

CHAPTER 2 SEARCH WARRANTS, ARREST WARRANTS, AND OTHER WRITS

1. The Chapter 15 Arrest Warrant

Warrants, in contrast to other writs such as the *capias* and *capias pro fine*, are issued primarily by judges in their capacity as magistrates. There is one notable exception to this rule in Texas: municipal judges and justices of the peace have authority to issue warrants of arrest for fine-only misdemeanors filed in their court pursuant to Article 45.014, C.C.P. The 85th Regular Legislature made significant changes relating to Article 45.014 warrants. The issuance of an arrest warrant is prohibited for the defendant’s failure to appear at the initial court setting, including failure to appear as required by a citation issued under Article 14.06(b), unless certain additional notice is provided by telephone or regular mail. Furthermore, judges are required to recall an arrest warrant for the defendant’s failure to appear if, before the arrest warrant is executed, the defendant voluntarily appears to resolve the arrest warrant and the arrest warrant is resolved in any manner authorized by the Code of Criminal Procedure; this is commonly referred to as the “safe harbor” provision.

As a magistrate, a municipal judge has authority to issue warrants of arrest for offenses including those that are outside of the municipal court’s jurisdiction, such as Class A and B misdemeanors and felonies. For those offenses, a magistrate’s authority for issuing arrest warrants is found in Chapter 15, C.C.P. Article 2.09, C.C.P. lists those persons who are magistrates in Texas. Included in that list are municipal judges. A magistrate’s authority is countywide. *Gilbert v. State*, 493 S.W.2d 783 (Tex. Crim. App. 1973) and *Ex parte Clear*, 573 S.W.2d. 224 (Tex. Crim. App. 1978). A magistrate’s authority to issue warrants is discussed in Checklist 2-1.

Checklist 2-1	Script/Notes
<p>A “warrant of arrest” is a written order from a magistrate directed to a peace officer commanding the officer to take the body of the person accused of an offense to be dealt with according to law.</p> <ul style="list-style-type: none"> <input type="checkbox"/> 1. No arrest warrant shall issue without probable cause supported by oath or affirmation. An arrest warrant may be issued: <ul style="list-style-type: none"> <input type="checkbox"/> a. When a verbal order of arrest is proper; <input type="checkbox"/> b. When a person swears under oath that another has committed an offense against the laws of the State; or 	<p>Art. 15.01, C.C.P. See <i>The Municipal Judges Book</i>: Chapter 1.</p> <p>Art. 1.06, C.C.P.</p> <p>Art. 15.03(a)(1), C.C.P.</p> <p>Art. 15.03(a)(2), C.C.P. A person may appear before the magistrate in person or they may be presented to the magistrate through an electronic broadcast system. Art. 15.03(c), C.C.P. A recording of the communication must be made and preserved, if the defendant is charged with the offense, until the defendant is acquitted or all appeals have been exhausted. Art. 15.03(d), C.C.P.</p>

- c. In any case in which the C.C.P. permits the issuance of an arrest warrant.
- 2. The arrest warrant:
 - a. Issues in the name of “The State of Texas;”
 - b. Names the person to be arrested, if known, or reasonably describes the person to be arrested, including any or all of the following:
 - (1) Nickname or “street” name;
 - (2) Age;
 - (3) Gender;
 - (4) Height and weight;
 - (5) Identifying marks; and
 - (6) Ethnic origin.
 - c. Alleges the commission of some offense against the laws of the State; and
 - d. Is signed by a magistrate with his or her office named in the body of the warrant or in connection with the officer’s signature.
- 3. An arrest warrant must also be supported by an affidavit of probable cause stating:
 - a. The name of the accused, if known, and if not known, a reasonably definite description;
 - b. The time and place of the commission of the offense, as definitely as can be stated by the affiant; and
 - c. Sufficient facts to support a finding of probable cause that the person named therein:

Art. 15.03(a)(3), C.C.P.

See *TMCEC 2022 Forms Book*:
Warrant of Arrest: Magistrate.

Arts. 15.04 and 15.05, C.C.P., Art.
1.06, C.C.P.

- (1) Committed the offense charged;
and
- (2) Committed it within the period
covered by the statute of
limitations.

- 4. The specific requisites of the complaint or affidavit
are covered later in this chapter.

- 5. An arrest warrant is valid throughout Texas, unless
issued by a city mayor.

- 6. Make sure a copy of any warrant or affidavit
is provided to the clerk of the court for public
disclosure once executed.

See Checklist 2-4.

Art. 15.06, C.C.P. A warrant issued
by a mayor is generally only valid
in the county in which it is issued.
Art. 15.07, C.C.P.

Art. 15.26, C.C.P.
See Checklist 2-11.

<p><input type="checkbox"/> b. A <i>capias</i> may be issued by the court in misdemeanor cases upon the filing of an information or complaint.</p>	<p>A <i>capias</i> may issue only after a judge’s determination of probable cause. Art. 23.04, C.C.P.; <i>Sharp v. State</i>, 677 S.W.2d 513 (Tex. Crim. App. 1984).</p>
<p><input type="checkbox"/> c. A <i>capias</i> may be issued in electronic form for a person’s failure to appear before a court or to comply with a court order.</p>	<p>Art. 23.031, C.C.P.</p>
<p><input type="checkbox"/> d. A <i>capias</i> shall be issued when a bail forfeiture is declared.</p>	<p>Art. 23.05, C.C.P.</p>
<p><input type="checkbox"/> e. Make sure copies of all <i>capiases</i> and affidavits are provided to the clerk of the court for public disclosure once executed.</p>	<p>Art. 15.26, C.C.P. See Checklist 2-11.</p>
<p><input type="checkbox"/> 2. A “<i>capias</i>” as defined in Chapter 43 is a writ that is: (1) issued by a court having jurisdiction of a case after judgment and sentence; and (2) directed to any peace officer of the State of Texas commanding the officer to arrest a person convicted of an offense and bring the arrested person before that court immediately or on a day or at a term stated in the writ.</p>	<p>Art. 43.015(1), C.C.P.</p>
<p><input type="checkbox"/> a. The court may issue a <i>capias</i>, as defined in Chapter 43, when a judgment and sentence have been rendered against a defendant and the defendant is absent.</p>	<p>Art. 43.04, C.C.P</p>
<p><input type="checkbox"/> b. A <i>capias</i>, issued pursuant to Chapter 43, may be issued in electronic form.</p>	<p>Art. 43.021, C.C.P.</p>
<p><input type="checkbox"/> c. A <i>capias</i> may be issued to any county in the State and shall be executed as in other cases, but no bail shall be taken.</p>	<p>Art. 43.06, C.C.P.</p>

