

TEXAS JUSTICE COURT TRAINING CENTER

TEXAS STATE UNIVERSITY – SAN MARCOS
701 BRAZOS STREET, SUITE 710
AUSTIN, TEXAS 78701
PHONE: (512) 347-9927 OR (800) 687-8528
FAX: (512) 347-9921

2014 - 2015

Justice of the Peace Program

Noncompliant Criminal Defendants

Presented by:

Justice Melissa Goodwin
Third Court of Appeals, Place 4
Phone: 512-463-1733

COPYRIGHT © 2015 Texas Justice Court Training Center.

All rights reserved.

No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system without the prior written permission of the Texas Justice Court Training Center unless such copying is expressly permitted by federal copyright law. Address inquiries to: Permissions, Texas Justice Court Training Center,
701 Brazos Street, Suite 710, Austin, TX 78701

Presented by The Hon. Melissa Goodwin
Justice, Third Court of Appeals, Austin, Texas
melissa.goodwin@txcourts.gov

Noncompliant Criminal Defendants

Learning Objectives

- Identify the elements of failure to appear and violation of promise to appear and where those statutes are located;
- Request a complaint for FTA or VPTA in appropriate circumstances;
- Identify the judge's role in the bond forfeiture process;
- Apply the procedures associated with issuing a capias pro fine;
- Differentiate between the commitment process and the capias pro fine process;
- Identify risks associated with improperly issuing capias pro fines;
- Utilize technology to access handbooks, statutes, and rules of procedure relating to this topic.

Citations ,Complaints, and Arrest Warrants

Commission of an Offense/Issuance of a Citation

- Before anything happens in justice court, an offense is committed.
- An arrest typically follows the commission of an offense. Various Texas statutes authorize a peace officer who has made an arrest to issue a "citation" or "written notice" and release the person arrested instead of taking him before a magistrate. -Article 14.06, Code of Criminal Procedure & Section 543.003, Transportation Code.
- In most instances, the officer is also authorized to commit the person to jail, after which the person may be released on bail.

Issuance of a Citation

- At the time a citation is issued, its primary purpose is to record the arrested person's promise to appear before a magistrate at a designated time and place.
- In many instances, the magistrate named in the citation is a justice of the peace.
- Issuance of the citation to the accused does not create a criminal case in the court of the magistrate named in the citation.

Jurisdiction?

Bronson is pulled over for speeding on 9/30/2015. At that time, the peace officer who made the traffic stop issues Bronson a written notice to appear in justice court on 10/15/2015. Does the court have personal jurisdiction over Bronson on 10/1/2015?

1. Yes
2. No
3. It depends

Citation vs. Charging Instrument

- A “trial court’s jurisdiction over a particular defendant [is] conferred by a charging instrument.” *Trejo v. State*, 280 S.W.3d 258 (Tex. Crim. App. 2009) (Keller, P.J., concurring).
- A trial court which lacks personal jurisdiction over the defendant should take no action regarding a criminal matter. Do nothing pertaining to the charged offense until a charging instrument is filed.

Citation vs. Charging Instrument

- A court must have personal jurisdiction over the defendant before taking any action, including:
 - Issuance of an arrest warrant;
 - Reporting the defendant to DPS via the OMNIBASE system;
 - Issuance of a capias;
 - Forfeiture of a defendant’s bond;
 - Requiring the defendant to post an appearance bond;
 - Accepting a plea of guilty or no contest.

Types of Charging Instruments

- Valid charging instruments in justice court include:
 1. Complaints which meet the requisites listed in Article 45.019 of the Code of Criminal Procedure
 2. “Written notices,” most often duplicate copies of citations issued by peace officers, filed pursuant to Article 27.14(d) of the Code of Criminal Procedure.

“Written Notice” as a Charging Instrument

- When a duplicate copy of the citation issued to the defendant is filed as the charging instrument it both serves as a complaint (to which the defendant may plead "guilty," "not guilty," or "nolo contendere") **and** gives the justice court notice of when the defendant must appear in accordance with the promise to appear that he gave in order to be released from custody.

