



STATE OF DELAWARE
THE JUSTICE OF THE PEACE COURT


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ALAN G. DAVIS
CHIEF MAGISTRATE

POLICY DIRECTIVE 84-091(REVISED)

TO: ALL JUSTICES OF THE PEACE COURT EMPLOYEES

FROM: ALAN G. DAVIS
CHIEF MAGISTRATE 

DATE: MARCH 15, 2019

RE: PROCEDURES REGARDING THE ISSUANCE OF CAPIASES

Scope

This revision of Policy Directive 84-091 updates the procedures to be used for the issuance of capiases after defendants fail to appear for scheduled court events and for juvenile defendants who fail to pay deferred payments on time. It ensures additional procedural fairness by providing consistency in how the Court handles defendants' failure to appear for initially-scheduled Call of the Calendar arraignments.¹

This revision also introduces a new form, the "Juvenile Failure to Appear Letter." This letter is to be mailed to the parents or guardians of juveniles who fail to appear for initially-scheduled Call of the Calendar arraignments, no later than one business day from when the computer-generated Failure to Appear letters, addressed to the juvenile defendants, are mailed.

¹ For the entirety of this policy directive, any reference to "Call of the Calendar arraignments" shall mean all motor vehicle arraignments with or without a police prosecutor.

This revision does not modify the court's processes or procedures as they relate to cases containing only civil charges, as capiases may not issue on such cases.

Justice of the Peace Court Policy

It is the policy of the Justice of the Peace Court to continue to create and utilize procedures to help reduce the number of "Failure to Pay" and "Failure to Appear" capiases and to reduce the number of citizens who may face the risk of monetary bail on charges for which incarceration cannot legally be the penalty upon conviction. The Court shall, prior to the issuance of capiases, mail computer-generated reminder letters to defendants who fail to pay as ordered on Time to Pay agreements or fail to appear for their initially-scheduled Call of the Calendar arraignments. For juvenile defendants who fail to appear for their initially-scheduled Call of the Calendar arraignments, the Court shall mail "Juvenile Failure to Appear" letters to the parents or guardians. Judges shall continue to have the discretion to either order a capias or to allow the issuance of the computer-generated "Failure to Appear" letter when either an adult or a juvenile defendant has multiple failures to appear for Call of the Calendar arraignments on the same case, or a failure to appear for a scheduled Title 11 criminal arraignment, an arraignment with a trial, a trial, or any other event. A judge may override this policy only upon a recorded finding of aggravating factors leading the judge to issue a capias after a defendant's failure to appear for an initially-scheduled Call of the Calendar arraignment. In an attempt to minimize the number of incarcerations based on secured bail on cases where the originating charge penalty does not carry incarceration, the Court shall utilize these procedures. In addition, under no circumstances should a capias or a default judgment issue for a defendant's failure to appear for any scheduled appearance until such time as the ticket or summons has been sworn to by the officer, regardless of the charge.

Policy Directives Affected

Policy Directive 84-091 is hereby rescinded and to be kept for historical purposes only.
Policy Directive 07-227 (1st Supplement) shall simultaneously be in effect to conform with PD 84-091 (Revised).
Policy Directive 10-235 (2nd Supplement) shall simultaneously be in effect to conform with PD 84-091 (Revised).

Effective Date

This policy shall take effect on May 1, 2019.

DISCUSSION

Failure to Pay (FTP) Capiases -Adults

The Justice of the Peace Court has utilized a system of reminders to defendants who have failed to make timely payments on deferred payment plans since Chief Magistrate Norman A. Barron issued Policy Directive 84-091 on September 10, 1984. Initially, the court clerk made calls, sent letters, and checked employment in an attempt to collect the outstanding fines and

costs. The court became automated in 1991 with the DRS system, later updated to the Case Management System, which was the beginning of the computer-generated reminder letters, delivered to defendants via the United States Postal Service (USPS). These letters are issued at midnight on the day after the payment was due and give the defendant two (2) weeks from the last due date to make their required payment, or opt for work referral or voluntary wage attachment. The letters also warn defendants of a *capias*, followed by a suspension of their driving privileges, as well as possible contempt of court charges and incarceration. A *capias* is issued if the defendant does not respond to the court and the warning period has expired. This process, as it pertains to adults, is not affected or modified by this revised policy directive.

Time to Pay Agreements and the attempts to collect on them have always been costly to the State in labor and materials used. The court must continue to strive to reduce the number of Time to Pay Agreements and the *capiases* entered against them as a last resort for collection. The court has begun giving the "Time to Pay Information" sheet to every defendant who is set up for a payment plan. The "Time to Pay Information" sheet notifies defendants of their options to pay and of the consequences of a failure to pay.