CHAPTER 2 SEARCH WARRANTS, ARREST WARRANTS, AND OTHER WRITS

3. The Chapter 45 Arrest Warrant

Warrants, in contrast to other writs such as the *capias* and *capias pro fine*, are issued primarily by judges in their capacity as magistrates. There is one notable exception to this rule in Texas: municipal judges and justices of the peace have authority to issue arrest warrants for fine-only misdemeanors filed in their court pursuant to Art. 45.014, C.C.P. This Chapter 45 warrant is in many ways more similar to a *capias* than an arrest warrant, as it is issued by a judge as opposed to a magistrate and is often issued after the judge has jurisdiction over the offense due to the filing of the sworn complaint. It may also be issued by the judge after an affidavit establishing probable cause, but prior to formal charging, much like the Chapter 15 arrest warrant.

The 85th Regular Legislature made significant changes relating to the Article 45.014 warrant. The issuance of an arrest warrant is prohibited for the defendant's failure to appear at the initial court setting, including failure to appear as required by a citation issued under Article 14.06(b) unless certain additional notice is provided by telephone or regular mail. Furthermore, judges are required to recall an arrest warrant for the defendant's failure to appear if, before the arrest warrant is executed, the defendant voluntarily appears to resolve the arrest warrant and the arrest warrant is resolved in any manner authorized by the Code of Criminal Procedure; this is commonly referred to as the "safe harbor" provision.

Checklist 2-3	Script/Notes
<ul style="list-style-type: none"> <li data-bbox="212 989 915 1192"> <input type="checkbox"/> 1. Prior to issuing an arrest warrant for the defendant's failure to appear at the initial court setting, including failure to appear as required by a citation issued under Article 14.06(b), C.C.P., the judge must provide by telephone or regular mail to the defendant notice that includes: <ul style="list-style-type: none"> <li data-bbox="310 1304 915 1440"> <input type="checkbox"/> a. A date and time, occurring within the 30-day period following the date that notice is provided, when the defendant must appear before the justice or judge; <li data-bbox="310 1478 915 1545"> <input type="checkbox"/> b. The name and address of the court with jurisdiction in the case; <li data-bbox="310 1583 915 1719"> <input type="checkbox"/> c. Information regarding alternatives to the full payment of any fine or costs owed by the defendant, if the defendant is unable to pay that amount; 	<p data-bbox="1000 989 1256 1020">Art. 45.014(e), C.C.P.</p> <p data-bbox="1000 1058 1373 1125">See <i>TMCEC 2022 Forms Book</i>: Notice Initial Court Setting.</p> <p data-bbox="1000 1163 1406 1262">A court may send any notice using mail or electronic mail. Sec. 80.002, G.C.</p>

- | | |
|--|--|
| <ul style="list-style-type: none"> <input type="checkbox"/> d. A statement that the defendant may be entitled to a credit toward any fine or costs owed by the defendant if the defendant was confined in jail or prison after the commission of the offense for which the notice is given; and <input type="checkbox"/> e. An explanation of the consequences if the defendant fails to appear before the justice or judge as required by this article. | |
| <ul style="list-style-type: none"> <input type="checkbox"/> 2. The defendant must fail to appear before the justice or judge as required by this article. | |
| <ul style="list-style-type: none"> <input type="checkbox"/> 3. A defendant who receives notice may request an alternative date or time to appear before the judge if the defendant is unable to appear on the date and time included in the notice. | <p>Art. 45.014(f), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 4. A judge may issue a warrant for the arrest of the accused and deliver the same to the proper officer to be executed when a sworn complaint or affidavit based on probable cause has been filed before the municipal court | <p>Art. 45.014(a), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 5. The arrest warrant is sufficient if it: | <p>See <i>TMCEC 2022 Forms Book: Warrant of Arrest: Judge.</i></p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> a. Issues in the name of “The State of Texas;” | <p>Art. 45.014(b)(1), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> b. Is directed to the proper peace officer or some other person specifically named in the warrant; | <p>Art. 45.014(b)(2), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> c. Includes a command that the body of the accused be taken, and brought before the authority issuing the warrant, at the time and place stated in the warrant; | <p>Art. 45.014(b)(3), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> d. States the name of the person whose arrest is ordered, if known, or if not known, it describes the person as in the complaint; | <p>Art. 45.014(b)(4), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> e. States that the person is accused of some offense against the laws of this state, naming the offense; and | <p>Art. 45.014(b)(5), C.C.P.</p> |

- | | |
|--|--|
| <p><input type="checkbox"/> f. Is signed by the judge, naming the office of the justice or judge in the body of the warrant or in connection with the signature of the justice or judge.</p> | <p>Art. 45.014(b)(6), C.C.P.</p> |
| <p><input type="checkbox"/> 6. Chapter 15 applies to a warrant of arrest issued under this article, except as inconsistent or in conflict with this chapter.</p> | <p>Art. 45.014(c), C.C.P.
See Checklist 2-1.</p> |
| <p><input type="checkbox"/> 7. In a county with a population of more than two million that does not have a county attorney, a judge may not issue a warrant under this section for the offense of Issuance of Bad Check under Section 32.41, P.C., unless the district attorney has approved the complaint or affidavit on which the warrant is based.</p> | <p>Art. 45.014(d), C.C.P.</p> |
| <p><input type="checkbox"/> 8. A justice or judge shall recall an arrest warrant for the defendant's failure to appear if the defendant voluntarily appears and makes a good faith effort to resolve the arrest warrant before the warrant is executed.</p> | <p>Art. 45.014(g), C.C.P.</p> |

CHAPTER 2 SEARCH WARRANTS, ARREST WARRANTS, AND OTHER WRITS

4. Search Warrants for Persons and Property

A municipal judge, signing a search warrant in his or her capacity as a magistrate, must have geographical authority over the area to be searched (i.e., the county or counties in which the city is located). For example, an Austin municipal judge lacks the authority to issue a search warrant for property located in the City of El Paso. All magistrates have co-equal jurisdiction with all other magistrates within the county or counties in which their city is situated and their jurisdiction is coextensive with the limits of the county or counties. *Gilbert v. State*, 493 S.W.2d 783 (Tex. Crim. App. 1973) and *Ex parte Clear*, 573 S.W.2d. 224 (Tex.Crim. App. 1978).