Limits on Written Notices as Charging Instruments

- If the defendant has been charged by written notice, “the written notice serves as a complaint to which the defendant may plead "guilty," "not guilty," or "nolo contendere." **If the defendant pleads "not guilty" to the offense or fails to appear based on the written notice, a complaint shall be filed that conforms to the requirements of Chapter 45 of this code, and that complaint serves as an original complaint.**”

“Written Notice:” Purpose When Charging Instrument is a Complaint

- If a peace officer files a sworn complaint with the justice court, he or she may also deliver to the court a copy of the citation issued to the defendant in order to give the justice court notice of when the defendant must appear in accordance with the promise to appear that he gave in order to be released from custody.
- If this occurs, the complaint is the charging instrument, not the citation.
- The Department of Public Safety currently follows the above practice in several Texas counties (see handout).

Who creates and files the complaint?

If a defendant is charged by citation and fails to appear, a complaint **shall** be filed. Ideally, who should file the complaint?

1. A prosecutor
2. A peace officer
3. The justice court clerk

Prosecutors and/or Peace Officers Should File Complaints

- TJCTC's position: It is vital that a trial court remain impartial with respect to criminal prosecutions.
- The filing of a complaint tolls the statute of limitations, which aids the prosecution. (See Article 12.05, Code of Criminal Procedure.)
- If the defendant pleads not guilty or fails to appear and no complaint has been filed to replace the citation, we recommend setting the case for a pretrial hearing.

Complaints in Justice Court

- A complaint is the preferred charging instrument in justice court.
- A complaint may be the first charging instrument filed with the court, or it may be filed after the defendant fails to appear or pleads not guilty in order to meet the requirements of Article 27.14(d) of the Code of Criminal Procedure.

Requisites of a Complaint in Justice Court

- A complaint is sufficient, without regard to its form, if it substantially satisfies the following requisites:

- (1) it must be in writing;
- (2) it must commence "In the name and by the authority of the State of Texas";
- (3) it must state the name of the accused, if known, or if unknown, must include a reasonably definite description of the accused;

Requisites of a Complaint in Justice Court

- (4) it must show that the accused has committed an offense against the law of this state, or state that the affiant has good reason to believe and does believe that the accused has committed an offense against the law of this state;
- (5) it must state the date the offense was committed as definitely as the affiant is able to provide;
- (6) it must bear the signature or mark of the affiant; and

Requisites of a Complaint in Justice Court

- (7) it must conclude with the words "Against the peace and dignity of the State."
- (8) A complaint filed in justice court must allege that the offense was committed in the county in which the complaint is made.

What should the court do?

Roger is arrested on 10/31/2015 for disorderly conduct and issued a citation requiring him to appear before the justice court on 11/15/2015. A copy of the citation is filed with the justice court on 11/4/2015. If Roger fails to appear, may the court issue an arrest warrant on the DOC offense?

1. Yes
2. No

Sworn Complaint Must Precede Arrest Warrant

• Article 45.014 of the Code of Criminal Procedure states that **when a sworn complaint or affidavit based on probable cause** has been filed before the justice or municipal court, the justice or judge may issue a warrant for the arrest of the accused and deliver the same to the proper officer to be executed.

Failure to Appear and Violation of Promise to Appear

What should the court do?

A written notice to appear for speeding, issued to Bronson on 9/30/2015, is filed in justice court on 10/3/2015. Bronson fails to appear on 10/15/2015 as ordered. The justice court may:

1. Set a "show-cause" hearing
2. Request an FTA complaint
3. Request a VPTA complaint
4. Convict Bronson of the offense

Violation of Promise to Appear (VPTA): Sec. 543.009, Transp. Code

• A defendant commits the offense of violation of promise to appear if he:

- 1. Is issued a written notice to appear;
- 2. Is accused of committing a Rules of the Road Transportation Code offense; and
- 3. "Wilfully violates" his written promise to appear

Violation of Promise to Appear

• VPTA is a Transportation Code offense for which the minimum fine is \$1.00 and the maximum fine is \$200.00.

