yes, what is going on in County Courts is Masking under Federal Guidelines.

HB 485 - Restitution

- Amends Article 45.041 CCP (Judgments)
 - Deletes Cap of \$500 on Restitution
 - Allows for Restitution in Hot Check Cases
 - Not to Exceed \$5,000
 - All Other Cases - No Maximum Dollar Amount
 - Was this a Problem?
 - Will this now be a Problem?
 - Must there be a "Victim?"
 - What's the Difference between "Damages" and "Restitution?"

HB 2267 - Deferred Disposition

- Indigent Issues
 - Old Law- Made it a Condition Precedent that All Court Costs be Paid before Deferred Disposition Could be Granted:
 - Legal? – Probably not (*Tate v. Short* – Equal Protection)
 - Strictly Followed? – Not by Judges who Know Case Law
 - New Law (Art. 45.051 (a-1) CCP)
“Notwithstanding any other provision of law...”
 - Installments
 - Community Service
 - Combination

HB 2267 - Deferred Disposition (Continued)

- Show Cause Hearing Now Required
 - Art. 45.051(c-1) – No Different than Existing DSC Requirement
 - Notice in Writing
 - Mailed to Address on File or on Citation
 - Stating Time and Date of Show Cause
 - Show What? Show why Order should not be Revoked!
 - “Additional Period” (Article 45.051(c-2))
 - Unclear
 - Presumably no longer than another 180 Days

HB 1470 – Notification for Family Violence Offenders

- Amends Art. 26.13 CCP - Requires Admonishment PRIOR to Plea of Guilty or No-Contest
- Amends Art. 42.0131 - Persons Convicted of Misdemeanors involving “Family Violence” that it is Unlawful to Possess or Transfer a Firearm or Ammunition
- Does the Legislature Know that Municipal Courts Hear Class C Assaults and Make Affirmative Findings of Family Violence pursuant to Art. 42.013 CCP?

HB 3060 – “The *Capias* Clean Up Bill”

Secs. 2, 3, 6, 7, 10, 13

- ALL RESULT IN SEIZURE; BUT ARE NOT THE SAME:
 - *Capias* – Issued by JUDGES (not Magistrates)
 - Chapter 23 – Bond Forfeiture (Pre-Judgment)
 - Chapter 43 – Procuring Custody of Defendant (Post-Judgment)
 - Arrest Warrant – Issued by Magistrate (not Judge)
 - Chapter 17 – Surety Surrenders Principal
 - *Capias Pro Fine* – Issued by Judges (not Magistrates)
 - Chapter 43 and 45 – Post Judgment Enforcement for Fines and/or Court Costs ONLY
 - 1st Time Ever there are Definitions for Each Writ in their Respective Chapters

HB 3060 (Section 1)

- Tries to Fix Article 15.18, CCP (Arrest for Out of County Offenses)
 - Art. 15.18 **only** applies to magistrates taking pleas on out-of-county Class C misdemeanors
 - Art. 15.18 was never intended to apply to a *capias pro fine*
 - As amended, Art. 15.18 is EXPRESSLY inapplicable to *capias pro fines*

HB 3060 – Electronic Issuance

- Section 4 – Amends Article 23.031 to Authorize the Electronic Issuance of a “*Capias*” (PRE-JUDGMENT)
- Section 8 – Adds Art. 43.021 Authorizing the Electronic Issuance of a “*Capias*” or “*Capias Pro Fine*” (POST-JUDGMENT)

HB 3060 – *Capias* & Summons in Misdemeanors (Sec. 5)

- Until Now, Article 23.04 has Never Expressly Required a Finding of Probable Cause before the Issuance of a *Capias* in *Misdemeanor Cases*
- Old Law Referred to Article 23.03 –
 - “*capias* shall be issued by the district clerk upon each indictment for felony presented”
- As Amended, Codifying Case Law
 - *Capias* in misdemeanor is triggered by filing of complaint or information
 - Requires the Judge to Determine Existence of Probable Cause

HB 3060 – Presentation Before Issuing Court

- Applies to Courts issuing *Capias Pro Fines* (Post-Judgment)
- Sec 11 (Amends by creating 43.05(b) and Sec. 16 (Amending 45.045(a))
 - Both REQUIRE that Defendants be brought before the issuing court NO LATER than the business day following the defendant’s arrest
- Not the Same as Art. 15.17 (Presentation before the Magistrate) – performance is by court not magistrate

HB 3060 – Commitment Orders

- Commitment Order in ALL TRIAL COURTS
 - Must be in writing
 - Issued after a hearing
 - Must state that community service would not have been undue hardship
- Art. 43.03 Governs Non-Chapter 45 Courts (County and District Courts) (Sec 9)
- Art. 45.045 & 45.046 Govern Chapter 45 Courts (Municipal and Justice Courts) (Secs. 16 & 19)

HB 3060 – Commitment Orders

- Sec. 19 – Judge at hearing makes a written determination that :
 - Defendant *is not* indigent and has failed to make a good faith effort to discharge the fine and costs
 - OR**
 - Defendant *is* indigent, has failed to make a good faith effort to discharge via Art. 45.049 (Community Service) and could have discharged without experiencing undue hardship

HB 3060 – Broadens Scope of *Capias Pro Fine*

- Sec. 11 - Can Now be Used
 - by All Trial Courts
 - Previously only applied in misdemeanors
 - District Courts were excluded
 - to enforce judgments of contempt imposing only a fine
 - Previously **ONLY** applied to “Defendants” (excluded contemnors)
 - Expands scope of *capias pro fine*

HB 3060 – More Clarification

- Sec. 12 Amending Art 43.06 CCP
 - Both *capias* and *capias pro fine* (both post-judgment) are executable statewide.
 - **No bail** for defendant seized pursuant to either *capias* or *capias pro fine*
 - Why? Post-judgment enforcement

HB 3060 – Application of Chapter 43, CCP

- Certain Parts of Chapter 43 do not apply to Chapter 45 courts (Secs. 14, 15, 17, 18)
 - 43.09 (Community Service)
 - Chapter 45 contains its own community service statute (Article 45.049)
 - Former 43.09(m) municipal court and community supervision services, now Art. 45.049(g)
 - 43.091 (Waiver of Fine and Costs)
 - Now only applies to courts not governed by Chapter 45
 - Chapter 45 now contains its own version Article 45.0491

Parts of Chapter 43 Govern *Capias Pro Fine* Issued by All Trial Courts

- *Capias Pro Fine* provisions applicable to All Trial Courts:
 - Art. 43.015 – Definitions
 - Art 43.05 – CPF Shall Recite
 - Art. 43.06 – CPF May Issue to Any County
 - Art. 43.07 – Execution for Fine and Costs
 - Art. 43.08 – Further Enforcement of Judgment
- Additional *Capias Pro Fine* provisions applicable to Chapter 45 Courts
 - Art. 45.045 – *Capias Pro Fine*
 - Art. 45.046 - Commitment

HB 3060 – Court Costs

- Secs. 20-21
 - Even after judgment courts costs may be assessed for the processing or execution of a *capias pro fine*
 - The court costs are \$50
 - The same amount is assessed for a *capias*