Failure to Pay Capiases - Juveniles

When the defendant is a juvenile and the case is ripe for a *capias*, the court shall schedule a show cause hearing and notify both the juvenile defendant and the parent/guardian/co-signer of the date and time for the hearing. If the juvenile and co-signer fail to appear at the hearing, the court may issue a FTP *capias* for the juvenile defendant's arrest, as it would for an adult defendant who failed to pay as ordered.

Failure to Appear (FTA) Capiases- Adults

Just as when defendants fail to pay on time, defendants who fail to appear for arraignments, trials or any other scheduled hearings, used to receive letters or phone calls from the court clerks after Policy Directive 84-091 went into effect. Just as with the process to computer-generate FTP reminder notices, a process was instituted to computer-generate Failure to Appear (FTA) reminder notices, to be delivered to defendants via USPS. These notices are issued at midnight on the day after the defendant failed to appear for a scheduled court event. The notices explain to defendants that if they do not contact the court, or appear in person before the court, within fourteen (14) days to reschedule their hearings, *capiases* will be issued. Over time, many judges in many court locations chose to issue *capiases* for FTA for criminal arraignments, trials or other court hearings at the end of the day versus allowing the computer-generated FTA reminder letters to issue. The release of Policy Directive 10-235 "Disposition of Cases Through the Police Prosecution Process," provided judges with the option to issue a FTA *capias* after a defendant failed to appear for a Call of the Calendar (traffic) arraignment. This resulted in some judges in some Justice of the Peace Court locations issuing *capiases* for failure to appear for traffic arraignments.

Each judge has the discretion, for failure to appear for trials, criminal arraignments, and other court-scheduled hearings, to allow the computer to generate the FTA notice or to issue a *capias*. There is a high level of continuity and consistency across all Justices of the Peace court

locations, and with judges throughout the state, that *capiases* are issued under these circumstances. This process is not affected or modified by this revised policy directive.

However, there is a high level of disparity across the state in how defendants who fail to appear for *initially-scheduled* Call of the Calendar arraignments are treated by different court locations and by different judges within the same court location. Some defendants receive the computer-generated FTA warning notice, giving them opportunities to remedy the failure to appear. Other defendants receive *capiases* for their arrests and incur \$15.00 *capias* fees, even when they remedy the failure to appear within the fourteen (14) days given to the “FTA letter” group. This process, in which a judge chooses to issue a *capias* or allow the computer to generate a FTA letter for failure to appear for initially-scheduled Call of the Calendar arraignments (traffic), is modified by this revised policy directive in order to gain additional consistency throughout the Justice of the Peace Court. Procedural fairness to all defendants is an identified goal of the court and treating defendants scheduled for initially-scheduled arraignments on motor vehicle charges equally, regardless of the court location in which the defendant appears, will provide additional procedural fairness.

FTA *capiases* have both intended and unintended consequences. When *capiases* are issued, the court intends to gain compliance from defendants. The court intends to penalize the defendants in some fashion for perceived disrespect toward the court. For those individuals who have no intention of addressing their court cases unless forced to do so, these actions are necessary to maintain the integrity of the court. All of the state’s costs in labor and materials, plus others, such as the costs of incarceration, may be necessary to gain the defendants’ compliance. But for those individuals who simply need a reminder because they are disorganized, forgetful, or have financial difficulties getting off work or affording day care, the above collective costs for the state are much higher than the cost of one computer-generated FTA notice and are not necessary to gain compliance.

Capias histories and records will affect a judge’s perceptions of the likelihood that a defendant will appear at the next scheduled court event and may ultimately affect the judge’s decision on the setting of a money bail condition. One of the unintended consequences of a *capias* for a failure to appear for a traffic summons on a Call of the Calendar, is a defendant being incarcerated due to a financial inability to pay a monetary bail condition ordered by a judge at the time of the defendant’s appearance on a FTA *capias* on a charge(s) for which incarceration cannot legally be the penalty upon conviction. And incarceration has significant costs to the system.

Incarceration is the most restrictive condition that can be ordered to achieve the state’s objective to assure the defendant’s appearance at the next scheduled court event. Incarceration can affect defendants’ employment, residence, and child custody, to name a few ramifications. Inversely, the state and the country, moving toward criminal justice and bail reform, are instituting policies that promote the presumption that the least restrictive conditions should be ordered. For some defendants, a reminder letter would accomplish the state’s goal of a defendant’s compliance, just as a *capias* would, but the record of a *capias* history could affect these defendants more significantly than necessary.