What should the court do?

Roger is arrested on 10/31/2015 for disorderly conduct and issued a citation requiring him to appear before the justice court on 11/15/2015. A copy of the citation is filed with the justice court on 11/4/2015. If Roger fails to appear, the court may:

1. Request an FTA complaint
2. Request a VPTA complaint

Failure to Appear (FTA): Sec. 38.10, Penal Code

- A defendant commits the offense of failure to appear if he:
 - 1. Is lawfully released from custody (with or without bail);
 - 2. Promised to subsequently appear in court as a condition of his release; and
 - 3. Intentionally or knowingly fails to appear in accordance with the terms of his release.

Failure to Appear

- Failure to Appear is a Class C misdemeanor, punishable by a minimum fine of \$0.01, and a maximum fine of \$500.00.

Can a defendant who commits VPTA be charged with FTA instead?

- No. If the defendant has been released by citation for a Transportation Code "Rules of the Road" offense and fails to appear, he commits the offense of violation of promise to appear and **not** failure to appear. *Azeez v. State*, 248 SW 3d 182 (Tex. Crim. App. 2008).

FTA or VPTA?

Laura receives a citation for running a red light. A duplicate copy of the citation is filed in a justice court. If Laura fails to appear on or before the date listed on the citation, she will commit:

1. FTA
2. VPTA
3. No offense

FTA or VPTA?

Thea is stopped for failing to signal a left turn. The peace officer making the traffic stop places her under arrest after Thea refuses to sign the citation. Thea posts bail, then misses a subsequent justice court appearance. Thea has committed:

1. FTA
2. VPTA
3. No offense

FTA or VPTA?

A peace officer issues a citation to Jen for driving without insurance. A complaint charging Jen with the offense is filed in justice court. Jen fails to appear in court on or before the date listed on the citation. Jen has committed:

1. FTA
2. VPTA
3. No offense

FTA or VPTA?

Rob gets into a car wreck and is taken to the hospital. Peace officers determine that Rob caused the wreck. They mail a citation for failure to control speed to Rob and file a duplicate copy in justice court. If Rob fails to appear he will commit:

1. FTA
2. VPTA
3. No offense

FTA/VPTA Question

Ideally, what should happen before an arrest warrant for FTA/VPTA is issued?

1. The justice court clerk creates and files a complaint for FTA/VPTA
2. A prosecutor or peace officer files a complaint for FTA/VPTA
3. We don't need a complaint before issuing a warrant

Complaint for FTA/VPTA

- TJCTC's position: FTA/VPTA is a separate offense; therefore, a prosecutor or peace officer should generate a complaint for FTA/VPTA and file it with the court.
- Once the complaint is filed, the court may issue a warrant for the defendant's arrest.
- Note that the court does not **have** to do any of this; there is no requirement that the court initiate the complaint process for the new offense.

FTA/VPTA Question

Thea is placed on deferred disposition for a disorderly conduct charge. However, Thea fails to take advantage of the court's leniency and does not report for counseling as ordered. The court sets Thea's case for a "show-cause" hearing, and Thea also fails to appear for that. Should the court request a complaint for failure to appear?

1. Yes
2. No

FTA/VPTA

- An offense occurs only when a defendant fails to appear for a **pending** charge.
- A defendant who fails to appear for any hearing **after** the case has been disposed of does **not** commit FTA or VPTA.
- "Disposed of" includes placing a defendant on deferred disposition or ordering a defendant to complete a driving safety course.

Juvenile Defendants and FTA/VPTA

A 15-year-old defendant fails to appear for a disorderly conduct charge on or before the date listed on the citation.

The justice court may:

1. Request a complaint for FTA/issue an arrest warrant if complaint filed
2. Do nothing, because the defendant is under 17.

