

BILL ANALYSIS

Senate Research Center

H.B. 3060
By: Pena (Watson)
Jurisprudence
5/7/2007
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A *capias pro fine* is a writ ordering the arrest of a criminal defendant who has failed to pay court-ordered fines, fees, and the like. Chapter 45 (Justice and Municipal Courts), Code of Criminal Procedure, expressly authorizes municipal courts and justice courts to issue a *capias pro fine*, but there is no such expressed statutory authorization for district courts and county-level courts. The Texas Judicial Council passed a resolution recommending enactment of legislation to authorize the issuance of a *capias pro fine* in criminal cases from all courts.

H.B. 3060 authorizes district courts and county-level courts to issue a *capias pro fine*. This bill provides clarification of the differences amongst the *capias* issued prior to trial, the *capias* relating to the execution of judgment, the *capias pro fine* currently provided under Chapter 45, Code of Criminal Procedure, and the arrest warrant issued by a magistrate. This bill additionally amends current language in the statute to make technical corrections.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 15.18, Code of Criminal Procedure, by adding Subsection (d) to provide that this article (Arrest for Out-of-County Offense) does not apply to an arrest made pursuant to a *capias pro fine* issued under Chapter 43 (Execution of Judgment) or Article 45.045 (Capias Pro Fine).

SECTION 2. Amends Articles 17.19(b) and (c), Code of Criminal Procedure, as follows:

(b) Requires the court, rather than the court or magistrate, that finds that there is cause for the surety to surrender the surety's principal, to issue a *capias* for, rather than a warrant for the arrest of, the principal. Requires a magistrate, in a prosecution pending before the magistrate, to issue a warrant of arrest for the principal if the magistrate finds that there is cause for the surety to surrender the surety's principal. Makes conforming and nonsubstantive changes.

(c) Makes a conforming change. Makes a nonsubstantive change.

SECTION 3. Amends Article 23.01, Code of Criminal Procedure, to redefine "*capias*."

SECTION 4. Amends Article 23.031, Code of Criminal Procedure, to delete existing text including failure to pay a fine as a reason for which a district clerk, county clerk, or court is authorized to issue a *capias* in electronic form.

SECTION 5. Amends Article 23.04, Code of Criminal Procedure, as follows:

Art. 23.04. IN MISDEMEANOR CASE. Requires the issuance of a *capias* or summons in a misdemeanor case from a court having jurisdiction of the case on the filing of an information or complaint. Requires the summons to be issued only upon request of the attorney representing the state and on the determination of probable cause by the judge.

SECTION 6. Amends Article 23.05(a), Code of Criminal Procedure, to require a capias to be immediately issued for the arrest of the defendant if a forfeiture of bail is declared by a court or a surety. Makes nonsubstantive changes.

SECTION 7. Amends Chapter 43, Code of Criminal Procedure, by adding Article 43.015, as follows:

Sec. 43.015. DEFINITIONS. Defines "capias" and "capias pro fine."

SECTION 8. Amends Chapter 32, Code of Criminal Procedure, by adding Article 43.021, as follows:

Art. 43.021. CAPIAS OR CAPIAS PRO FINE IN ELECTRONIC FORM. Authorizes the issuance of a capias or capias pro fine in electronic form.

SECTION 9. Amends Article 43.03, Code of Criminal Procedure, by amending Subsection (d) and adding Subsection (e), as follows:

(d) Prohibits a court from ordering a defendant confined under Subsection (a) of this article (Fine Discharged) unless the court makes a written determination at a hearing that the defendant is not indigent and has failed to make a good faith effort to discharge the fines and costs, or that the defendant is indigent and has failed to make a good faith effort to discharge the fines and costs and could have made said discharge without experiencing any undue hardship. Deletes existing text prohibiting a confined defendant unless the court makes a determination that the defendant willfully refused to take certain actions to pay a fine and determines that no alternative method of discharging fines and costs provided by Article 43.09 is appropriate for the defendant.

