

FORM SUMMARY

Name of Form: Arrest-Bench Warrant/Capias

Form Number: GF-142

Statutory Reference: Chapter 345, §§885.11(2), 968.04(3)(a), 968.09, Wisconsin Statutes

Purpose of Form: Written order directing law enforcement to arrest an individual. The terms "arrest warrant," "bench warrant," "capias," and "body attachment" are often incorrectly used interchangeably.

Arrest Warrant

An "arrest warrant" is used in situations in which the person has not yet appeared in court or otherwise submitted to the jurisdiction of the court. The court orders the arrest of the defendant in order to bring the person before the court and to confer jurisdiction on the court over the person. Section 968.04(3)(4), Wisconsin Statutes, provides for specific mandatory provisions for such warrants. One of the requirements is the warrant specify the name of the crime and the section charged and the number of the section alleged to have been violated. RMC believes this can be accomplished by attaching a copy of the complaint or citation to the warrant. Therefore, RMC has placed an instruction to that effect in the warrant (in bold) with a reference that the name of the crime and statutory references are incorporated into the warrant.

In criminal matters, a copy of the criminal complaint must be attached. This complaint contains a probable cause statement and is under oath. In noncriminal matters brought by citation, there is no probable cause statement nor is the citation under oath. Courts may also be reluctant to issue arrest warrants without some basis to believe the defendant was actually personally served and there is sufficient probable cause. Since §345.36, Wisconsin Statutes, provides that for nonappearance a warrant may be issued under Ch. 968, it would appear that the Ch. 968 safeguards must also be considered.

Therefore, in all cases in which the court issues an arrest warrant for failure to appear in response to a citation, the Committee suggests that an Affidavit of the Court Officer be completed and attached, indicating that the defendant was personally served with the citation and the basis for the issuance of the citation (personal knowledge or information and belief.)

Bench Warrant

A "bench warrant" is used in situations in which the person has previously appeared in court or submitted to the jurisdiction of the court but fails to appear in court as required. It is generally issued from the bench; hence the term "bench warrant." It is not necessary to attach a copy of the complaint or citation, or an affidavit of the court officer described above.

Capias

The term "capias" is a Latin term meaning "that you take"; in this context it is used to "take the body" before the court. Another term often used is "body attachment." The capias is used in this instance to order law enforcement to arrest and bring the person before the court for failure to comply with certain court orders, including:

- failure to appear (including witnesses, respondents in paternity or divorce actions),
- failure to pay financial obligations (fines, forfeitures, assessments, surcharges, and court costs, any any other type of financial obligation). For financial obligations, the person arrested may be released with no further court appearances upon payment of the financial obligation.

Who Completes It:

Clerk of Court

Distribution of Form:

Original: Court file

Copies: Law enforcement, attorneys

Accompanying Forms:

Arrest warrant

- Copy of complaint or citation
- Affidavit of the court officer

Bench warrant

- No other forms needed

Capias

- No other forms needed

New Form/Modification:

Modification, last update 1/97.

Modification:

Added a file/date stamp area to upper left corner. Added a statement on the bottom indicating that the form shall not be modified.

Retained from previous modifications:

The Committee of Chief Judges and CCAP Steering have requested that the reference to "warrant fee" in the "amount due" block at the bottom left of the form be removed. As stated, the warrant fee is a "nonstatutory fee" for which there is no authority to collect. It was believed that having the blank for "warrant fee" on the form gave it some type of unwarranted credibility. However, the sheriff is authorized by statute to collect a sheriff's fee under §814.70, Wisconsin Statutes for service of civil or criminal process. Therefore, to accommodate the concerns of the chief judges and CCAP, but avoid giving the implication that statutory sheriff's fees cannot be collected, RMC has changed the language to "Amount Due: \$____ plus statutory sheriff's fees." All sheriff departments have their own forms for calculating the statutory sheriff's fees. These statutory sheriff's fees are not paid to the Clerk of Court but kept by the sheriff for transmittal to the county treasurer (§59.28, Wisconsin Statutes). Only the amount due as set by the court is transmitted to the Clerk of Court.

In the last modification of this form, RMC added a block of text in the

lower left corner by the "Amount Due" section, indicating that if the subject of the warrant posts the required amount, law enforcement must immediately inform the court and the district attorney of the new court date that was assigned. This was added with the hope this would help insure that the necessary court and prosecutorial personnel were informed when the subject was expected to be in court. However, in order for law enforcement to know what date to provide the defendant, the court must provide a schedule to law enforcement in advance indicating the appropriate court dates (similar to traffic court dates or criminal intake dates).

CCAP version: For "bench warrants" and "failure to pay capias" versions, CCAP will print out a section listing the underlying charges on the case. For the bench warrant, only the active charges will print (not amended or dismissed) and for failure to pay capias, on charges with "guilty" verdicts and assessments will appear. Some law enforcement agencies have requested this information so that they will have an idea of the type of individual with whom they are dealing and can take necessary precautions.

The court has added a new section "C" to allow the arrest/bench warrant to be used when a defendant fails to comply with certain court-ordered financial obligations (fines, forfeitures, assessments, surcharges, and court costs). The CCAP financial version will only print the section "C" and eliminate the unnecessary "A" and "B" portions. The hard copy version of this form has all 3 sections. A judge or court commissioner issuing the arrest-bench warrant/capias will have to check the appropriate section.

Comments:

This form **should not** be used to take a *juvenile* into custody in a juvenile court proceeding. There is a separate form called "Capias" (JD-1714) for such proceedings.

About this form:

This form is the product of the Wisconsin Records Management Committee, a committee of the Director of State Court's Office and a mandate of the Wisconsin Judicial Conference.

If you have additional information that does not change the meaning of the form, attach it on a separate page. The form itself shall not be altered.