

### **Purpose**

To provide a procedure for all local pretrial services and community-based probation agencies with a consistent and uniform procedure for returning defendants and offenders to court and for terminating supervision. The authority to seek a Capias is a remedy to expedite the return to confinement for those defendants and offenders who have egregiously failed to meet their judicial officer or court ordered conditions of bail, probation, or programmatic conditions of supervision. The purpose of a show cause summons is to have the defendant or offender return to court on their own to explain their non-compliance or recalcitrance to the court.

### **Authorization**

§9.1-176.1 A 6 & 7 and §19.2-152.4:3 A 5 & 6 identify the conditions under which an officer files a Motion for Show Cause or is required to seek a Capias.

### **Related Standard**

Department of Criminal Justice Services *Minimum Standards for Local Community Corrections and Pretrial Services*, §3.6 C., E., F., & G. & § 4.6 E., F. & G.

### **Supersession**

Supersedes and replaces DCJS policy memos dated July 25, 2000 and January 01, 2004 and Guideline dated 10/1/2005

### **Definitions**

- Capias means a warrant authorizing an officer of the law to arrest a named person.
- Custodian means the person, organization or pretrial services agency that provides custody or supervision and to which a defendant is released as a term of bail.
- Egregious Behavior means any willful and extreme act on the part of a defendant or offender.
- File a Motion means to deliver or place an instrument or other paper in the official custody of a clerk of court.
- Intractable Behavior means unmanageable or difficult behavior that demonstrates an offender's unwillingness or inability to conform to that which is necessary for successful completion of a condition or conditions of probation or is disruptive to the extent that it threatens the completion of a program or probation by other participants.
- Recognizance means a signed commitment by a person to appear in court as directed and to adhere to any other terms ordered by an appropriate judicial officer as a condition of bail.
- Seek a Capias means to actively go to a judicial officer with a petition for a Capias.
- Show Cause means a summons to court for a person to appear on his own behalf to answer charges why the terms of bail or conditions of probation should not be revoked.

**Policy**

**I. Seeking a Capias for Arrest of a Pretrial Defendant or Local Probationer**

A. Pretrial:

1. Pursuant to §19.2-152.4:1, a pretrial services officer **may** seek a Capias when there is a failure to comply with any conditions of release imposed by a judicial officer, for failure to comply with conditions of pretrial supervision established by a pretrial services agency, or when there is reason to believe that the person will fail to appear, will leave, or has left the jurisdiction to avoid prosecution.
2. Pursuant to §19.2-152.4:3 A.5, a pretrial services officer is **required** to seek a Capias for any defendant placed under the supervision or custody of the agency when continued liberty or non-compliance presents a risk of flight, or a risk to the safety of the defendant or the public.

B. Local Community-Based Probation:

1. Pursuant to §19.2-303.3 C., a local probation officer **may** seek a Capias for a probationer for removal from the program for intractable behavior, refusal to comply with the terms and conditions imposed by the court, refusal to comply with the requirements of local probation supervision established by the program or the commission of a new offense while on probation and under supervision.
2. Pursuant to §9.1-176.1 A.6, a local probation officer is **required** to seek a Capias when intractable behavior presents a risk of flight, or risk to the safety of the offender or the public.

**II. Procedures for Seeking a Capias:**

A. Before seeking a Capias, all pretrial services and local probation officers shall:

1. have successfully completed Basic Skills training.
2. be sworn officers in accordance with the recommended requirements of the Oath of Office as outlined in the DCJS Guideline No.8.

B. The program director, coordinator or designee must approve each case for which a Capias is being sought.

C. Before seeking a Capias from any judicial officer the pretrial services or local probation officer should complete the Petition for Capias, Form PTS/CBP15. The first section of this form specifies the date, the conditions under which the defendant or probationer was released to pretrial or local probation services, and the judicial officer who signed the original release or the court order.

- D. Each officer should attach to the PTS/CBP15 form, copies of the following, where applicable:
  - 1. A copy of the original Warrant of Arrest [forms DC-312, 314, or 315]
  - 2. the initial bail release form [DC-330]
  - 3. the commitment to jail form [DC-352]
  - 4. any court continuance form [DC -355]
  - 5. signed acknowledgment of program conditions of supervision [pretrial or probation]
  - 6. For district court cases, court order for probation [Completed reverse side of Warrants of Arrest DC -312, 314, 315] or DC-319, Summons [for criminal cases]
  - 7. court order, if applicable, for alcohol or drug screening, assessment, evaluation, etc. pursuant to §19.2-299.2 [DC-357, Order Regarding Substance Abuse Screening]
  - 8. For circuit court cases, circuit court order used for probation or placement order developed by the program and approved by the court
- E. When the pretrial services or local probation officer appears before the judicial officer seeking a Capias, the following forms may be used:
  - 1. Form PTS/CBP-15
  - 2. [DC-635] the Motion for Show Cause Summons or Capias
- F. When a judicial officer other than the court determines that a Capias is necessary, the local pretrial services or probation officer should assist the judicial officer in completing the correct form. For district court cases, this is the DC-361x. For circuit court cases, it is the CC-1301.

