



CAPIAS PRO FINES: DOS AND DON'TS

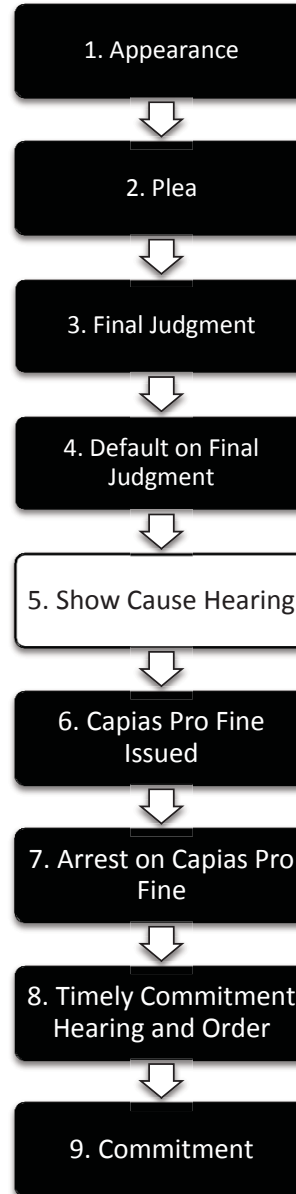
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DO

1. Consider All Enforcement Options
Know all of the “Tools” in Your “Tool Box”
2. Know the Applicable Law
 - Key Statutes (Code of Criminal Procedure)
 - Controlling Case Law
 - Canons of Judicial Conduct
3. Begin with the End in Mind
 - Know the Steps (Follow the Steps) Leading Up to Commitment on a Capias Pro Fine
 - Logistics
 - How is this going to work?
 - Who is going to do what?
 - When are they going to do it?
 - Communication
 - Whose job is it?
 - How will you know what’s happening?
 - What if you don’t?
 - Document Everything
 - Judgments
 - Correspondence
 - The Capias Pro Fine
 - The Commitment (a hearing and written determination are required)
4. Consider the Facts and Circumstances
 - Prior to Issuing the Capias Pro Fine (Recommended)
 - When Conducting a Commitment Hearing (Required)
5. Show Cause Hearings
 - “Failed” DSC and Deferred (Mandatory)
 - Prior to Issuing the Capias Pro Fine (Recommended)

Steps



DO NOT

1. Do Not Attempt to Enforce the Law by Ignoring the Law
 - Issuing a Capias Pro Fine Commits the Court to Conduct a Timely Commitment Hearing
 - Failure to Follow Procedure is a Violation of the Law and the Canons of Judicial Conduct
2. Do Not Confuse “Sentencing” with “Commitment”
 - The “sentence” in a Class C misdemeanor is the payment of fines and costs.
 - A defendant convicted of a Class C misdemeanor may not be sentenced to jail.
 - When enforcing a judgment via a capias pro fine, the court is still not sentencing the defendant to jail. Rather, confinement is a result of a commitment hearing and order per Article 45.046, CCP.
3. Do Not Confuse a “Capias Pro Fine” with “Contempt”
4. Do Not Presume a Defendant is Not Indigent. An Indigence Determination is Part of the Commitment Hearing.
5. Do Not Believe the Capias Pro Fine is Mandatory
 - It is discretionary.
 - It is not automatic.
 - It may not be the “right fit” for all courts.

KEY STATUTES: CODE OF CRIMINAL PROCEDURE

Art. 43.015(2) DEFINITIONS.

“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.

Art. 45.045. CAPIAS PRO FINE.

(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 be brought before the court immediately.

(a-1) 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: (1) 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 (2) 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.

(b) A capias pro fine may not be issued for an individual convicted for an offense committed before the individual’s 17th birthday unless:

(1) the individual is 17 years of age or older;
(2) the court finds that the issuance of the capias pro fine is justified after considering: (A) the sophistication and maturity of the individual; (B) the criminal record and history of the individual; and (C) the reasonable likelihood of bringing about the discharge of the judgment through the use of procedures and services currently available to the court; and (3) the court has proceeded under Article 45.050 to compel the individual to discharge the judgment.

(c) This article does not limit the authority of a court to order a child taken into custody under Article 45.058 or 45.059.

Art. 45.046. COMMITMENT.

(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 that: (1) the defendant is not indigent and has failed to make a good faith effort to discharge the fine and costs; or (2) the defendant is 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.

(b) A certified copy of the judgment, sentence, and order is sufficient to authorize such confinement.

(c) For purposes of a hearing described by Subsection (a), a defendant may be brought before the court in person or by means of an electronic broadcast system through which an image of the defendant is presented to the court. For purposes of this subsection, “electronic broadcast system” means a two-way electronic communication of image and sound between the defendant and the court and includes secure Internet video conferencing.