Informal research was conducted in three (3) areas relevant to the decision to issue a *capias* or allow the computer-generated FTA notice to issue after defendants fail to appear for initially-scheduled Call of the Calendar arraignments.

- 1) A survey was sent to all Justices of the Peace in June 2017, asking the judges if they believe a *capias* should be issued the same day against defendants who fail to appear for their initial Call of the Calendar arraignments or the computer-generated FTA notice should be mailed as a reminder prior to the issuance of a *capias*. The survey received a 50% response rate. Of the judges who responded to the survey, 25% voted for a same-day *capias* and 75% voted for the computer-generated FTA reminder notice prior to the issuance of a *capias*.
- 2) Victim Information & Notification Everyday (VINE), an automated calling system, was developed and put into place as a mechanism to inform victims of “Offender Custody Status,” “Protective Order Status,” and “Court Events.” As an added benefit, the system also became an automated calling system to the offenders/defendants, reminding them of their court dates. This function can only provide a reminder to a defendant as long as the defendant’s phone numbers are in the computer. The data must be collected by the police at the time of the incident or by court personnel at the defendant’s first appearance. Empirically, these notifications by phone reduce the number of defendants who fail to appear. However, the Court cannot rely on a reminder from a VINE call to every defendant. An examination of cases scheduled for Call of the Calendar in Justice of the Peace Court 11 for one week, yielded the following results: depending upon the police agency, the percentage of defendants with no phone number in the computer, because there was no phone number on either the ticket or the defendant history form, ranged between 23% and 52%. These defendants did *not* receive the VINE reminder phone call.
- 3) Just as the court is committed to working toward reducing the number of FTP *capiases*, reducing the number of FTA *capiases* will always remain a goal of the Court. As discussed in the “Failure to Pay (FTP) *Capiases*” section above, *capiases* cost money. Defendants who fail to appear for initially-scheduled police prosecutions in New Castle County Justice of the Peace Court locations, uniformly receive computer-generated FTA notices, not *capiases*. A two-week examination of cases scheduled for fourteen (14) Police Prosecution days at Court 11 and Court 9, indicated that ultimately *capiases* were issued for an average of 63% of defendants after the fourteen (14)-day warning period given by the FTA notice. An average of 37% of defendants responded positively to the FTA letter by rescheduling their arraignments, scheduling trial, transferring to the Court of Common Pleas, or entering pleas.

The Court has a goal of promoting public confidence in the judiciary.² The Court also has identified a goal of improving procedural fairness for all defendants. Public confidence in the courts is closely related to procedural fairness. A research report submitted to the U.S. Department of Justice stated that “defendants who appeared for court perceived that they were

² Delaware Judges’ Code of Judicial Conduct, Canon 1, Rule 1.2

treated with greater fairness and respect...” and “...trust/confidence, procedural justice perceptions, and levels of cynicism were significantly correlated with court appearances.”³ Nonetheless, the Court has a goal, and reasonable expectation, that defendants will treat the Court and its processes with respect. These can be related but not mutually exclusive, goals. The Court demonstrates procedural fairness in the many ways in which defendants are treated throughout the process and in the multiple interactions defendants experience with court personnel. Enacting processes and procedures which embody consistency and fairness help to instill confidence and respect from the public.

Risk is inherent. There are no guarantees. The Court must manage this risk while attempting to accomplish the goal of getting all defendants with traffic summonses into the courtroom to take care of their tickets (i.e. treating the Court and its processes with respect). We must work to control the risk and - wherever we can in the process - attempt to help the individuals who are willing to accept the help. The Court must compare beneficial versus harmful outcomes for defendants when making decisions on the issuance of capiases and bail. For some defendants, capiases do not accomplish the court’s goals any more effectively than computer-generated FTA notices. In fact, for some defendants, especially the indigent, capiases do more harm than good.

It should be clearly understood, however, that the Court will not tolerate *willful* disrespect. The computer-generated FTA notices sent to defendants who fail to appear for their initially-scheduled Call of the Calendar arraignments inform them that they have two weeks within which to contact the court and reschedule their arraignments. The letter warns them that if they do not do so, capiases will be issued for their arrests. In an effort to ensure that the Court and its processes are not disrespected, capiases should be issued at this two-week juncture against those defendants who did not respond and who may have no intention of addressing their cases unless forced to do so. The penalty for these defendants does not disappear. It simply is delayed two weeks. But defendants who failed to appear for their initially-scheduled arraignments due to disorganization, forgetfulness, or financial difficulties, as opposed to willful disrespect, will avoid the issuance of a *capias* by making contact with the court and rescheduling their arraignments. Capiases are not necessary to gain their compliance.

