

SUBJECT: Issuance by a court of a *capias*, *capias pro fine*, or an arrest warrant

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Peña, Vaught, Riddle, Escobar, Hodge, Mallory Caraway, Pierson, Talton

0 nays

1 absent — Moreno

WITNESSES: For — (*Registered, but did not testify:* Ray Martinez, Texas Municipal Courts Association)

Against — None

On — Ted Wood, Office of Court Administration

BACKGROUND: A *capias* is a writ issued by a court that has jurisdiction of a case after judgment and sentence. A *capias pro fine* is a writ issued by a court having jurisdiction of a case after judgment and sentence for unpaid fines and costs. These differ from an arrest warrant in that an arrest warrant is issued by a judge acting in a magisterial capacity, while both the *capias* and *capias pro fine* are issued by judges in conjunction with the judge presiding over a particular case. The *capias pro fine* warrant differs from a *capias* warrant in that it is issued for the sole purpose of arresting someone and bringing the defendant before the court because of non-payment of court-ordered fines, fees, and court costs.

Code of Criminal Procedure, ch. 45 explicitly authorizes justice of the peace (JP) courts and municipal courts to issue *capias pro fine* writs. Chapters 23 and 43 regulate the issuance of *capias* warrants by all Texas trial courts.

DIGEST: HB 3060 explicitly would authorize judges to issue *capias pro fine* warrants. The bill also would define the law regarding *capias*, *capias pro fine*, and arrest warrants. Finally, HB 3060 would include protections for indigent defendants.

HB 3060 would amend Code of Criminal Procedure, art. 23.01 and art. 43.015 to define “capias” as a writ:

- issued by a court with jurisdiction of a case after judgment and sentence;
- 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 or on a day at a term stated in the writ.

Art. 43.015 also would define a “capias pro fine” as a writ:

- issued by a court having jurisdiction of a case after judgment and sentence *for unpaid fines and costs*;
- 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 or on a day at a term stated in the writ.

HB 3060 would authorize the issuance of a capias pro fine in electronic form by amending Code of Criminal Procedure, art. 43.021. The bill also would amend art. 102.011(a) to expand the \$50 fee for executing or processing an issued arrest warrant or capias to include a capias pro fine.

The bill would amend art. 43.091 to allow any court to waive payment of a fine or costs imposed on a defendant who defaulted in payment if the court determined that the defendant was indigent and each alternative method of discharging the fine or cost under art. 43.09 would impose an undue hardship on the defendant. These alternatives include community services, work on county improvements programs, jail industries, discharge of debt through confinement, or electronic monitoring.

Code of Criminal Procedure, art. 45.049 would be amended to allow a community supervision and corrections department or court-related services office to provide the administrative and other services necessary for supervision of a defendant required to perform community service. The bill would add art. 45.0491 to allow municipal courts, regardless of whether they were courts of record or JP courts, to waive payment of a fine or costs imposed on a defendant who defaulted in payment if the court determined that the defendant was indigent and that discharging the fine

and costs through community service under art. 45.049 would impose an undue hardship on the defendant.

HB 3060 also would amend art. 17.19(b) to direct a magistrate to issue an arrest warrant if the magistrate found that there was cause for the surety to surrender the surety's principal. It would provide an affirmative defense to any liability on the bond that the court or magistrate refused to issue a capias or an arrest warrant for the principal and, after the refusal to issue the capias or warrant of arrest, the principal failed to appear.

The bill would amend art. 23.04 to require in misdemeanor cases that on the filing of an information or a complaint, a capias or summons would issue from a court. The summons would be issued only upon request of a prosecutor and on determination of probable cause by the judge and would follow the same form and procedure as in a felony case.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

HB 3060 would clarify existing practice. The Texas Judicial Council passed a resolution asking the Legislature to explicitly grant non-municipal and JP court judges the power to issue capias pro fine writs. HB 3060 would do this, while also clarifying the law regarding capias, capias pro fine, and arrest warrants. The distinctions between these have blurred in case law over the years, and HB 3060 would establish clear distinctions, making them more useful to judges and easier for appeals courts to review.

Capias and capias pro fine warrants are tools that commonly are used in criminal cases to compel the payment of fees and court costs. They are methods a court can use to enforce compliance with its orders. Current law only authorizes municipal and justice of the peace courts to issue capias pro fine warrants. Other county-level judges and district judges are authorized to issue capias writs under Code of Criminal Procedure, ch. 23 and ch. 43. There is disagreement among these county-level and district judges as to whether the authorization to issue capias warrants also grants them the ability to issue capias pro fine warrants.

Some of these judges already are issuing capias pro fine warrants. However, the lack of statutory authorization has made other courts reluctant to use them, and there is concern that without such authorization, these warrants would be quashed on appeal. To the extent that some judges are not currently using the capias pro fine warrant because they do

not believe they have the authority to do so, the system is failing to hold some defendants accountable in getting them to pay court-ordered fines, fees, and costs. HB 3060 explicitly would give all judges this tool.

The author plans to offer a floor amendment to prohibit the detention of an indigent person by ensuring that a person who claimed indigency was granted a hearing to prove indigency within one business day of being arrested.

**OPPONENTS
SAY:**

Expanding the capias pro fine warrant to all Texas judges would result in an increase in the jail population as more defendants were confined through use of these warrants. Texas jails already are dangerously overcrowded, and any available space should be used to hold violent offenders, not those who are late paying fines, fees, and costs.

HB 3060 also would result in indigent persons being held in jail for days or weeks because they could not pay off their fines, fees, or court costs. There is a constitutional ban on debtors prisons, and HB 3060 would come dangerously close to allowing courts to incarcerate persons who could not pay their debts.

HB 3060 is not necessary. Courts have broad authority to enforce their rulings and judgments under common law. The references to capias pro fine in ch. 45 dealing with JP and municipal courts does not mean that capias pro fine warrants may not be issued by other courts. Ch. 45 was meant to ensure municipal and JP courts had this judicial power, not restrict other county level and district courts from using it.

NOTES:

During second reading consideration yesterday before the bill was postponed, the House adopted an amendment by Rep. Peña that would prohibit the detention of an indigent person by ensuring that a person who claimed indigency was granted a hearing to prove the claim of indigency within one business day of being arrested.