(e) Provides that this article does not apply to a court governed by Chapter 45 (Justice and Municipal Courts).

SECTION 10. Amends Article 43.04, Code of Criminal Procedure, to delete existing text authorizing the court to order a capias for the defendant's arrest when a judgment and sentence have been rendered against a defendant specifically for a fine. Makes nonsubstantive changes.

SECTION 11. Amends Article 43.05, Code of Criminal Procedure, as follows:

Art. 43.05. New heading: CAPIAS PRO FINE SHALL RECITE. (a) Requires a capias pro fine issued for the arrest and commitment of a defendant convicted of a misdemeanor or felony, or found in contempt and whose penalty includes a fine, to recite the judgment and sentence, and to command a peace officer, rather than the sheriff, to immediately bring the defendant before the court. Deletes existing text requiring a capias to state the rendition and the amount of the judgment and sentence.

(b) Creates this subsection from existing text. Provides that 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. Makes nonsubstantive changes.

SECTION 12. Amends Article 43.06, Code of Criminal Procedure, as follows:

Art. 43.06. New heading: CAPIAS OR CAPIAS PRO FINE MAY ISSUE TO ANY COUNTY. Authorizes the issuance of a capias or capias pro fine, rather than a capias as provided for in this chapter, to any county in the state.

SECTION 13. Amends Article 43.07, Code of Criminal Procedure, to replace text referring to a capias with text referring to a capias pro fine in relation to a case of pecuniary fine. Makes a nonsubstantive change.

SECTION 14. Amends Article 43.09, Code of Criminal Procedure, by adding Subsection (n) to provide that this article does not apply to a justice or a municipal court governed by Chapter 45.

SECTION 15. Amends Article 43.091, Code of Criminal Procedure, as follows:

Sec. 43.091. New heading: WAIVER OF PAYMENT OF FINES AND COSTS FOR INDIGENT DEFENDANTS. Authorizes a court, rather than certain types of courts, to waive payment of a fine or cost imposed on a defendant who defaults in payment if the court determines that the defendant is indigent and that each alternative method of discharging the fine or cost would impose an undue hardship on the defendant.

SECTION 16. Amends Article 45.045(a), Code of Criminal Procedure, to make conforming changes.

SECTION 17. Amends Article 45.049, Code of Criminal Procedure, by adding Subsection (g) to authorize a community supervision and corrections department or a court-related services office to provide the administrative and other services necessary for supervision of a defendant required to perform community service under this article (Community Service in Satisfaction of Fine or Costs).

SECTION 18. Amends Chapter 45, Code of Criminal Procedure, by adding Article 45.0491, as follows:

Sec. 45.0491. WAIVER OF PAYMENT OF FINES AND COSTS FOR INDIGENT DEFENDANTS. Authorizes a municipal court, regardless of whether the court is a court of record, or a justice court to waive payment of a fine or costs imposed on a defendant who defaults in payment if the court determines that the defendant is indigent and that alternative methods of discharging the fine or cost would impose an undue hardship on the defendant.

SECTION 19. Amends Article 45.046(a), Code of Criminal Procedure, to authorize a court to order a defendant to be confined, when a judgment and sentence have been entered against a defendant and the defendant defaults in the discharge of the judgment, if the court makes a written determination at a hearing that the defendant is not indigent and has failed, rather than intentionally failed, to make a good faith effort to discharge the fines and costs, or that the defendant is indigent and has failed to make a good faith effort to discharge the fines and costs and could have made said discharge without experiencing any undue hardship.

SECTION 20. Amends Article 102.011(a), Code of Criminal Procedure, to require a defendant convicted of a felony or misdemeanor to pay \$50 for the execution or procession of an issued arrest warrant, capias, or capias pro fine.

SECTION 21. Repealer: Articles 43.09(m) (regarding certain authorities of a municipal court and a community supervision and corrections department or a court-related services office that are duplicated by amendments made by this Act) and 43.12 (Capias for Confinement), Code of Criminal Procedure.

SECTION 22. Effective date: September 1, 2007.