Checklist 2-4	Script/Notes
<p>A “search warrant” is a written order from a magistrate to a peace officer commanding the officer to search for and to seize designated property or things and to return them to the magistrate.</p>	<p>Art. 18.01(a), C.C.P.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> 1. Review the search warrant, being certain it: <ul style="list-style-type: none"> <input type="checkbox"/> a. Issues in the name of “The State of Texas;” and <input type="checkbox"/> b. Directs any peace officer of the county to search the person, place, or thing named, and seize one or more of the following: <ul style="list-style-type: none"> <input type="checkbox"/> (1) Property acquired by theft or by any manner that makes its acquisition a penal offense; <input type="checkbox"/> (2) Property specifically designed, made, or adapted for or commonly used in the commission of an offense; <input type="checkbox"/> (3) Arms or munitions kept or prepared for purposes of insurrection or riot; <input type="checkbox"/> (4) Weapons prohibited by the Penal Code; <input type="checkbox"/> (5) Gambling devices or equipment, altered gambling equipment, or gambling paraphernalia; 	<p>Art. 18.02, C.C.P.</p>

- (6) Obscene materials kept or prepared for commercial distribution or exhibition;
 - (7) A drug, controlled substance, immediate precursor, chemical precursor, or other controlled substance property, including an apparatus or paraphernalia kept, prepared, or manufactured in violation of the laws of this state;
 - (8) Any property whose possession is prohibited by law;
 - (9) Implements or instruments used in commission of a crime;
 - (10) Property or items, except the personal writings by the accused, constituting evidence of an offense or constituting evidence tending to show that a particular person(s) committed an offense;
 - (11) Persons;
 - (12) Contraband subject to forfeiture under Chapter 59, C.C.P.; or
 - (13) Electronic customer data held in electronic storage.
- c. Identifies the property to be seized with particularity;
 - d. Identifies the location or property sought, including:
 - (1) A specific street address; and

See Checklist 2-6 for special rules concerning “evidentiary” warrants for mere evidence.

A warrant for electronic customer data can only be issued by a district judge. Art. 18B.353, C.C.P.

Art. 18.04(2), C.C.P.

Art. 18.04(2), C.C.P.

- | | |
|--|--|
| <ul style="list-style-type: none"> <input type="checkbox"/> (2) A full description of the building and surrounding areas. If no address is provided, this description should be detailed enough to distinguish the property to be searched. In cases of a multiple unit structure, such as apartment complexes, condominiums, and storage facilities, identify the specific unit to be searched. | |
| <ul style="list-style-type: none"> <input type="checkbox"/> e. Describes the person, place, or thing to be searched, including any or all of the following: <ul style="list-style-type: none"> <input type="checkbox"/> (1) Proper name, nickname, or street name; <input type="checkbox"/> (2) Age; <input type="checkbox"/> (3) Gender; <input type="checkbox"/> (4) Height and weight; <input type="checkbox"/> (5) Identifying marks; or <input type="checkbox"/> (6) Ethnic origin. | <p>Art. 18.04(2), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 2. Date and sign the warrant. | <p>Art. 18.04(4), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 3. Ensure that your name is included in clearly legible handwriting or in typewritten form along with your signature. | <p>Art. 18.04(5), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 4. Record the date and hour the warrant is signed on the face of the warrant. | <p>Art. 18.07(b), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 5. If the facts presented for the issuance of a search warrant also establish probable cause that a person has committed an offense, the search warrant may also order the arrest of that person. | <p>This is a “combination” search and arrest warrant. Art. 18.03, C.C.P.; see <i>TMCEC 2022 Forms Book: Search and Arrest Warrant</i>.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 6. With the exception of affidavits for search warrants that have been temporarily sealed, make sure a copy of all warrants and affidavits are provided to the clerk of the court for public disclosure, when executed. | <p>Art. 15.26, C.C.P.
 Art. 18.01(b), C.C.P.
 Art. 18.011, C.C.P.
 See Checklist 2-11.</p> |

CHAPTER 2 SEARCH WARRANTS, ARREST WARRANTS, AND OTHER WRITS

5. The Affidavit Supporting the Arrest Warrant, Capias, or Search Warrant

Checklist 2-5	Script/Notes
<p><input type="checkbox"/> 1. The affidavit must establish a substantial basis for concluding that there is a “fair probability” that a search will uncover evidence of wrongdoing or that a person has committed an offense.</p>	<p><i>Illinois v. Gates</i>, 462 U.S. 213 (1983).</p>
<p><input type="checkbox"/> 2. The affidavit must contain facts, not mere conclusions, from which the magistrate can make an independent determination of probable cause.</p>	<p>Art. 18.01(b), C.C.P. See <i>TMCEC 2022 Forms Book: Affidavit for Probable Cause for Arrest Warrant</i>.</p>
<p><input type="checkbox"/> a. The determination is based on the totality of the circumstances, practicality, and common sense.</p>	
<p><input type="checkbox"/> b. Probable cause is a level of certainty more than mere suspicion but less than a preponderance; it is not a more-likely-than-not standard.</p>	<p>See <i>The Municipal Judges Book: Chapter 1</i>.</p>
<p><input type="checkbox"/> 3. Any reliable evidence may be considered without regard to its admissibility at trial; hearsay and police records may be considered.</p>	
<p><input type="checkbox"/> 4. Do not consider any information not in the warrant affidavit.</p>	<p>The four-corners doctrine limits the determination of sufficient probable cause to the four corners of the affidavit. <i>Lagrone v. State</i>, 742 S.W.2d 659 (Tex. Crim. App. 1987); <i>Adkins v. State</i>, 717 S.W.2d 363 (Tex. Crim. App. 1986).</p>
<p><input type="checkbox"/> a. If the applicant for a warrant has additional information, have that information included in an affidavit that is attached to the warrant.</p>	<p>While the four-corners rule has been consistently applied to search warrants, its application to arrest warrants is less strict, especially with recent changes in the law allowing an oath to be made before a magistrate electronically. See “Rounding the Corners: Criminal Application of the Four-Corners Rule,” <i>The Recorder</i> (June 2012).</p>

- b. For search warrants submitted by electronic means, the magistrate may consider additional testimony or exhibits.