Complaint for FTA may be filed

- Although the defendant is only 15 years old, a complaint for failure to appear may be generated and an arrest warrant issued.
- If this defendant is arrested, he or she will **not** be taken to the county jail, but will instead be: 1) released to a parent; 2) taken to a place of nonsecure custody; or 3) taken before the justice court.

Be Careful!

- Keep in mind that the offenses in our hypothetical example were disorderly conduct and failure to appear, both **Penal Code offenses**.
- However, due to recent legislative changes, an arrest warrant may not be issued for any **Education Code offense** committed by an individual under 17 years of age. -Sec. 37.085, Education Code
- If the underlying offense is an Education Code offense, such as failure to attend school, **do not** issue a warrant on the underlying offense.

Juvenile Defendants: Other Options

- Also keep in mind that the defendant's parent(s) must be summoned to appear, and a new criminal complaint against the parent(s) may be generated (and an arrest warrant issued) if the parent(s) fail to appear. -Arts. 45.0214, 45.057, Code of Criminal Procedure
- If the defendant holds a driver's license, the defendant's failure to appear may be reported to DPS via the OMNIBASE system. -Chapter 706, Transportation Code

The Capias

May the Court Issue a Capias?

Laura was issued a speeding citation requiring her to appear in justice court on 10/31/2015. However, no charging instrument was filed until 11/15/2015. A constable serves Laura with a summons to appear on 11/30/2015, but Laura doesn't appear. Capias?

1. Yes
2. No

Article 23.01, Code of Criminal Procedure

- DEFINITION OF A "CAPIAS". In this chapter, a "capias" is a writ that is:
- (1) issued by a judge of the court having jurisdiction of a case after commitment or bail and before trial, or by a clerk at the direction of the judge; and
- (2) directed "To any peace officer of the State of Texas", commanding the officer to arrest a person accused of an offense and bring the arrested person before that court immediately or on a day or at a term stated in the writ.

Capias

- A capias is often referred to as a **warrant**, but it is described in the Code of Criminal Procedure as a **writ**.
- A capias is the proper writ to issue when the defendant's bail bond is forfeited for failure to appear. —Art. 23.05, Code of Criminal Procedure

Section 21.001(a), Government Code

- INHERENT POWER AND DUTY OF COURTS. (a) A court has all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders, including authority to issue the writs and orders necessary or proper in aid of its jurisdiction.

When a capias may issue

- TJCTC's position: A justice court may issue a capias if:
 - 1) the court ordered or summoned a defendant to appear in court on a specified date in writing;
 - 2) the defendant fails to appear; and
 - 3) the justice court verifies that the defendant received the written order or summons to appear

Pretrial Referral to Collections

Article 103.0031(a)(2), Code of Criminal Procedure

- "(a) The commissioners court of a county...may enter into a contract with a private attorney or a public or private vendor for the provision of collection services for one or more of the following items...
- (2) amounts in cases in which the accused has failed to appear..."

Article 103.0031(b), Code of Criminal Procedure

- “A commissioners court...that enters into a contract with a private attorney or private vendor under this article may authorize the addition of a collection fee in the amount of 30 percent on each item described in Subsection (a) that is more than 60 days past due and has been referred to the attorney or vendor for collection.”

Article 103.0031(b), Code of Criminal Procedure

- “With respect to cases described by Subsection (a)(2), the amount to which the 30 percent collection fee applies is:
- (1) the amount to be paid that is communicated to the accused as acceptable to the court under its standard policy for resolution of the case, if the accused voluntarily agrees to pay that amount; or
- (2) the amount ordered paid by the court after plea or trial.”

How much is owed?

Bronson fails to appear as promised for a speeding charge on 12/1/2015. He receives a letter from a collection agency stating that the “standard policy for resolving the case” is \$250.00. If Bronson pays on 12/31/2015, he owes:

1. \$250.00
2. \$325.00 (\$250.00 plus a 30% collection fee of \$75.00)

"60 Days Past Due"

- If the defendant fails to appear and has not paid the "the amount to be paid that is communicated to the accused as acceptable to the court under its standard policy for resolution of the case" by the 61st day following "the date by which the accused promised to appear or was notified, summoned, or ordered to appear," the amount is considered 60 days past due. - Art. 103.0031(f), Code of Criminal Procedure

Article 103.0031(j), Code of Criminal Procedure

- "A communication to the accused person regarding the amount of payment that is acceptable to the court under the court's standard policy for resolution of a case must include a notice of the person's right to enter a plea or go to trial on any offense charged."