Once capiases are issued after defendants have previously received the computer-generated FTA notices, the defendants may appear at the court of their own volition, or through an arrest. At this appearance, the judge has discretion in the setting of bail, as always. Being cognizant of the issuing court location’s bail recommendation (if any), the defendant’s reasons for the failure to appear, the number of defendant’s recent failures to appear, the penalty if convicted of the charges, the likelihood of a plea offer, etc., the judge may set a monetary condition of bail, although the presumptive type is unsecured.

Subsequent Failure to Appear for Scheduled Call of the Calendar Arraignments

It remains within the judge’s discretion to issue a *capias* for those defendants who have multiple failures to appear for scheduled Call of the Calendar arraignments on the same case, as they do for failures to appear for trial, arraignment with trial, or other hearings. The clerical staff

³ <https://www.ncjrs.gov/pdffiles1/nij/grants/234370.pdf>

shall review the cases remaining after Call of the Calendar is completed and the police prosecutors have left the court locations, pull all cases with a subsequent FTA and give them to a judge for review. Judges shall decide on whether to order a same-day *capias* or allow the computer-generated FTA notice to issue for all cases with multiple failures to appear for arraignment. Under no circumstances should a *capias* issue for a defendant's failure to appear at arraignment until such time as the ticket has been sworn to by the officer.

Failure to Appear (FTA) Capiases - Juveniles

Juvenile Justice Reform across the country during the last few decades has resulted in the consideration and treatment of juvenile defendants differently than adult defendants. Delaware codified a narrow list of specific charges and/or circumstances under which the Court is permitted to remove a juvenile from his/her home and hold them in a secure detention facility.⁴ The Justice of the Peace Court instituted the use of the Juvenile Bail & Disposition Form,⁵ which guides the judge through the bail decision-making process, including a review of the legal requirements for detention. These are conscious efforts to create conditions under which juveniles are treated with a greater sensitivity toward the emotional and social consequences of direct contact with law enforcement, the courts and the Department of Correction.

The next step the Justice of the Peace Court is taking is using a new form, the "Juvenile Failure to Appear Letter," for a juvenile defendant who fails to appear for an initially-scheduled Call of the Calendar arraignment. The use of the "Juvenile Failure to Appear Letter" considers and treats a juvenile defendant slightly differently than the court considers and treats an adult defendant. Its use is intended to help keep a juvenile from starting a *capias* history and the harm which can occur from the ramifications of a *capias* history. Parents or guardians who may not be aware of the existence of the summons will now have notice in order to proactively respond to the Court with the juvenile. The Court shall mail the "Juvenile Failure to Appear Letter" to the parents or guardians for a juvenile's failure to appear for an initially-scheduled Call of the Calendar arraignment, in conjunction with the computer-generated FTA letter mailed to the juvenile. As with adults, *capiases* shall not be issued for a failure to appear for an initially-scheduled Call of the Calendar arraignment.

The "Juvenile Failure to Appear Letter" provides the following information to the parents or guardians: the juvenile's court case number; the date the juvenile was given the summons; the date the juvenile was scheduled to appear in court; the next scheduled court date for meeting with the appropriate police prosecutor; notice that all juveniles must be accompanied by a parent or guardian for court appearances; and notice that if the juvenile does not appear on the next scheduled date, a *capias* will be issued for his/her arrest. This letter designates a date for the next scheduled arraignment, unlike a standard computer-generated FTA letter, which instructs defendants to contact the court to reschedule.

The Court shall address and mail a "Juvenile Failure to Appear Letter" to the "Parent or Guardian of" a juvenile defendant who has failed to appear for an initially-scheduled Call of the

⁴ 10 *Del. C.* § 1007(a)

⁵ Criminal Form No. 3J

Calendar arraignment.⁶ This letter is to be mailed no later than one business day from when the computer-generated FTA letter is mailed to the juvenile.

For consistency and efficiency, the court shall issue *all* Juvenile FTA Letters no later than the next business day, but there is a strong preference for the letter to be mailed on the same day of the missed Call of the Calendar arraignments, if possible. The goal is to have these letters, addressed to the parents or guardians, arrive close to the same day as the computer-generated FTA notices arrive, which are addressed directly to the juveniles. If after the issuance of the Juvenile FTA Letter, the juvenile does not appear before the Court either on or before the next scheduled date, the Court may proceed with handling the case as it would for an adult defendant with the issuance of a *capias*.