- 5. Determine whether the source of the information in the affidavit is reliable.
 - a. The affiant is presumed to be honest (because of the oath).
 - b. A named victim, eyewitness, or citizen informant who reports a crime is presumed reliable.
 - c. An unnamed informant’s reliability may be shown by:
 - (1) Recitation of lack of criminal record, good reputation in the community for general veracity, and gainful employment;
 - (2) Corroboration of details provided by the informant;
 - (3) Recitation that informant has provided true, correct, and reliable information in the past; or
 - (4) Declaration by informant against penal interest.

- 6. Determine the basis of the source’s knowledge and whether the information from the source is credible.
 - a. Is the information first-hand and the result of direct observation of the facts rather than an opinion or a conclusion?
 - b. Is the information hearsay and, if so, is there an indication of its reliability?
 - c. Is the information corroborated by other sources or independent investigation?

Magistrates who consider additional information will have additional responsibilities under the new Art. 18.01(b-1), C.C.P. See Checklist 2-10.

Wetherby v. State, 482 S.W.2d 852 (Tex. Crim. App. 1972).

- d. Are there details not commonly known that suggest inside information by the informant?
- e. In the case of a search warrant, does it state the time when the information was acquired?

- 7. The search warrant affidavit is generally public information after the warrant is executed and should be made available for public inspection.

- 8. Make sure a copy of all warrants and affidavits are provided to the clerk of the court for public disclosure.

Schmidt v. State, 659 S.W.2d 420 (Tex. Crim. App. 1983). Stale information will not support a conclusion that property is still on the premises to be searched.

Art. 18.01(b), C.C.P.
See Checklist 2-12.

Art. 15.26, C.C.P.
See Checklist 2-12.

CHAPTER 2 SEARCH WARRANTS, ARREST WARRANTS, AND OTHER WRITS

6. Search Warrants for Mere Evidence

Checklist 2-6	Script/Notes
<p>A “mere evidence” or evidentiary search warrant is an order from the magistrate to a peace officer to search for and seize property or items, except the personal writings of an accused, that constitute evidence of an offense or tend to show a particular person committed an offense.</p>	<p>Art. 18.02(a)(10), C.C.P. A blood warrant is an example of a “mere evidence” search warrant. See Checklist 2-7.</p>
<p><input type="checkbox"/> 1. An original mere evidence warrant may be issued by a judge of a municipal court of record or a county court judge who is a licensed attorney; a judge of a statutory county court, the Court of Criminal Appeals, or the Supreme Court.</p>	<p>Art. 18.01(h), C.C.P.</p>
<p><input type="checkbox"/> 2. Except under the limited circumstances noted below, neither a judge of a non-record municipal court nor a justice of the peace may issue a mere evidence warrant. The exception is for counties that do not have: (1) a judge of a municipal court of record who is a licensed attorney; (2) a county judge who is a licensed attorney; or (3) a statutory county court judge.</p>	<p>Art. 18.01(i), C.C.P.</p>
<p><input type="checkbox"/> 3. Any subsequent mere evidence warrant to search the same person, place, or thing subjected to a prior search under a mere evidence warrant may be issued only by a judge of a district court, a court of appeals, the Court of Criminal Appeals, or the Supreme Court.</p>	<p>Even municipal courts of record cannot issue a second mere evidence warrant. Art. 18.01(d), C.C.P.</p>
<p><input type="checkbox"/> 4. Greater specificity is required in the affidavit for an evidentiary warrant than for a regular search warrant.</p>	<p>Art. 18.01(c), C.C.P.</p>
<p><input type="checkbox"/> a. The affidavit must contain facts to establish probable cause that:</p> <p style="margin-left: 40px;"><input type="checkbox"/> (1) A specific offense was committed;</p> <p style="margin-left: 40px;"><input type="checkbox"/> (2) Specifically described property or items to be searched for and seized constitute evidence of the specific offense or that a particular person committed it; and</p>	<p>See Checklist 2-5 on probable cause.</p>

- (3) The property or items constituting evidence are located at or on the particular person, place, or thing to be searched.

- 5. A warrant to search for “mere evidence” — as opposed to items in Article 18.02(a)(1-9) — may not be issued for the office of a:
 - a. Newspaper;
 - b. News magazine; or
 - c. Television or radio station.

Art. 18.01(e), C.C.P.

CHAPTER 2 SEARCH WARRANTS, ARREST WARRANTS, AND OTHER WRITS

7. Blood Search Warrants

Checklist 2-7	Script/Notes
<p>A blood search warrant is an order from the magistrate to a peace officer to seize a sample of a person’s blood.</p> <p><input type="checkbox"/> 1. A blood search warrant may be issued by any magistrate who is a licensed attorney if:</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. The suspect refuses to submit to a breath or blood alcohol test; and</p> <p style="padding-left: 20px;"><input type="checkbox"/> b. Is charged with:</p> <p style="padding-left: 40px;"><input type="checkbox"/> (1) Driving While Intoxicated;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (2) Driving While Intoxicated with a Child Passenger;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (3) Flying While Intoxicated;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (4) Boating While Intoxicated;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (5) Assembling or Operating an Amusement Ride While Intoxicated;</p> <p style="padding-left: 40px;"><input type="checkbox"/> (6) Intoxication Assault; or</p> <p style="padding-left: 40px;"><input type="checkbox"/> (7) Intoxication Manslaughter.</p> <p><input type="checkbox"/> 2. Greater specificity is required in the affidavit for an evidentiary warrant than for a regular search warrant.</p> <p style="padding-left: 20px;"><input type="checkbox"/> a. The affidavit must contain facts to establish probable cause that:</p> <p style="padding-left: 40px;"><input type="checkbox"/> (1) A specific offense was committed;</p>	<p>Arts. 18.01(j) and 18.02(a)(10), C.C.P.</p> <p>Art. 18.01(j), C.C.P. See <i>TMCEC 2022 Forms Book: Blood Search Warrant.</i></p> <p>Sec. 49.04, P.C.</p> <p>Sec. 49.045, P.C.</p> <p>Sec. 49.05, P.C.</p> <p>Sec. 49.06, P.C.</p> <p>Sec. 49.065, P.C.</p> <p>Sec. 49.07, P.C.</p> <p>Sec. 49.08, P.C.</p> <p>Art. 18.01(c), C.C.P. See <i>TMCEC 2022 Forms Book: Affidavit for Blood Search Warrant.</i></p> <p>See Checklist 2-5 on probable cause.</p>

