

It's an Order: Writs, Warrants and Judgments

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OBJECTIVES

- **OBJECTIVE 1:** Define writs, warrants and judgments and be able to recognize and identify each one.
- **OBJECTIVE 2:** Distinguish between the different types of warrants.
- **OBJECTIVE 3:** Differentiate between a judgment and sentence and understand what a judgment must include.

What is a "Writ"?

- **A written order issued by a court and directed to an official or party, commanding the performance of some act**
- **Origin: in Early English Law = Something Written**

Warrant of Arrest

- 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

Capias

- A capias is a writ (written order) from a court directed to a peace officer commanding him or her to arrest a person accused of an offense and bring him or her before that court immediately or on a day or at a term stated in the capias

Capias Pro Fine

- A capias pro fine is issued by a judge when a defendant is absent at the time judgment is rendered or when a defendant defaults in payment of fine. It is a written order from a court directed to a peace officer commanding him or her to arrest a person and bring the person before the court or place him or her in jail until he or she can be brought before the court

Capias Pro Fine

REMINDER!!!

The purpose of the Capias Pro Fine is NOT to commit a defendant to jail. Its purpose is to bring the defendant before the Court to show cause why they did not comply with the court ordered judgment

Search Warrant

- A written order from a magistrate to a peace officer commanding the officer to search for and seize designated property or things and return them to the magistrate

What is an "Order"?

- Any rule or regulation of a court with which one must comply or risk a contempt action

Standing Orders

- A written order, signed by the Judge to allow Clerks to "process" payments, DSC, deferred disposition, etc.

Deferred Disposition Order

- Article 45.051
Code of Criminal
Procedure

Deferred Disposition

- Always "discretionary" with the Court
- Requires a plea of Guilty or Nolo Contendere; or Finding if Guilt
- Payment if court costs:
 - at time of order, in installments, by community service, or any combination
 - Court defers proceedings for up to 180 days

**Deferred Disposition
Special Expense Fee (SEF)**

- Article 45.051(a) authorizes the collection of the "special expense fee" prior to the end of the deferral period.
- Judge may elect not to impose the SEF for good cause shown by the defendant.
- If the defendant violates probation and Judge orders collection of the SEF, amount must be applied toward payment of the fine imposed by Judge

Deferred Disposition

All fine only Offenses, EXCEPT:

- Offenses committed in a construction maintenance work zone (542.404 T.C.)
- DUI and consumption w/ 2 convictions
- CDL Holders
 - Accused of state law or city ordinance violations relating to "Motor Vehicle Control"
 - Excluding "parking violations"

**Deferred Disposition
Conditions**

The Judge may order additional conditions:

- Professional counseling
- Pay restitution not to exceed fine
- Diagnostic testing for alcohol or drugs
- Psychosocial assessment
- Participate in alcohol and drug abuse treatment or education program

Deferred Disposition Conditions

(cont'd)

- Pay costs directly or through court costs for any testing, assessment, treatment or education program
- Drivers Safety Course
- Any reasonable condition

Mandatory Deferred Conditions

Deferred Disposition is Mandatory if Defendant is under age 25

- Only applies to "traffic offenses" that are "moving violations"
- Provisional DL holders required to retake the driving test at DPS.

Mandatory Deferred Conditions

All alcohol related offenses, including PI under age 21 are required to:

- Complete an Alcohol Awareness Course
- Community service required (except DUI)
 - First offense - 8 to 12 hours
 - Second offense - 20 to 40 hours

Deferred Disposition - Compliance

If Defendant complies with all the conditions of the Deferred Disposition Order and presents evidence of completion to the court in a timely manner, the Clerk prepares the Judgment and gives evidence of compliance to Judge for dismissal of the charge

Deferred Disposition - Failure to Comply

If Defendant fails to comply with the terms of the Deferred Disposition Order:

- Mandatory Show Cause Hearing
 - Notice in Writing to address on file
- Court may impose judgment or reduce fine if Defendant is 25+
- Court **MUST** impose fine if Defendant is under 25
- Defendant pays fine or may appeal

Deferred Disposition Reporting

Reporting to DPS

- May not report traffic offenses deferred unless Defendant fails to complete and there is a conviction (Sec. 543.3204, T.C)
- Must report deferrals of all Alcoholic Beverage Code offenses (Sec. 106.117, A.B.C.)
- Use DIC-15 when case is deferred

**Driving Safety Course and
Motorcycle Operator Course**

Article 45.0511
Code of Criminal Procedure

**Driving Safety Course and
Motorcycle Operator Course**

The Judge shall grant DSC if:

- Charged with Eligible Offense
- Defendant Elects in a timely manner
- Defendant meets Qualifications

**Driving Safety Course and
Motorcycle Operator Course**

Applies to offenses:

- Within jurisdiction of municipal or justice courts
- Involves the operation of Motor Vehicle
 - Subtitle C Rules of the Road
 - Disobeying Warning Signs
 - Juvenile offenders for same violations

Driving Safety Course and Motorcycle Operator Course

DSC - NOT ELIGIBLE

- Speeding 25 mph over posted limit
- Speeding over 95 mph
- Passing a School Bus
- Hit and Run Offenses (Occupied Vehicles)
- Serious traffic offenses (CMV)
- Construction Zone While Workers Present
 - Subtitle C Rules of Road
 - Not including Seatbelt and Inspection Offenses
- Offenses Committed by CDL Holders

Driving Safety Course and Motorcycle Operator Course

DSC - What constitutes an Election ?

- In person
- By Attorney
- By Certified Mail

Driving Safety Course and Motorcycle Operator Course

DSC - What constitutes "Timely"?

- Before the Answer Date
- Mailbox Rule, Art. 45.013, C.C.P.
 - If "postmarked" on or before answer date
 - Must be received within 10 days of answer date
 - Keep Envelope (legible postmark is evidence of receipt)

Driving Safety Course and Motorcycle Operator Course

DSC - Discretionary

Judge may grant DSC to Defendant even if Defendant does not qualify under normal circumstances.

- Under 45.0511(d), the Judge may grant DSC even if Defendant has completed DSC in the past 12 months; or request is untimely, but before Final Disposition
- Under 45.051, Judge MAY allow DSC as Condition of Deferred Disposition

Driving Safety Course Safety Seats and Seatbelts

Violations of 545.412 & 545.413(b), T.C.

Specialized DSC with 4 hours of instruction "Encouraging Use of Child Seats and Seatbelts"

- Can take Specialized DSC even if Defendant has taken regular DSC within last 12 months (DL record must show no special DSC in last 12 months)

Driving Safety Course Safety Seats and Seatbelts

Processing DSC

- Court enters judgment on plea
- Collects Costs
- Court defers imposition of judgment for 90 days
- During deferral period - Defendant must present:
 - Certificate of Completion
 - Certified Copy of Driving Record from DPS
 - Affidavit of Eligibility

**Driving Safety Course
Safety Seats and Seatbelts**

DSC Compliance

- On proof of Completion
 - Court removes judgment
 - Reports date of completion to DPS
- Court may only dismiss one charge for each completion

**Driving Safety Course
Safety Seats and Seatbelts**

DSC Show Cause Hearing

- Court Notifies Defendant in Writing:
 - Of Failure to comply
 - Of time of hearing
 - Of place of hearing
- Court mails notice to address on file
- Court requires Defendant to appear

**Driving Safety Course
Safety Seats and Seatbelts**

DSC Show Cause Hearing

- If defendant appears, Court may
- Allow extension of time to present required documents, or
 - Court may impose judgment

Defendant may pay the fine or appeal

Driving Safety Course Safety Seats and Seatbelts

DSC Show Cause Hearing

If defendant Fails to Appear, Court may:

- Impose judgment on underlying charge;
- Require immediate payment of outstanding fine;
- Issue Capias Pro Fine

• IS THE JUDGMENT
THE SAME AS THE
SENTENCE?

What is a "Judgment"?

The written declaration of the court signed by the Judge and entered into the record showing the conviction or acquittal of the Defendant. All cases should have a final judgment.

• ARTICLE 42.01 PROVIDES THAT:

• The "Judgment" is the formal determination of guilt or innocence and that the "sentence" is the consequence or penalty derived from the finding of guilt in the judgment.

• Another definition is:

• A judgment is a written declaration of the court signed by the trial judge and entered in the record showing the conviction or acquittal of the defendant. The sentence served shall be based on the information contained in the judgment.

What Should a Judgment Contain?

- The title and number of the case;
- That the case was called and parties appeared;
- The plea or pleas of the defendant to the offense(s) charged;
- Whether the case was tried before a jury or a jury was waived;
- The submission of the evidence, if any;
- In cases tried before a jury, that the jury was charged by the court;
- In the event of a conviction, that the defendant is adjudged guilty of the offense as found by the verdict of the jury or the finding of the court, and that the defendant be punished in accordance with the jury's verdict or the court's finding as to the proper punishment.
- In the event of conviction, that the defendant pay a fine;

Continued:

- In the event of acquittal, that the defendant be discharged;
- The offense or offenses for which the defendant was convicted;
- The date of the offense(s) and degree of offense for which the defendant was convicted;
- The date judgment is entered;
- The date sentence is imposed; and
- The terms of any plea bargain.

**Don't forget your
"Resources"**

- **TMCEC - Forms Book**
- **Local TCCA Chapter**
- **TCCA - Procedures & Reference Guide**
- **Other Municipal Courts**