Subsequent Failure to Appear for Scheduled Call of the Calendar Arraignments

As for adults, it remains within the judge's discretion to issue a *capias* for those juvenile defendants who have multiple failures to appear for Call of the Calendar arraignments on the same case, as the judge has the discretion to issue a *capias* for failures to appear for trial, arraignment with trial, or other hearings. The clerical staff shall review the cases remaining after Call of the Calendar is completed and the police prosecutors have left the court location, pull all cases with a subsequent FTA and give them to a judge for review. Judges shall decide on whether to order a same-day *capias* or allow the computer-generated FTA notice to issue for all cases with multiple failures to appear for arraignment.

Conclusion:

The process for the issuance of computer-generated Failure to Pay notices to adults is not changed by this policy directive revision.

As of the effective date of this revision, *when the defendant is a juvenile* and the case is ripe for a *capias*, the court shall schedule a show cause hearing and notify both the juvenile defendant and the parent/guardian/co-signer of the date and time for the hearing. If the juvenile and co-signer fail to appear at the hearing, the court may issue a FTP *capias* for the juvenile defendant's arrest, as it would for an adult defendant who failed to pay as ordered.

The process for the issuance of computer-generated FTA notices to adults who fail to appear for trial, arraignment and trial, or other scheduled court hearing, is not changed by this policy directive revision. The judge has the discretion to either allow the computer-generated FTA notice or to issue a *capias*.

As of the effective date of this revision, the court shall not issue *capiases* on the same day for adult defendants who fail to appear for their initially-scheduled Call of the Calendar arraignments. The computer-generated FTA notices will issue. The judge may issue a same-day *capias* if the defendant has failed to appear for more than one scheduled Call of the Calendar arraignment for the same case.

⁶ The standard computer-generated FTA letter is addressed to the juvenile since it is his/her name on the summons.

As of the effective date of this revision, the court will not issue capiases on the same day for juvenile defendants who fail to appear for initially-scheduled Call of the Calendar arraignments. The Court will mail the new "Juvenile Failure to Appear Letter," addressed to the juvenile's parents or guardians, in conjunction with the computer-generated FTA notice, addressed and mailed to the juvenile defendant. The judge may issue a same-day capias if the juvenile defendant has failed to appear for more than one scheduled Call of the Calendar arraignment for the same case.

In addition, under no circumstances should a capias or a default judgment issue for a defendant's failure to appear for any scheduled appearance until such time as the ticket or summons has been sworn to by the officer, regardless of the charge.

Attachments: CRF52 "Juvenile Failure to Appear Letter"
CRF49J "Juvenile Failure to Pay Show Cause Hearing"

cc: The Honorable Leo E. Strine, Jr.
The Honorable Andre Bouchard
The Honorable Jan Jurden
The Honorable Alex J. Smalls
The Honorable Michael K. Newell
Amy Quinlan, SCA
Marianne Kennedy
Jody Huber, Esquire
Mark Hitch
Alderman's Courts
Law Libraries: New Castle County, Kent County, Sussex County
Widener University School of Law

PRINT ON COURT LETTER HEAD

DATE: _____

Parent or Guardian of _____

Address: _____

Case Number: _____

Dear Sir or Madam:

On _____, the defendant, _____, was given a summons to appear in this court on _____ (copy enclosed). Please note that all minors (under the age of 18) are required by law to be accompanied by a parent or guardian. As of this date your child failed to appear in court on the above-mentioned date.

If the defendant, along with a parent or guardian, does not appear in this court on _____ at _____ a.m. /p.m. the Court will issue a capias (bench warrant) for the defendant's arrest. Should you have any questions or if you would like to request this date to be rescheduled, you may contact the court at the number listed above.

Very Truly Yours,

Justice of the Peace Court _____
Court Clerk

Cc: Court File

Crim. Form 52 – Juvenile FTA Letter (Rev 2/6/19)

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR _____ COUNTY
COURT NO. _____**

**JUVENILE FAILURE TO PAY
SHOW CAUSE HEARING**

Date: _____

Parent/Guardian Co-Signer for:
Name: _____
Address: _____

Case Number: _____

Dear Sir or Madam:

On _____ the defendant, _____ and the parent/guardian co-signer were given a time a pay agreement (copy enclosed). As of this date your child has failed to pay the court on the agreed upon date.

You are commanded to appear at Justice of the Peace Court _____ to show cause as to why a capias should not be issued for the defendant's arrest for failure to make the above payment.

A Show Cause Hearing will be scheduled for _____, _____, 20__ at _____ located at **the below court and address:**

Justice of the Peace Court _____
Address _____

Phone: _____

You have the right to be represented by an attorney, but you are not required to have one, and you may represent yourself.

Justice of the Peace

Cc/File