- (2) Specifically described property or items to be searched for and seized constitute evidence of the specific offense or that a particular person committed it; and
 - (3) The property or items constituting evidence are located at or on the particular person, place, or thing to be searched.

- 3. A warrant issued under Art. 18.10(a)(10) to collect a blood specimen may be executed in any county adjacent to the county in which the warrant was issued and by any law enforcement officer authorized to make an arrest in the county of execution. The specimen may be removed from the county in which it was seized and returned to the county in which the warrant issued without a court order. Arts. 18.067 and 18.10(b), C.C.P.

- 4. In the following circumstances, a blood search warrant is not necessary for police to obtain a blood sample:
 - a. A suspect voluntarily agrees to submit to the drawing of a blood sample;
 - b. A peace officer is mandated to obtain a blood sample if:
 - (1) the officer arrests the person for a motor or watercraft intoxication offense;
 - (2) the person refuses the officer's request to submit to the taking of a blood sample voluntarily;
 - (3) the person was the operator of a motor vehicle or watercraft involved in an accident that the officer reasonably believes occurred as a result of the offense; andSec. 724.012(a-1), T.C.

- (4) at the time of the arrest, the officer reasonably believes that as a direct result of the accident any individual has died, will die, or has suffered serious bodily injury.

- c. Subject to Sec. 724.012(a-1), T.C., a police officer is mandated to obtain a breath or blood sample where a person has been arrested for a motor or watercraft intoxication offense, the person refuses the officer's request to submit to the taking of a specimen voluntarily, and
 - (1) The person was the operator of a motor vehicle or a watercraft involved in a collision that the officer reasonably believes occurred as a result of the offense and, at the time of the arrest, the officer reasonably believes that as a direct result of the collision, an individual other than the person has suffered bodily injury and been transported to a hospital or other medical facility for treatment.
 - (2) The offense for which the person was arrested is Driving While Intoxicated with Child Passenger; or
 - (3) At the time of the arrest, the officer possesses or receives reliable information from a credible source that the person:
 - (A) Has been previously convicted of or placed on community supervision for Driving While Intoxicated with Child Passenger, Intoxication Assault, or Intoxication Manslaughter; or

Sec. 724.012(b), T.C.

- (B) On two or more occasions, has been previously convicted of or placed on community supervision for Driving While Intoxicated, Flying While Intoxicated, Boating While Intoxicated, or Assembling or Operating an Amusement Ride While Intoxicated.

- (4) A peace officer may not require the taking of a specimen under Section 724.012, T.C. unless the officer:
 - (A) obtains a warrant directing that the specimen be taken; or
 - (B) has probable cause to believe that exigent circumstances exist.

Sec. 724.012(e), T.C.

CHAPTER 2 SEARCH WARRANTS, ARREST WARRANTS, AND OTHER WRITS

8. Search Warrants to Photograph a Child. Art. 18.021, C.C.P.

Checklist 2-8	Script/Notes
<p><input type="checkbox"/> 1. The affidavit must contain the following information in addition to that normally required:</p> <p><input type="checkbox"/> a. The allegation of one of the following specific offenses:</p> <p><input type="checkbox"/> (1) Injury to a child;</p> <p><input type="checkbox"/> (2) Sexual assault of a child;</p> <p><input type="checkbox"/> (3) Aggravated sexual assault of a child; or</p> <p><input type="checkbox"/> (4) Continuous sexual abuse of young child or children.</p> <p><input type="checkbox"/> b. The name or a description of the victim;</p> <p><input type="checkbox"/> c. A statement that evidence of the offense or evidence that a particular person committed the offense can be detected by photographing the child; and</p> <p><input type="checkbox"/> d. A statement that the child to be located and photographed can be found at a particular place to be searched.</p> <p><input type="checkbox"/> 2. Special conditions for the execution of the warrant are also found in Article 18.021, C.C.P.</p> <p><input type="checkbox"/> 3. The return on the warrant shall include the exposed film.</p>	<p>Sec. 22.04, P.C.</p> <p>Sec. 22.011(a), P.C.</p> <p>Sec. 22.021, P.C.</p> <p>Sec. 21.02, P.C.</p> <p>Art. 18.01(f), C.C.P.</p> <p>Art. 18.021(c), C.C.P.</p> <p>Art. 18.021(d), C.C.P.</p>

-
- | | |
|--|------------------------------|
| <p><input type="checkbox"/> 3. If the officer is from a city, county, or other political subdivision, verify that he or she is designated as a person authorized to be issued the warrant.</p> | <p>Art. 18.05(d), C.C.P.</p> |
| <p><input type="checkbox"/> 4. If the officer is from a political subdivision other than a city or county, verify that the political subdivision routinely inspects premises to determine whether there is a fire or health hazard, unsafe building condition, or a violation of fire, health or building regulations, statutes, or ordinances.</p> | <p>Art. 18.05(d), C.C.P.</p> |
| <p><input type="checkbox"/> 5. A warrant may not be issued under Article 18.05, C.C.P., to a code enforcement official of a county with a population of 3.3 million or more for the purpose of allowing the inspection of specified premises to determine the presence of an unsafe building condition or a violation of a building regulation, statute, or ordinance.</p> | <p>Art. 18.05(e), C.C.P.</p> |
| <p><input type="checkbox"/> 6. The affidavit must demonstrate probable cause to believe that the specifically named violation or hazardous condition is present in the premises to be inspected.</p> | |
| <p><input type="checkbox"/> 7. The magistrate may consider the:</p> <ul style="list-style-type: none"><input type="checkbox"/> a. Specific knowledge of the affiant;<input type="checkbox"/> b. Age and general condition of the premises;<input type="checkbox"/> c. Previous violations or hazards found present in the premises;<input type="checkbox"/> d. Type of premises;<input type="checkbox"/> e. Purposes for which the premises are used; and<input type="checkbox"/> f. Presence of hazards or violations in, and the general condition of premises near, the premises sought to be inspected. | <p>Art. 18.05(c), C.C.P.</p> |