Risks regarding pretrial collection

- Can an amount be "past due" if the defendant has not yet been convicted?
- Communications with the defendant must fully and clearly explain the defendant's right to enter a plea of not guilty and request a jury trial.
- Communications with the defendant should also explain that mailing in payment will result in a criminal conviction.

Pretrial OMNI Reporting

Section 706.004, Transportation Code

- Sec. 706.004. DENIAL OF RENEWAL OF DRIVER'S LICENSE. (a) If a political subdivision has contracted with the department, on receiving the necessary information from the political subdivision the department may deny renewal of the person's driver's license for **failure to appear based on a complaint or citation** or failure to pay or satisfy a judgment ordering the payment of a fine and cost in the manner ordered by the court in a matter involving an offense described by Section 706.002(a).

Pretrial OMNI Reporting

- Although the "OMNI statute" is found in the Transportation Code, it applies to all criminal offenses for which the justice court has jurisdiction under the Code of Criminal Procedure.
- Therefore, if a defendant fails to appear as promised based on a public intoxication citation, the defendant may be reported to DPS.

Pretrial OMNI Reporting

- Being reported to DPS via OMNI results in the defendant's inability to renew his or her Texas driver's license. -Sec. 706.004, Transp. Code
- Generally speaking, the defendant's case must be disposed of and the defendant must pay a \$30.00 administrative fee (commonly referred to as the "OMNI fee") in order to be removed from the system. -Sec. 706.006, Transp. Code

Pretrial OMNI Reporting

A 19 year-old defendant is placed on deferred disposition by the court for a speeding ticket. The defendant fails to take a driving safety course as ordered, and the court sets a show-cause hearing. If the defendant fails to appear at this hearing, may you report the failure to appear to OMNI?

1. Yes
2. No

Pretrial OMNI Reporting

- The defendant's failure to appear must be "based on a complaint or citation."
- TJCTC's position: Reporting a defendant's failure to appear to OMNI after the defendant is placed on deferred disposition, ordered to complete a driving safety course, or convicted is not appropriate.

Pretrial OMNI Reporting

True or false? A fourteen year old defendant who does not hold a driver's license and who fails to appear may be reported to OMNI.

1. True
2. False

Pretrial OMNI Reporting: Driver's License Required

- "...on receiving the necessary information from the political subdivision the department may deny renewal of the person's **driver's license** for failure to appear based on a complaint or citation or failure..." -Sec. 706.004, Transportation Code

Pretrial OMNI Reporting: Driver's License Required

- "'Driver's license' means an authorization issued by the department for the operation of a motor vehicle. The term includes:
 - (A) a temporary license or instruction permit; and
 - (B) an occupational license." -Sec. 521.001, Transportation Code
- "'License' means an authorization to operate a motor vehicle that is issued under or granted by the laws of this state. The term includes:
 - (A) a driver's license;
 - (B) the privilege of a person to operate a motor vehicle regardless of whether the person holds a driver's license; and
 - (C) a nonresident's operating privilege." -Sec. 521.001, Transportation Code

Pretrial OMNI Reporting

True or false? A fourteen year old defendant who does not hold a driver's license and who fails to appear may be reported to DPS using a DIC-81 form.