(d) For purposes of a hearing described by Subsection (a), if the court that issued the capias pro fine is unavailable, the following judicial officers may conduct the hearing: (1) a justice of the peace or county criminal law magistrate with jurisdiction over Class C misdemeanors who is located in the same county as the issuing court, if the issuing court was a justice of the peace court; or (2) a municipal court judge who is located in the same municipality as the issuing court, if the issuing court was a municipal court.

Art. 45.048. DISCHARGED FROM JAIL.

(a) A defendant placed in jail on account of failure to pay the fine and costs shall be discharged on habeas corpus by showing that the defendant: (1) is too poor to pay the fine and costs; or (2) has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of not less than \$50 for each period of time served, as specified by the convicting court in the judgment in the case.

(b) A convicting court may specify a period of time that is not less than eight hours or more than 24 hours as the period for which a defendant who fails to pay the fines and costs in the case must remain in jail to satisfy \$50 of the fine and costs.

CANONS OF JUDICIAL CONDUCT

“A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

Canon 2A.

Canon 3 of the Code of Judicial Conduct requires judges to perform duties impartially. In terms of adjudicative responsibilities, judges are supposed to maintain professional competence in the law and shall not be swayed by partisan interests, public clamor, or fear of criticism. Canon 3(B)(2).

In performing judicial duties, a judge shall neither manifest bias nor prejudice, including bias or prejudice based upon socioeconomic status, nor shall the judge knowingly permit staff, court officials, and others subject to the judge’s direction and control to do so. Canon 3(B)(6).

Judges are required to give any person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law. Canon 3(B)(8).

In municipal courts with more than one judge, presiding judges with supervisory and performance oversight over other judges should be mindful that a “judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.” Canon 3(C)(3).

Ultimately, it is the responsibility of judges in Texas to monitor and enforce the Code of Judicial Conduct. Judges who know of misconduct have disciplinary responsibilities. A judge who receives information clearly establishing that another judge has committed a violation of the Code should take appropriate action. A judge who knows that another judge has committed a violation of the Code which raises a substantial question as to the other judge’s fitness for office is obliged to inform the SCJC or take other appropriate action. Canon 3(D)(1).

FEDERAL AND STATE CASE LAW

U.S. Supreme Court

Tate v. Short, 401 U.S. 395 (1971) - The Equal Protection Clause of the 14th Amendment prohibits states from imposing a fine as a sentence and automatically converting it to a jail term solely because the defendant is indigent and cannot pay the fine in full

Bearden v. Georgia, 461 U.S. 660 (1983) - When the state determines that a fine or restitution are an adequate penalty for a crime, it may not imprison a defendant *solely* because the defendant lacked the resources to pay it. If, however, the probationer (1) has *willfully* refused to pay the fine or restitution

when he has the ability to pay or (2) has failed to make sufficient *bona fide* efforts to seek employment or borrow money, the state is justified in using imprisonment as a sanction to enforce collection.

- Opinions from the U.S. 5th Circuit Court of Appeals and the Texarkana Court of Appeals state that municipal judges and justices of the peace are bound by the holding in *Bearden*. See, *Garcia v. City of Abilene*, 890 F.2d 773 (5th Cir. 1989); *Ex parte Burks*, 2014 Tex. App. LEXIS 4507 (Unpublished Op).
- Nuanced and specific issues in Chapter 45 of the Code of Criminal Procedure, governing municipal and justice court proceedings, have not been considered by the Texas Court of Criminal Appeals. The Court of Criminal Appeals has stated that separate and distinct from the Code of Criminal Procedure, “*Bearden* prescribes a *mandatory* judicial directive.” *Gipson v. State*, 3983 S.W.3d 152, 157 (Tex. Crim. App. 2012).

Texas Court of Criminal Appeals

A judgment together with the court’s finding that the defendant failed to satisfy the terms of the judgment is sufficient probable cause to support issuance of a capias pro fine. *Jones v. State*, 119 S.W.3d 766 (Tex. Crim. App. 2003).

An unsworn complaint cannot be the basis of either a judgment or a subsequent capias pro fine. *Ex parte Bozeman*, 313 S.W.2d 300 (Tex. Crim. App. 1958).

Ordinances preempted by state law may not be enforced by means of a capias pro fine. *Ex parte Watson*, 225 S.W.2d 850 (Tex. Crim. App. 1949).

Unreasonable, arbitrary, and discriminatory ordinances violating the Texas and U.S. Constitutions may not be validly enforced by means of a capias pro fine. *Ex parte Smith*, 211 S.W.2d 204 (Tex. Crim. App. 1948).

A capias pro fine cannot be issued prior to either a complaint or a warrant and subsequently a valid judgment. *Ex parte Smith*, 265 S.W. 170 (Tex. Crim. App. 1924).

A defective complaint can invalidate a subsequent capias pro fine. *Ex parte Jonischkies*, 227 S.W. 952 (Tex. Crim. App. 1921).

A capias pro fine cannot be issued by a judge who is an injured party to an alleged crime. *Ex parte Ambrose*, 24 S.W. 291 (Tex. Crim. App. 1893).