

A SURVEY OF ENFORCEMENT OPTIONS IN FINE-ONLY OFFENSES

Cathleen Riedel

Program Director

Texas Municipal Courts Education Center

ACTIVE ENFORCEMENT: (GO GET 'EM)

- WARRANTS-----
Prejudgment tool
- CAPIAS PRO FINE---
Post-judgment tool
- CONTEMPT





PASSIVE:

(Come to Papa)

- DPS Omni –FTA Program
- TxDOT Scofflaw Program
- PRIVATE ENFORCEMENT:
 - Collection firms
- CIVIL ENFORCEMENT:
 - Abstract of Judgment
 - Writ of Execution

ACTIVE



CAPIAS PRO FINE

DEFINED IN ART. 43.015 CCP:

“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 the person convicted of the offense and bring the arrested person before that court immediately.”

PROCEDURE FOR CPF

1. Clerk files Affidavit for Capias pro fine stating offense defendant charged with; and date and citing Defendant's lack of compliance with Court's order or failure to appear
2. Judge issues CPF (writ) commanding officer to bring Defendant to court without delay or place in jail until next business day
3. After commitment hearing, judge enters Order of commitment

Defendant arrested, now what?

- A. Defendant taken to county jail, where he is released upon payment of delinquent amount
- B. Defendant is taken before Magistrate to pay his fine/costs
- C. Defendant taken to court of original jurisdiction, where court will determine fate of Defendant

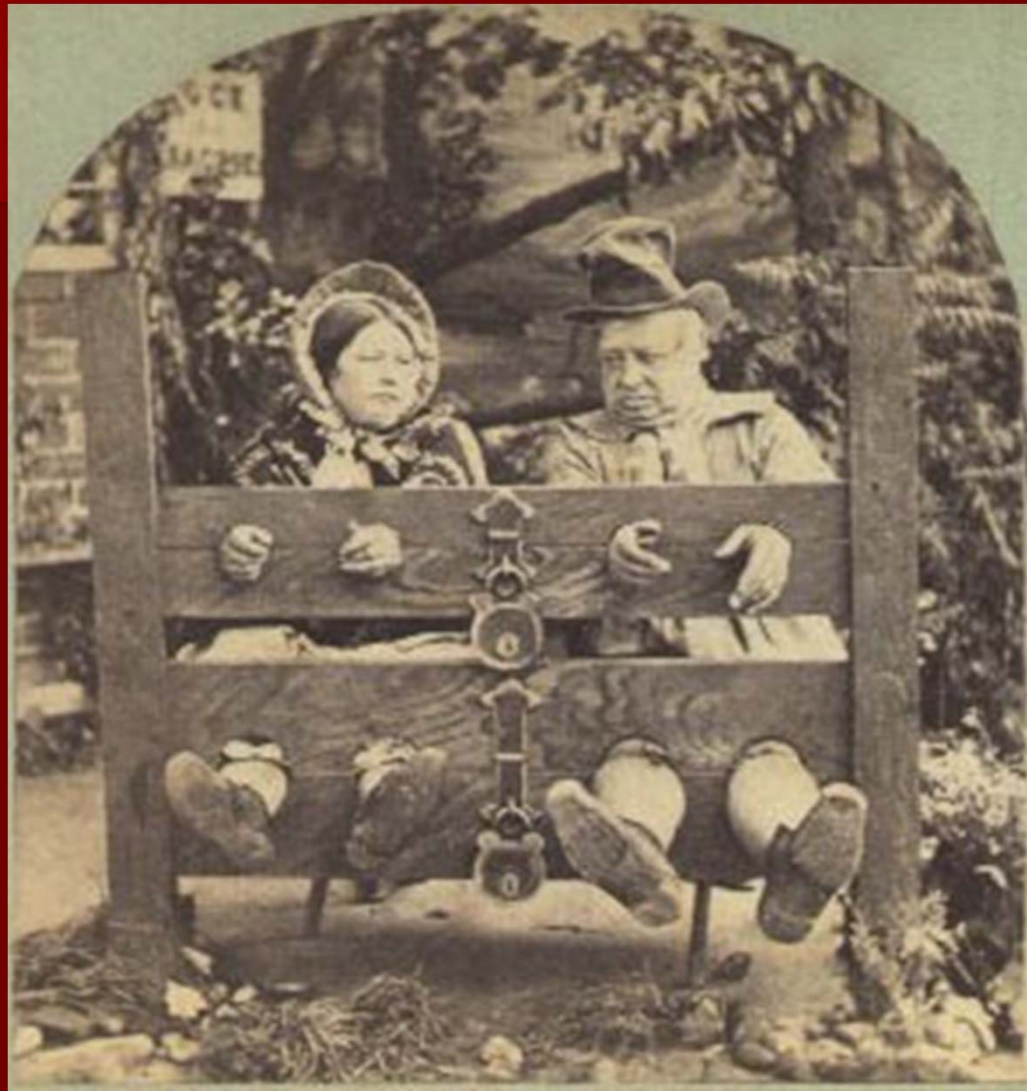
C.