1. True
2. False

Pretrial OMNI Reporting: DIC-81 Reporting as an Alternative

- The department shall revoke the person's license if the department determines that the person:
 - ...(6) has been reported within the preceding two years by a justice or municipal court for failure to appear or for a default in payment of a fine for a misdemeanor punishable only by fine, other than a failure reported under Section 521.3452 [relating to OMNI reporting], committed by a person who is at least 14 years of age but younger than 17 years of age when the offense was committed, unless the court files an additional report on final disposition of the case... -Sec. 521.294, Transportation Code

Pretrial OMNI Reporting

After initially failing to appear and being reported to OMNI, the defendant was convicted of speeding in the justice court. The defendant pays the \$30.00 administrative "OMNI fee" at the same time that she posts her appeal bond. Does the justice court need to take any action at this point in time?

1. Yes
2. No

Removal from OMNI

• A justice court shall “immediately” request the defendant’s removal from OMNI if the defendant pays the \$30.00 “OMNI fee” and:

- 1) an appeal to county court is perfected following the defendant’s conviction;
- 2) the case is dismissed;
- 3) the defendant posts an appearance bond;

Removal from OMNI

• 4) the defendant is placed on deferred disposition, ordered to complete a driving safety course, or convicted and placed on a payment plan; or

• 5) the defendant is convicted and satisfies the judgment in full.

Removal from OMNI

A defendant who failed to appear in the justice court in 1994 is still in OMNI. Is this right/legal?

1. Yes
2. No
3. Maybe

Removal from OMNI (pretrial)

- A justice court shall “immediately” request the defendant’s removal from OMNI without requiring the defendant to pay the \$30.00 “OMNI fee” if:
 - 1) the defendant is acquitted of the charge for which he failed to appear;
 - 2) the initial report was made in error; or
 - 3) the case records have “been destroyed in accordance with the political subdivision’s records retention policy.”

Bond Forfeiture

When Bond Forfeiture Is an Option

- The defendant fails to appear and:
 - 1. The defendant was arrested for the offense and released on a bail bond or personal bond. The defendant’s bail bond contained an order to appear in the justice court on a specific date or the court issued a written summons to appear to the defendant.
 - 2. The justice court required the defendant to post an appearance bond and the court issued a written summons to appear to the defendant.

Step 1: Ensure that the defendant is absent

- The bailiff, clerk, or judge calls the defendant's name at the courthouse door.
- If the defendant fails to answer "within a reasonable time after such call is made," the justice court may initiate bond forfeiture proceedings.

Step 2: Initiate Forfeiture Proceedings

- Bond forfeiture proceedings are initiated by generating a judgment nisi. A judgment nisi is NOT a final judgment. It is similar to a petition filed in a small claims suit.
- The judgment nisi should be styled as The State of Texas vs. [name of defendant/principal] and [name of bail bondsman/surety].
- The judgment nisi shall state the amount owed based on the forfeiture, and shall also state that the judgment will be made final unless good cause for the defendant's failure to appear can be shown.
- A sample judgment nisi form may be found on the TJCTC website.

Step 3: Issue a Capias

- Article 23.05 of the Code of Criminal Procedure states that "if forfeiture of bail is declared by a court...a capias shall be immediately issued for the arrest of the defendant."
- The court may require the defendant to post a cash bond in order to be released from custody following an arrest based on a capias issued as the result of a bond forfeiture.

Step 4: Service of Citation

- Bond forfeiture hearings are governed by the Rules of Civil Procedure. Accordingly, Texas law requires service of citation.
- The justice court clerk should generate the citation.
- Citation in bond forfeiture hearings shall include: 1) the judgment nisi; 2) a copy of the forfeited bond; 3) a copy of any power of attorney attached to the bond; and 4) a summons to appear and show cause why the judgment nisi should not be made final.

Step 4: Service of Citation

- The surety in a bond forfeiture proceeding shall always be served.
- The principal shall be served if: 1) the bond forfeited was a cash bond; or 2) the defendant "has furnished his address on the bond."
- The best practice is to always serve both the surety and the principal.

Step 5: Answer?

- The surety in a bond forfeiture proceeding may answer "within the time limited for answering in other civil actions."
- Therefore, if a bond is forfeited in justice court, the surety/defendant has 14 days following service of citation to answer.
- If the defendant(s) fail to answer, a default judgment may be taken.