### **III. Procedures for Filing a Motion for Show Cause for a Pretrial Defendant or Local Probationer**

Pursuant to §19.2-152.4:3 A 6 and §9.1-176 A 7., a local pretrial services or probation officer, is **required** to seek a motion or order for a show cause summons, when the desired outcome is for a defendant or offender to return to court on his/her own behalf for a hearing on less serious failures to comply with conditions imposed.

- A. Pretrial or local probation services agencies, when continued liberty is not a concern or when non-compliance is not the result of egregious behavior:
  - 1. **may** send a letter to a court seeking a show cause summons for cases in which the court should determine whether bail or probation should be revoked, or

2. **shall** seek an order for or file a motion for show cause when a subsequent hearing before court is required. [Motion for Show Summons or Capias: DC-635 can be completed]
- B. When a judicial officer other than the court determines that a Show Cause Summons is appropriate, the local pretrial services or probation officer should assist the judicial officer in completing the correct form. For district court cases, this is the DC-360. For circuit court cases, it is the CC-1356.

**References**

Warrant for Arrest (Forms DC-312, 314, and 315)

Recognizance (Form DC-330) Bail Release

Commitment Order (Form DC352) to Jail

Continuance Order (Form DC-355) for Court

Capias to Show Cause (Form CC-1356) for Circuit Court

Motion for Show Cause Summons or Capias (Form DC-635)

Capias (Form DC-361x) District Court, Circuit Court Capias (Form CC-1301)

**Attachment**

Petition for Capias (Form PTS/CBP15)

**PETITION FOR CAPIAS**

\_\_\_\_\_  
NAME OF ADMINISTRATIVE AGENT (COUNTY OR CITY)

\_\_\_\_\_  
OFFICIAL NAME OF PROGRAM

TO: ANY JUDICIAL OFFICER

WHEREAS, THE DEFENDANT  OFFENDER  \_\_\_\_\_  
Name of Defendant/Offender

ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ OF \_\_\_\_\_ WAS, TO THIS OFFICE:  
Day Month Year

- RELEASED TO CUSTODY AND SUPERVISION ON BAIL
- SENTENCED AND RELEASED TO PROBATION
- RELEASED TO PROBATION FOLLOWING A DEFERRED PROCEEDING
- ORDERED TO \_\_\_\_\_

BY THE AUTHORITY OF \_\_\_\_\_ OF THE  
MAGISTRATE  CLERK  JUDGE   
\_\_\_\_\_ JUDICIAL DISTRICT AND CIRCUIT

District /Circuit Number

AND, WHEREAS, THE ABOVE-NAMED INDIVIDUAL, HAS, IN MY JUDGMENT, VIOLATED ONE OR MORE OF THE FOLLOWING CONDITIONS OF RELEASE AND WHOSE CONTINUED LIBERTY PRESENTS A RISK OF FLIGHT OR TO PUBLIC SAFETY:

- FAILURE TO COMPLY WITH THE CONDITIONS OF RELEASE ON BAIL IMPOSED BY A JUDICIAL OFFICER
- FAILURE TO COMPLY WITH CONDITIONS OF PRETRIAL SUPERVISION
- MAY FAIL TO APPEAR, WILL LEAVE, HAS LEFT THE JURISDICTION TO AVOID PROSECUTION OR HAS ABSCONDED
- HAS DEMONSTRATED INTRACTABLE BEHAVIOR:
  - BY REFUSING TO COMPLY WITH TERMS AND CONDITIONS OF PROBATION IMPOSED BY THE COURT
  - BY REFUSING TO COMPLY WITH THE REQUIREMENTS OF LOCAL PROBATION SUPERVISION
- HAS COMMITTED A NEW OFFENSE WHILE UNDER SUPERVISION
- HAS DEMONSTRATED BEHAVIOR THAT PRESENTS A RISK TO HIMSELF OR HERSELF

NOW, THEREFORE, PURSUANT TO §§ 19.2-152.4:1 & 19.2-152.4:3  § 19.2-303.3 & § 9.1-176.1 OF THE CODE OF VIRGINIA, COMES THIS OFFICER SEEKING A CAPIAS FOR ARREST

WITNESS MY HAND THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_  
PRINT NAME

SIGNATURE \_\_\_\_\_

Pretrial Services Officer  Local Probation Officer

ATTACHMENTS:

- COPIES OF: ORIGINAL ARREST WARRANT
- DC 330  DC 352  DC 353  DC 355
- DC 357  SIGNED CONDITIONS OF SUPERVISION