- Is this how it's happening in your court?

COMMITMENT TO JAIL

- ARTICLE 45.046 CCP:
 - When a judgment and sentence have been entered against a defendant and defendant defaults in the discharge of the judgment, the court may order the defendant confined in jail.

VERY ACTIVE! WHAT'S THE CATCH?



THE JUDGE MUST FIND AND MAKE A WRITTEN DETERMINATION THAT:

- (1) THE DEFENDANT IS NOT INDIGENT AND HAS FAILED TO MAKE A GOOD FAITH EFFORT TO DISCHARGE THE FINES AND COSTS
OR
- (2) THE DEFENDANT IS INDIGENT AND HAS FAILED TO MAKE A GOOD FAITH EFFORT TO DISCHARGE THE FINES AND COSTS ASSESSED UNDER ART. 45.049 (Community Service in Satisfaction of Fine or Court Costs) AND DEFENDANT COULD HAVE DISCHARGED FINES AND COSTS UNDER 45.049 WITHOUT UNDUE HARDSHIP

WHAT IF DEFENDANT WAS UNDER 17 WHEN OFFENSE COMMITTED?

NO CPF **UNLESS**:

- 1. DEFENDANT NOW >17
- 2. COURT FINDS JUSTIFICATION BASED ON
 - SOPHISTICATED AND MATURITY OF DEF.
 - CRIMINAL HISTORY OF DEF. **AND**
 - REASONABLE LIKELIHOOD DISCHARGE THROUGH OTHER MEANS **AND**
- 3. COURT ALREADY PROCEEDED UNDER CONTEMPT PROVISIONS TO DISCHARGE JUDGMENT

WARRANTS-Prejudgment

- ART. 17.19 CCP- ARREST WARRANT FOR BOND FORFEITURE OR SURRENDER OF PRINCIPAL
- ART. 45.014 CCP-UPON SWORN COMPLAINT OR AFFIDAVIT BASED ON PROBABLE CAUSE, MAGISTRATE MAY ISSUE A WARRANT FOR ARREST OF ACCUSED



- **WHAT DO CAPIAS PRO FINE AND WARRANTS HAVE IN COMMON?**

- **BOTH ARE WRITS**
- **BOTH RESULT IN ARREST TRIGGERING 4TH AMENDMENT PROTECTION**
- **BOTH REQUIRE PROBABLE CAUSE TO ISSUE**

- **HOW ARE THEY DIFFERENT?**
- **TRIGGERED BY DIFFERED EVENTS**
 - **ISSUED AT DIFFERENT STAGES OF CRIMINAL PROCEEDING**
 - **MAGISTRATES ISSUE WARRANTS**
 - **JUDGES ISSUE CAPIAS PRO FINES**

CONTEMPT OF COURT

- SECTION 21.002(c) GC:

PUNISHMENT FOR CONTEMPT OF
COURT:

FINE NOT MORE THAN \$100

CONFINEMENT NOT MORE THAN 3 DAYS

OR BOTH

PASSIVE ENFORCEMENT

DPS FTA PROGRAM

CHAPTER 706 TRANSPORTATION CODE DENIAL OF RENEWAL OF LICENSE FOR FAILURE TO APPEAR

HOW DOES IT WORK

- If city has contracted with DPS:
- DPS may deny RENEWAL of driver's license for failure to appear based on citation or complaint or failure to pay or satisfy court order---Sec. 706.004 TC
- Warning required: under Sec. 706.003, officer must provide warning that FTA or satisfy court order may result in denied renewal of DL

HOW WELL DOES IT WORK

- 2007 Annual Activity Report of OCA
 - 922 jurisdictions reported - 6,974,089 violations
 - 5,581,607 traffic violations
 - 1,037,739 State law violations
 - 354,743 violations of city ordinances
- Revenues --- \$685,793,685
- 30% or 2,092,227 will fail to appear

Legislative History

- Chapter 706, Texas Transportation Code
- Authorized by Legislature – Sept. 1, 1995
- Initial program – only Class C traffic cases
- Expanded to all class C cases – 09/01/99
- Added Failure to pay or satisfy – 9/01/01
- Expanded to all courts/offenses – 6/18/03

HOW MUCH DOES IT COST DEFENDANT?

Sec. 706.006 TC:

ON FTA: \$30 administrative fee for each complaint or citation reported to DPS, unless person is acquitted of the charges for which person failed to appear—due when judgment entered on underlying offense

ON Failure to pay or satisfy judgment: pay \$30 administrative fee

WHERE DOES IT GO?

**SEC. 706.007 TC provides for \$30
administrative fee**

**Jurisdiction collects from violator at
disposition**

\$20 goes to State (quarterly report)

\$6 paid to OmniBase (quarterly)

\$4 jurisdiction retains

706.008 TC

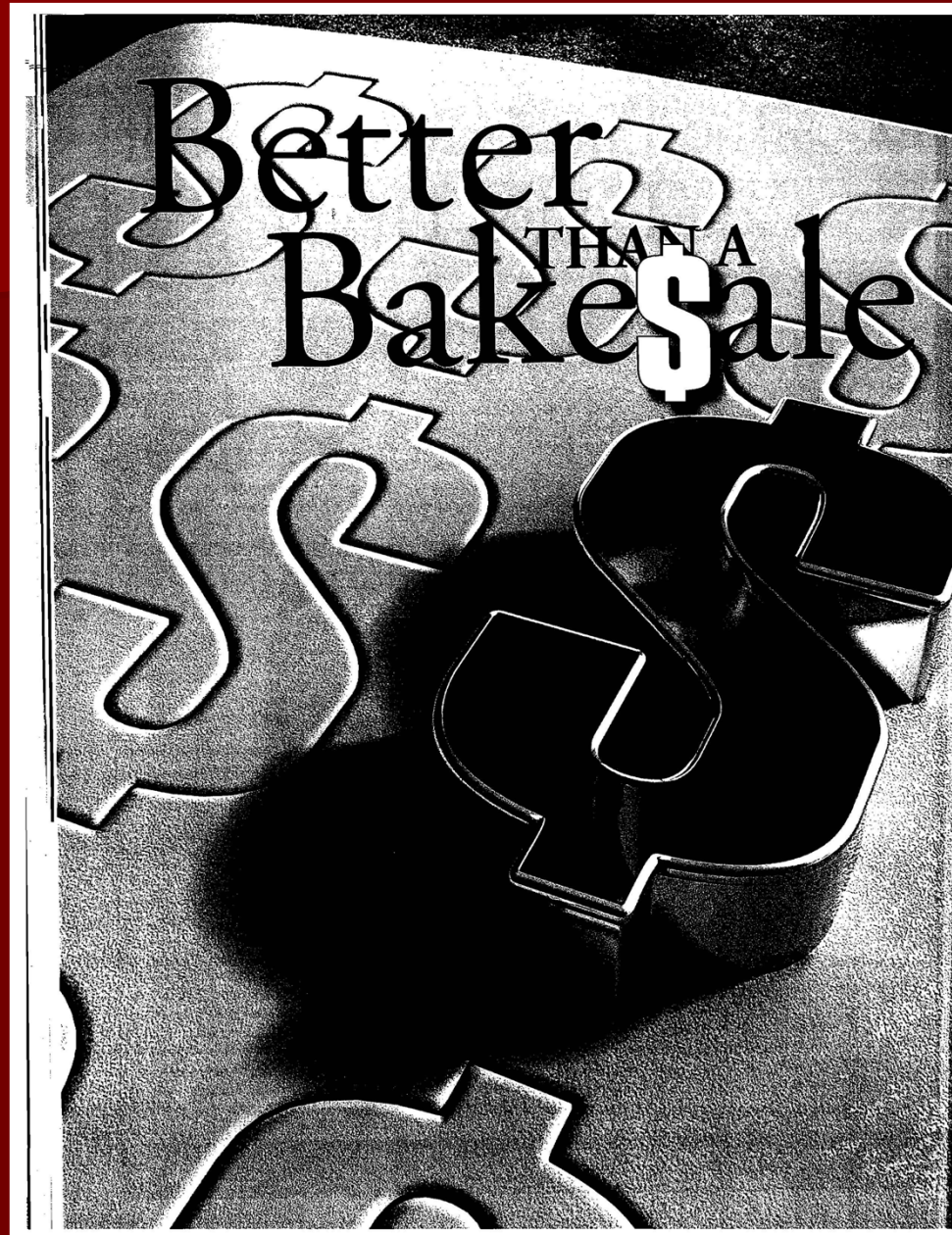
- **DPS MAY CONTRACT WITH PRIVATE VENDOR TO IMPLEMENT THIS PROGRAM:**
- **OmniBase Services –**
 - **Vendor selected by DPS**