Step 6: Default Judgment Hearing or Trial

- If the defendant(s) fail to answer and the State requests a default judgment hearing, the court may issue a default judgment.
- If the defendant(s) file an answer, the case should be set on a trial docket in accordance with the Texas Rules of Civil Procedure.

Are the defendants liable?

At trial, the surety claims that the principal was unable to appear in court due to “car trouble” on the date of his hearing. Are the defendants liable?

1. Yes
2. No

Step 7: Trial (if necessary)

- The following causes, **and no other**, will exonerate the defendant(s):
- 1) the bond was invalid/illegal;
- 2) the principal did not appear due to death;
- 3) sickness or “uncontrollable circumstance” prevented the principal’s appearance;
- 4) no complaint or citation was presented before the forfeiture; or
- 5) the principal was incarcerated at the time of forfeiture.

Step 8: Final Judgment

- If the defendant(s) are exonerated by the evidence presented at trial, the justice court should issue a final judgment on behalf of the defendants.
- If the defendant(s) are not exonerated by the evidence presented at trial, the justice court should issue a final judgment on behalf of the State in the amount of the bond forfeited.

Step 8: Post-Judgment Remedies

- If the defendant(s) fail to pay the amount owed, a prosecutor representing the state may request a writ of execution. "Separate executions shall issue against each party [principal and surety] for the amount adjudged against him."

Post-trial Referral to Collections

Article 103.0031(a)(2), Code of Criminal Procedure

- “(a)The commissioners court of a county...may enter into a contract with a private attorney or a public or private vendor for the provision of collection services for one or more of the following items...
- (1) debts and accounts receivable such as unpaid fines, fees, court costs, forfeited bonds, and restitution ordered paid by:
- (A) a court serving the county...”

Is a collection fee owed?

Bronson fails to satisfy a \$300.00 judgment. As a result, Bronson is referred to collections and a capias pro fine is issued. Bronson is arrested on the capias pro fine and committed to jail by the JP. Does he owe \$90.00 in collection fees?

1. Yes
2. No

Collection Fee

- The 30 percent collection fee may not be collected if:
- The court has determined “the defendant is indigent, or has insufficient resources or income, or is otherwise unable to pay all or part of the underlying fine or costs;”
- The defendant satisfies the fine and costs by performing community service; or
- The defendant is committed to jail to satisfy the fine and costs.

Is a collection fee owed?

Bronson is allowed to satisfy a \$300.00 judgment by performing community service. After performing \$100.00 worth of community service, Bronson quits and is referred to collections. He wins a poker tournament 3 months later and wants to pay the balance. Bronson owes:

1. \$200.00
2. \$260.00

Article 103.0031(b), Code of Criminal Procedure

- "The collection fee may be applied to any balance remaining after a partial credit for time served or community service if the balance is more than 60 days past due."

Post-trial OMNI Reporting

Section 706.004, Transportation Code

- Sec. 706.004. DENIAL OF RENEWAL OF DRIVER'S LICENSE. (a) If a political subdivision has contracted with the department, on receiving the necessary information from the political subdivision the department may deny renewal of the person's driver's license for failure to appear based on a complaint or citation or **failure to pay or satisfy a judgment ordering the payment of a fine and cost in the manner ordered by the court** in a matter involving an offense described by Section 706.002(a).

OMNI Questions

A 16 year old defendant is convicted of MIC and ordered to take an alcohol awareness class. 180 days have passed, and the defendant has not presented any information to the court. May the court report the defendant to OMNI for failure to satisfy the judgment?

1. Yes
2. No

Post-judgment OMNI Reporting

- TJCTC's position: when a separate statutory remedy exists, OMNI reporting should not be utilized.
- Section 106.115 of the Alcoholic Beverage Code states that a justice court shall suspend the defendant's driver's license if the defendant was ordered to complete an alcohol awareness course and fails to do so.