CHAPTER 2 SEARCH WARRANTS, ARREST WARRANTS, AND OTHER WRITS

10. Search Warrants and Affidavits Submitted by Reliable Electronic Means

In *Clay v. State*, 391 S.W.3d 94 (Tex. Crim. App 2013), the Court held, in light of the specific facts of the case, that the telephonic administration of an oath for a search warrant did not run afoul of Article 18.01. Judge Meyers, dissenting, stated that only the Legislature could expand the statute. See “Case Law and Attorney General Opinion Update” *The Recorder* (November 2013). It appears that the Legislature valued Judge Meyers’ dissent. During the 84th Legislature, subsection (b-1) was added to Article 18.01 of the Code of Criminal Procedure authorizing communication of information supporting the issuance of a search warrant by telephone or any other reliable electronic means. Additionally, a magistrate may examine, under oath, an applicant or another person on whose testimony the application is based.

For traditionalists, subsection (b-1) marks a major departure from the “four-corners rule.” While the warrant that is ultimately issued may contain all of the required and relevant information to establish probable cause, the content within its four corners may look nothing like the initial proposed warrant. It may contain scribbled additions, subtractions, and edits written in by a magistrate after questioning an applicant or witness under oath over the phone. Many have seen this coming since the passage of H.B. 976 in the 82nd Legislature in 2011. See “Rounding the Corners: Criminal Application of the Four-Corners Rule” *The Recorder* (June 2012).

Checklist 2-10	Script/Notes
<p>If a search warrant as submitted fails to establish probable cause, information communicated by telephone or other reliable electronic means may be considered by the magistrate in determining whether to issue a search warrant.</p>	<p>Considering additional information using Art. 18.01(b-1), C.C.P., is not required under the law. Alternately, the magistrate may simply deny the issuance of the warrant.</p>
<p><input type="checkbox"/> 1. If the applicant, and any person on whose testimony the application is based, is available to testify regarding additional facts, the magistrate may examine the person(s). If the magistrate chooses to do so, the magistrate shall:</p>	<p>Art. 18.01(b-1)(1), C.C.P.</p>
<p><input type="checkbox"/> a. Place the applicant, or person on whose testimony the application is based, under oath;</p>	<p>Art. 18.01(b-1)(2), C.C.P.</p>
<p><input type="checkbox"/> b. Acknowledge any attestation in writing on the affidavit if the applicant, or person on whose testimony the application is based, attests to the contents of the affidavit;</p>	<p>Art. 18.01(b-1)(2)(A), C.C.P.</p>
<p><input type="checkbox"/> c. Ensure that any testimony is recorded verbatim by an electronic recording device, by a court reporter, or in writing;</p>	

- | | |
|---|--|
| <ul style="list-style-type: none"> <input type="checkbox"/> d. Ensure that any electronic recording, court reporter’s notes, exhibits and any other written record are transcribed, certified as accurate and properly preserved; and | <p>Art. 18.01(b-1)(2)(B), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> e. Sign, certify the accuracy of, and preserve any other record; and ensure that the exhibits are preserved. | <p>Art. 18.01 (b-1)(2)(D), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 2. The applicant for a search warrant for which additional information is being considered, shall: <ul style="list-style-type: none"> <input type="checkbox"/> a. Prepare a proposed duplicate original of the warrant; and <input type="checkbox"/> b. Read or transmit the contents of the duplicate original warrant verbatim to the magistrate. | <p>Art. 18.01 (b-1)(3), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 3. The magistrate must ensure that the contents of a proposed duplicate original warrant as read or otherwise transmitted verbatim to the magistrate are entered into an original warrant, which then may serve as the original search warrant. | <p>Art. 18.01 (b-1)(3), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 4. A magistrate that modifies a warrant for which information is provided under Art. 18.01(b-1) shall: <ul style="list-style-type: none"> <input type="checkbox"/> a. Transmit the modified version of the warrant to the applicant by reliable electronic means; or <input type="checkbox"/> b. File the modified original and direct the applicant to modify the proposed duplicate original accordingly. | <p>Art. 18.01 (b-1)(4), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 5. The magistrate who issues a warrant for which information is provided under Art. 18.01(b-1) shall: | <p>Art. 18.01 (b-1)(5), C.C.P.
 Evidence obtained pursuant to a search warrant for which information was provided in accordance with Section 18.01(b-1) is not subject to suppression on the ground that issuing the warrant in compliance with this subsection was unreasonable under the circumstances, absent a finding of bad faith. Art. 18.01 (b-1)(6), C.C.P.</p> |

- a. Sign the original documents;
 - b. Enter the date and time of issuance on the warrant; and
 - c. Transmit the warrant by reliable electronic means to the applicant or direct the applicant to sign the judge's name and enter the date and time on the duplicate original.
6. Evidence obtained pursuant to a search warrant for which information was provided in accordance with Section 18.01(b-1) is not subject to suppression on the ground that issuing the warrant in compliance with this subsection was unreasonable under the circumstances, absent a finding of bad faith.

Art. 18.01 (b-1) (6), C.C.P.