PASSIVE

- **TEXAS SCOFFLAW PROGRAM**
- **CHAPTER 702 TC**
- **Section 702.003 TC provides that a county tax A/C may refuse to register a vehicle if the dept. receives notice from a city that it has contracted with of an outstanding warrant for FTA or failure to pay or satisfy court order on Traffic violation.**

■ **To utilize:**

- **Must have contract with county**
- **Peace officer must have issued written warning to each person to whom officer issues a citation, stating that the person might not be permitted to register vehicle in state if person fails to appear or fails to pay a fine**



County Magazine December 2008

- Dallas Morning News- Jan. 24, 2009

- Dallas County joins El Paso and Harris Counties in participating in Program
- “It’s a big stick...these are brand-new moneys coming in.” (David Marquez, enforcement director for El Paso)

PRIVATE ENFORCEMENT

- COLLECTION CONTRACTS:
- ARTICLE 103.0031 CCP
- City may contract with private attorney or private vendor to collect unpaid fines, fees, court costs and restitution ordered by the court

- The city may authorize a 30% collection fee on matters referred to collection agency on amounts more than 60 days past due
- Collection fee does not apply to case dismissed by court or to amounts satisfied through time-served or community service

- Defendant not liable for collection fees if court of "original jurisdiction" has determined defendant is indigent or has insufficient resources or income (Art. 103.0031(d))
- 30% collected by municipality may only be used to compensate collection agency

CIVIL ENFORCEMENT

ART. 45.047 CCP

- If after a judgment and sentence is entered the defendant defaults in payment of a fine, the justice or judge may order the fine and costs collected by execution against the defendant's property in the same manner as a judgment in a civil suit.

CIVIL ENFORCEMENT

- Writ of Execution

- Usually issued by clerk
- Requested by prosecutor
- Legal process of enforcing judgment by seizing and selling property of debtor

- Abstract of Judgment

Lien filed on property

filed with County Clerk

must be renewed every 10 years

RESOURCES

DPS-OMNI-FTA PROGRAM:

www.omnibase.com

OMNIBASE SERVICES OF TEXAS

7320 N. MOPACE, SUITE 310

AUSTIN, TEXAS 78731

(512) 346-6511

- TMCEC

- www.tmcec.com

- 800-252-3718

- OFFICE OF COURT ADMINISTRATION

- 512-463-1625







CHILL
YA'LL



■ The End