Post-Judgment OMNI Reporting: DIC-81
Reporting as an Alternative

- If a justice court orders a defendant to perform or refrain from performing certain acts and the defendant fails to comply with the court's order, the defendant may be held in contempt following a hearing. (Example: justice court issues 45.054 order requiring the defendant to attend school but defendant continues to skip class.) If the defendant is under 17, contempt is governed by Article 45.050 of the Code of Criminal Procedure.
- Article 45.050 of the Code of Criminal Procedure suggests that a child defendant who fails to "pay all or any part of a fine or costs imposed for the conviction of an offense punishable by fine only" may also be held in contempt.

Post-Judgment OMNI Reporting: DIC-81
Reporting as an Alternative

- If the justice court retains jurisdiction of the case and determines that the defendant is in contempt of court, the justice court may order:
 - "(A) that the contemnor pay a fine not to exceed \$500; or
 - (B) that the Department of Public Safety suspend the contemnor's driver's license or permit or, if the contemnor does not have a license or permit, to deny the issuance of a license or permit to the contemnor until the contemnor fully complies with the orders of the court." -Art. 45.050, Code of Criminal Procedure
- If the justice court chooses license suspension, submit the DIC-81 form to DPS.

Removal from OMNI

- The same rules that apply to pre-judgment removal from OMNI apply to post-judgment removal from OMNI.

Capias Pro Fine

Capias Pro Fine Definition

- "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.

Capias Pro Fine May Be Issued By a Justice Court

- 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.

Capias Pro Fine

• A **capias pro fine** may **never** be used when the defendant is under 17 years of age.

• A capias pro fine may be used in limited circumstances when a defendant who was convicted before his or her 17th birthday becomes an adult.

Capias Pro Fine

• If the defendant was **convicted** of an offense prior to his or her 17th birthday, a capias pro fine may be issued after the defendant turns 17 **only** if:

• 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

• The court has proceeded under Article 45.050 to compel the individual to discharge the judgment.

Capias Pro Fine

• A capias pro fine may not be used for **unadjudicated** (still-pending) offenses committed prior to the defendant's 17th birthday.

• The justice court may send a notice of continuing obligation pursuant to Art. 45.060 if the defendant has not yet been convicted of the offense.

When should a CPF issue?

Rob fails to appear for a show-cause hearing and is convicted. He doesn't respond to requests for payment. The capias pro fine should issue:

1. Immediately
2. 11 days after conviction
3. 31 days after conviction

Capias Pro Fine

- Sec. 133.103. TIME PAYMENT FEE. (a) A person convicted of an offense shall pay, in addition to all other costs, a fee of \$25 if the person:
- (1) has been convicted of a felony or misdemeanor; and
- (2) pays any part of a fine, court costs, or restitution on or after the 31st day after the date on which a judgment is entered assessing the fine, court costs, or restitution.

Issuing a Capias Pro Fine: Best Practices

- A capias pro fine should never be used if the noncompliant defendant is under 17 years of age.
- To avoid confusion, a capias pro fine should not be issued until 31 days after conviction.

What Should the Court Do?

Thea is arrested on a *capias pro fine*. What happens at the jail?

1. The sheriff collects the unpaid fine and costs or Thea "sits them out."
2. Thea is taken before the trial court as soon as possible.
3. The magistrate who reads Thea her rights collects money for the justice court.

Capias Pro Fine: After Arrest

- Only the justice court may order a defendant committed to jail in order to discharge a fine and costs, and only in limited circumstances.
- The arresting officer, sheriff, jail staff, or on-duty magistrate is **not** authorized to collect fines on behalf of your court unless the magistrate is a JP and a proper bench-exchange agreement is in place.

Capias Pro Fine: After Arrest

- In order to commit a defendant to jail in order to discharge the unpaid fine and costs, the judge must make 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.

Capias Pro Fine: After Arrest

- Other options for the court when a defendant is arrested on a capias pro fine and presented to the court include:
- 1) Allowing the defendant to discharge the fine and costs by performing community service; and
- 2) Placing the defendant on a payment plan.

Texas Constitution & Statutes Website

- <http://www.statutes.legis.state.tx.us/>