CHAPTER 2 SEARCH WARRANTS, ARREST WARRANTS, AND OTHER WRITS

11. Search Warrant Return and the Immediate Disposition of Seized Property

Checklist 2-11	Script/Notes
<p><input type="checkbox"/> 1. Review the search warrant returned and determine:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. If the warrant was executed; <input type="checkbox"/> b. The manner of execution; and <input type="checkbox"/> c. If any articles were seized. <p><input type="checkbox"/> 2. Enter an order directing where and with whom the seized property will be kept for safekeeping.</p> <p><input type="checkbox"/> 3. Hold a hearing on any questions arising from the execution of the search warrant.</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. Discharge the defendant and release the property if good grounds for the issuance of the warrant are not shown. <input type="checkbox"/> b. Retain any criminal instruments seized and order them to be held by the sheriff subject to a subsequent order as provided by Articles 18.17, 18.18, and 18.19, C.C.P., or Chapter 59, C.C.P. <p><input type="checkbox"/> 4. The property seized generally may not be removed from the county without an order approving the removal signed by a magistrate in the county in which the warrant was issued.</p> <p><input type="checkbox"/> 5. File the search warrant with the clerk of the court having jurisdiction of the case.</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. Send a record of any proceedings to the court of jurisdiction. 	<p>See <i>TMCEC 2022 Forms Book: Order Directing Safe Keeping of Property Taken Under a Search Warrant</i>. Art 18.10, C.C.P.</p> <p>Art. 18.12, C.C.P.</p> <p>Art. 18.13, C.C.P. This provision presumably applies only if the defendant is also arrested, perhaps under a combination arrest/search warrant.</p> <p>Art. 18.10, C.C.P. Note that a blood specimen taken under Art. 18.067, C.C.P. may be removed from the county in which it was seized and returned to the county in which the warrant was issued without a court order. Art. 18.10(b), C.C.P.</p> <p>Art. 18.15, C.C.P.</p>

- b. Retain a copy of all search warrants, affidavits, returns, and related documents.
- 6. Make sure a copy of all warrants and affidavits are provided to the clerk of the court for public disclosure.

Art. 15.26, C.C.P.
See Checklist 2-12.

CHAPTER 2 SEARCH WARRANTS, ARREST WARRANTS, AND OTHER WRITS

12. Public Disclosure of Arrest Warrants and Affidavits

Checklist 2-12	Script/Notes
<ul style="list-style-type: none"> <input type="checkbox"/> 1. Persons arrested have a right to know under what authority the arrest is made. <input type="checkbox"/> 2. The officer making the arrest need not actually have the warrant in his or her physical possession. <input type="checkbox"/> 3. Upon request, the defendant has the right to see the warrant and supporting affidavits as soon as possible. <input type="checkbox"/> 4. Warrants and supporting affidavits are public information. 	<p>Art. 15.26, C.C.P.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> 5. Unless temporarily sealed, the magistrate’s clerk shall immediately, if executed, make a copy of warrants and affidavits. 	<p>Art. 18.01(b), C.C.P. An arrest warrant is executed by the arrest of the defendant. Art. 15.26, C.C.P. While “execution” is not explicitly defined with regard to search warrants, presumably it happens upon searching the place to be searched. Art. 18.06(b), C.C.P.</p> <p>The “magistrate’s clerk” is the clerk of the court held by the judge giving the judge authority as a magistrate.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> a. Copies shall be available for public inspection in the clerk’s office during normal business hours. <input type="checkbox"/> b. The clerk may charge for making copies. <input type="checkbox"/> c. The clerk may not charge for the right to inspect. <input type="checkbox"/> d. An open records request is not necessary. <input type="checkbox"/> e. A Rule 12 request is not necessary. 	

- ❑ 6. An attorney representing the State in the prosecution of felonies may request a district judge or the judge of an appellate court to temporarily seal an affidavit presented under Article 18.01(b), C.C.P.
 - ❑ a. A district or appellate judge may seal the affidavit if the prosecuting attorney establishes a compelling state interest that either: (1) public disclosure of the affidavit would jeopardize the safety of a victim, witness, or confidential informant or cause the destruction of evidence; or (2) the affidavit contains information obtained from a court-ordered wiretap that has not expired at the time the attorney representing the State requests the sealing of the affidavit.
 - ❑ b. The order may not prohibit the disclosure of information relating to the contents of a search warrant, return of a search warrant, or inventory of the property taken pursuant to a search warrant, or affect the right of the defendant to discover the contents of an affidavit. When the order expires, the affidavit must be unsealed.

Art. 18.01(b), C.C.P.
Art. 18.011, C.C.P.

Art. 18.011(a), C.C.P.

Art. 18.011(d), C.C.P.

CHAPTER 2 SEARCH WARRANTS, ARREST WARRANTS, AND OTHER WRITS

13. The Capias Pro Fine

A capias pro fine is a post-judgment enforcement mechanism for unpaid fines and/or court costs. Article 45.045 of the Code of Criminal Procedure requires judges to hold a show cause hearing to determine whether the judgment imposes an undue hardship on the defendant prior to issuing a capias pro fine. A court has discretion when making a determination of undue hardship, but Article 45.0491 provides a list of criteria that courts are authorized to consider: Additionally, a court must recall a capias pro fine if, before the capias pro fine is executed, (1) the defendant provides notice to the justice or judge that they have difficulty paying in compliance with the judgment and a hearing is set, or (2) the defendant voluntarily appears and makes a good faith effort to resolve the capias pro fine.

The issuance of a capias pro fine authorizes an arrest, but it is neither an arrest warrant (see Checklist 2-1), nor is it a capias (see Checklist 2-2). Remember that converting a fine and/or court costs to a term of confinement when a defendant is unable to pay violates the defendant’s constitutional rights. The 14th Amendment requires that defendants accused of fine-only offenses be provided “alternative means” of discharging the judgment to avoid incarceration (via time-payment plans or discharge through community service.) *Tate v. Short*, 401 U.S. 395 (1971). See “Pay or Lay: *Tate v. Short* Revisited,” *The Recorder* (March 2003).

