

Enforcement in Criminal Cases

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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.

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Failure to Appear and Violation of Promise to Appear

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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

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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.

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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.

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Failure to Appear

- Failure to Appear is a Class C misdemeanor, punishable by a minimum fine of \$1.00, and a maximum fine of \$500.00.

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

- No. If the defendant has been released by citation for a “Rules of the Road” Transportation Code 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).

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Issues to Consider

- Was the defendant charged with a Rules of the Road offense? If no, VPTA can never be charged. If yes, FTA can never be charged.
- Was the defendant in custody and released upon a promise to appear? (Pulled over and signing a ticket is sufficient) If no, FTA can never be charged.

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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.

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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.

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FTA/VPTA Juvenile Warrants

- Even if a defendant is under 17, 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.

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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. 45.0215, 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

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Pretrial Referral to Collections

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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...”

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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.”

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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.”

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“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

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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.”

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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.

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Bond Forfeiture

- Either a “bail bond” or an “appearance bond” may be forfeited if the defendant fails to appear in court in accordance with the terms of his release.
- An “appearance bond” is a bail bond. (See Art. 45.016, CCP.)

Initiating Bond Forfeiture Proceedings

- Step 1: The bailiff, clerk, or judge calls the defendant’s name at the courthouse door.
- Step 2: If the defendant fails to answer “within a reasonable time after such call is made,” generate a judgment nisi.
- A judgment nisi is NOT a final judgment.

Bond Forfeiture Proceedings

- 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.

Bond Forfeiture Proceedings

- If the surety makes a written request for the return of the bond after the judgment nisi is entered (but before final judgment), the court shall order the amount of the bond remitted after subtracting:
 - 1) costs of court;
 - 2) costs to the county for return of the principal;
 - 3) interest accrued on the bond amount (applicable only if the defendant has been released on new bail or the original criminal case is dismissed).

Bond Forfeiture Proceedings

- Bond forfeiture hearings are governed by the Rules of Civil Procedure. Accordingly, Texas law requires service of 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.

Bond Forfeiture Proceedings

- 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.

Bond Forfeiture Proceedings

- 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.

Bond Forfeiture Proceedings

- Once the defendant answers, the case should be set for trial.
- At trial, only a small set of specific facts will exonerate the principal or surety from liability.

Bond Forfeiture Proceedings

- 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.

Bond Forfeiture Proceedings

- If the facts presented at trial do not exonerate the defendant, the court shall enter a final judgment indicating the amounts for which the surety and the principal are liable.
- The judgment amount “shall be collected by execution as in civil actions. Separate executions shall issue against each party [principal and surety] for the amount adjudged against him.”

The Judgment in Criminal Cases

Judgment: Definition

- A judgment is a “written declaration of the court signed by the trial judge...showing the conviction or acquittal of the defendant.”

-Art. 42.01, Code of Criminal Procedure

Judgment: Required Contents

- A justice court's judgment must contain:
 - The amount of the fine assessed;
 - The amount of the court costs assessed;
 - The amount of any restitution assessed;
 - Any other sanction authorized by law; and
 - An order to pay the amount of the fine and costs to the state.
 - -Art. 45.041, Code of Criminal Procedure

Judgment: Required Contents

- Upon conviction, a justice court may order the defendant to pay the fine and costs:
 - 1) At the time the sentence is pronounced;
 - 2) At some later date; or
 - 3) At designated intervals (payment plan).
 - -Art. 45.041(b), Code of Criminal Procedure

The Bill of Costs

Bill of Costs

- Article 103.001 of the Code of Criminal Procedure states that “a cost is not payable by the person charged with the cost until a written bill is produced or is ready to be produced, containing the items of cost, signed by the officer who charged the cost or the officer who is entitled to receive payment for the cost.”

Bill of Costs

- TJCTC recommends that each justice court produce a bill of costs as soon as costs are due.
 - In deferred disposition cases, at the time the court issues its written order.
 - Upon conviction, at the time of judgment.
- If additional court costs are incurred by the defendant before the case is finally disposed, TJCTC recommends producing a supplemental bill of costs.

Bill of Costs

- What does “ready to be produced” mean?
- TJCTC’s position: as long as the information contained in your computer system is complete, is accompanied by a digital signature (see below), and can be used to generate a printed bill of costs, the requirements of the statute have been satisfied.
- However, TJCTC believes that the best practice is to produce a bill of costs for the court’s file in each case.

OMNI Reporting – Failure to Appear

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OMNI reporting – Failure to Appear

- 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

- 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.

Information to Include in OMNI report

- Name, date of birth, and driver's license number of the defendant
- The nature and date of the alleged violation
- A statement that the person failed to appear as required by law or failed to satisfy a judgment ordering the payment of a fine and cost; and
- Any other information required by the department.

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."

Removal from OMNI - Pretrial

- 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;
 - 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
- ***The defendant does not have to pay the OMNI fee if the court has found the defendant to be indigent.***

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.”

Post-Trial Referral to Collections

Article 103.0031(a), Code of Criminal Procedure

- “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..”

Article 103.0031(b), Code of Criminal Procedure

- “A commissioners court or governing body of a municipality 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.”

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.

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.”

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.

Capias Pro Fine

- When should a capias pro fine issue?
 - A minimum of 10 days after judgment, since they have 10 days to appeal, and are barred from appealing if they pay the fine and costs
 - 30 days will allow the Time Payment Fee to be included
 - 60 days will allow the collection fee to be included

HB 121: 84th Legislative Session (2015) Art
103.0025, CCP

- (b) Notwithstanding any other provision of law, the court **may** adopt an alternative procedure for collecting a past due payment described by Subsection (a). Under the procedure, a peace officer who executes a capias pro fine or who is authorized to arrest a defendant on other grounds and knows that the defendant owes a past due payment described by Subsection (a)...

HB 121: 84th Legislative Session (2015) Art
103.0025, CCP

- (1) shall inform the defendant of:
 - (A) the possibility of making an immediate payment of the fine and related court costs by use of a credit or debit card; and
 - (B) the defendant's available alternatives to making an immediate payment; and
- (2) may accept, on behalf of the court, the defendant's immediate payment of the fine and related court costs by use of a credit or debit card, after which the peace officer may release the defendant as appropriate based on the officer's authority for the arrest.

Capias Pro Fine: After Arrest

- The arresting officer, sheriff, or jail staff **do not** have the authority to order a defendant committed to jail in order to discharge a fine and costs.

Capias Pro Fine: After Arrest

- If the capias pro fine was issued by a justice of the peace, the defendant may be taken before any justice of the peace (or a magistrate court with jurisdiction over Class C misdemeanors) in the same county as the court which issued the capias pro fine.

Capias Pro Fine: After Arrest

- A municipal court may not process cases in which a justice court has issued a capias pro fine, and vice-versa.

Capias Pro Fine: After Arrest

- In order to commit a defendant to jail in order to discharge the unpaid fine and costs, a 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;
 - 2) Placing the defendant on a payment plan; and
 - 3) Accepting full payment from the defendant.

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