Checklist 2-13	Script/Notes
<p>A capias pro fine is a writ: (1) issued by a court having jurisdiction of a case after judgment and sentence for unpaid fines and costs; and (2) directed to any peace officer of the State of Texas commanding the officer to arrest a person convicted of an offense and bring the arrested person before that court immediately or on a day or at a term stated in the writ.</p>	<p>Art. 43.015(2), C.C.P. Special rules apply to capias pro fines issued for offenses committed by those under age 17. See Checklist 13-22. See <i>TMCEC 2022 Forms Book: Capias Pro Fine</i>; <i>The Municipal Judges Book</i>: Chapter 5.</p>
<p><input type="checkbox"/> 1. Prior to issuing a capias pro fine for the defendant’s failure to satisfy the judgment according to its terms the court must hold a hearing to determine whether the judgment imposes an undue hardship on the defendant.</p>	<p>Art. 45.045(a-2), C.C.P. See <i>TMCEC 2022 Forms Book: Show Cause Prior to Issuing a Capias Pro Fine</i>.</p>
<p><input type="checkbox"/> 2. A court has discretion when making a determination of undue hardship, but is authorized to consider:</p>	<p>Judges may allow a defendant to appear by telephone or videoconference if a personal appearance would impose an undue hardship. Arts. 45.0201 and 45.0445, C.C.P.</p>
<p><input type="checkbox"/> a. Significant physical or mental impairment or disability;</p>	<p>Art. 45.0491, C.C.P.</p>

- | | |
|---|--|
| <ul style="list-style-type: none"> <input type="checkbox"/> b. Pregnancy and childbirth; <input type="checkbox"/> c. Substantial family commitments or responsibilities, including child or dependent care; <input type="checkbox"/> d. Work responsibilities and hours; <input type="checkbox"/> e. Transportation limitations; <input type="checkbox"/> f. Homelessness or housing insecurity; and <input type="checkbox"/> g. Any other factor the court determines relevant. | |
| <ul style="list-style-type: none"> <input type="checkbox"/> 3. At the hearing: <ul style="list-style-type: none"> <input type="checkbox"/> a. If the judge finds the judgment to impose an undue hardship, the judge must determine how the fine and costs should be satisfied. <input type="checkbox"/> b. If a justice or judge determines that the judgment does not impose an undue hardship, the judge must order the defendant to comply with the judgment not later than the 30th day after the determination is made. | <p>Art. 45.045(a-3), C.C.P.</p> <p>Art. 45.045(a-4), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 4. The court may issue a <i>capias pro fine</i> only if the defendant fails to: <ul style="list-style-type: none"> <input type="checkbox"/> a. Appear at the show cause hearing; or <input type="checkbox"/> b. Comply with an order issued at a show cause hearing. | <p>Art. 45.045(a-2), C.C.P. See <i>TMCEC 2022 Forms Book: Clerk's Affidavit for Capias Pro Fine.</i></p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 5. A <i>capias pro fine</i> may be issued in electronic form. | <p>Art. 43.021, C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 6. A <i>capias pro fine</i> shall recite the judgment and sentence and command the peace officer to immediately bring the arrested person to court. | <p>Arts. 43.05(a), C.C.P. and 43.045(a), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 7. A court must recall a <i>capias pro fine</i> if, before the <i>capias pro fine</i> is executed, the defendant: | <p>Art. 45.045(a-5), C.C.P.</p> |

- | | |
|--|---|
| <ul style="list-style-type: none"> <input type="checkbox"/> a. Provides notice to the justice or judge that they have difficulty paying in compliance with the judgment and a reconsideration hearing is set, or
 <input type="checkbox"/> b. Voluntarily appears and makes a good faith effort to resolve the capias pro fine. | <p>This reconsideration hearing was created by the Legislature in 2019, and judges may allow a defendant to appear by telephone or videoconference if a personal appearance would impose an undue hardship. Arts. 45.0201 and 45.0445, C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 8. A capias pro fine authorizes a peace officer to place the defendant in jail until the business day following the date of the defendant’s arrest if the defendant cannot be brought before the court immediately. | <p>Art. 43.045(a), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 9. If the court that issued the capias pro fine is unavailable, the arresting officer may take the defendant to one of the following locations in lieu of placing the defendant in jail: <ul style="list-style-type: none"> <input type="checkbox"/> a. if the court that issued the capias pro fine was a justice of the peace, to a justice of the peace or county criminal law magistrate court with jurisdiction over Class C misdemeanors that is located within the same county; or <input type="checkbox"/> b. if the court that issued the capias pro fine was a municipal court, to a municipal court judge that is located within the same city. | <p>Art. 45.045(a-1), C.C.P.</p> <p>Most municipal courts are unified, but state law does allow for the creation of multiple municipal courts. Capias pro fine commitment hearings may be heard at any court (or by any judge) in the city.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 10. A capias pro fine may be issued to any county in the State and shall be executed as in other cases, but no bail shall be taken. | <p>Art. 43.06, C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 11. A capias pro fine may issue simultaneously with civil enforcement of the judgment (i.e., execution). | <p>Arts. 43.07 and 45.047, C.C.P.</p> |

- 12. 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 that either:
 - a. The defendant is not indigent and has failed to make a good faith effort to discharge the fine or costs; or
 - b. The defendant is indigent and:
 - (1) has failed to make a good faith effort to discharge the fine or costs under Article 45.049, C.C.P. (community service); and
 - (2) could have discharged the fine or costs under Article 45.049, C.C.P., (community service) without experiencing any undue hardship.
- 13. A certified copy of the judgment, sentence, and order is sufficient to authorize confinement.
- 14. The court should set out a period of time between eight and 24 hours as the period the defendant must remain in jail to satisfy not less than \$150 of the fine and costs owed.

Art. 45.046(a), C.C.P. See *TMCEC 2022 Forms Book: Order of Commitment; Judgment/Jail Credit Addendum.*

Note: Article 45.0491, C.C.P., authorizes the waiver of fines and costs if the defendant defaults in payment and the court determines that (1) the defendant is indigent and (2) the performance of community service would constitute an undue hardship on the defendant.

Art. 45.046(b), C.C.P.

Art. 45.048, C.C.P.

Jail credit for time served before the judgment must be credited to each case concurrently. Post-judgment credit can be ordered to be served consecutively (or stacked) by the court if all cases with which the fine is to be treated consecutively are identified in the order. *Ex parte Hannington*, 832 S.W.2d 355 (Tex. Crim App. 1992); Tex. Atty. Gen. Op. JC-0393 (2001); *Ex parte Minjares*, 582 S.W.2d 105 (Tex. Crim. App. 1978).