



STATE OF DELAWARE  
**THE JUSTICE OF THE PEACE COURT**


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ALAN G. DAVIS  
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**POLICY DIRECTIVE 96-161 (REVISED)**

**TO: ALL JUSTICE OF THE PEACE COURT EMPLOYEES**

**FROM: ALAN G. DAVIS**  
**CHIEF MAGISTRATE** 

**DATE: JULY 14, 2025**

**RE: HANDLING JUSTICE OF THE PEACE COURT CAPIASES**

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**SCOPE**

This Policy Directive establishes the policy and procedures for handling Justice of the Peace Court capiases. The revisions in this document reflect technological advances and improvements now available to the Court. In addition, this document more accurately reflects that when judges are resolving capiases issued by criminal court locations for defendants' failure to appear and failure to pay, as well as capiases issued by civil court locations, the Justice of the Peace Court is one court with different locations.

**JUSTICE OF THE PEACE COURT POLICY**

The policy of the Justice of the Peace (JP) Court is that the Court is one entity with various locations throughout the State of Delaware. For all persons brought to any JP Criminal Court location, the Court shall handle and appropriately dispose of all outstanding capiases issued by other JP Court locations, regardless of the county or hours of operation of the issuing Court's location. This policy is a departure from the original policy directive and its supplements which made those variables (i.e. location and hours of operation) relevant in the handling, decision making, and scheduling of JP Court capiases.

In addition, this Policy Revision aligns with the “Protocol for Virtual Hearings in Criminal Court Locations”.<sup>1</sup>

### **POLICY DIRECTIVES AFFECTED**

The following policy directives are rescinded, but may be retained for historical purposes:

- Policy Directive 96-161 “Handling All Court Capiases,” dated October 18, 1996;
- Policy Directive 96-161 (1st SUPPLEMENT) “Handling All Court Capiases,” including attachment dated February 10, 1997;
- Policy Directive 96-161 (2<sup>nd</sup> SUPPLEMENT) “Handling All Court Capiases,” dated January 28, 1998; and
- Policy Directive 96-161 (3<sup>rd</sup> SUPPLEMENT) “Handling Civil Court Capiases,” dated April 30, 2002.

### **EFFECTIVE DATE**

This policy directive shall take effect on July 14, 2025.

### **DISCUSSION**

The JP Court has for many years handled capiases issued by other Delaware Courts including Superior Court, Court of Common Pleas, and Family Court, as well as Alderman Court, when those courts are closed or will be closed by the time the defendant can be transported to the appropriate court. Per Chief Magistrate Griffin in October 1996, “this cooperative arrangement reduces police transport time, prison overcrowding, and inconvenience to the general public and those persons involved with the criminal justice system.”<sup>2</sup>

The procedures for handling capiases for other courts are outlined in the following policy directives:

- Policy Directive 86-103 “Superior Court Capias Returns to Justice of the Peace Courts” dated June 30, 1986;
- Policy Directive 80-003 “Capias Issued out of Court of Common Pleas” dated July 8, 1980; and
- Policy Directive 90-122 “Return of Family Court Capiases and Warrants” dated April 16, 1990.

The policies and procedures regarding the handling of capiases from other Justice of the Peace Court locations was established by Policy Directive 96-161 “Handling All Court Capiases” dated October 18, 1996. This policy was updated in 1997, 1998, and 2002, with supplements.

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<sup>1</sup> PD 97-163 (7<sup>th</sup> Revision).

<sup>2</sup> Justice of the Peace Policy Directive 96-161 dated October 18, 1996.

Due to technological advancements in how cases are processed, Policy Directive 96-161 is revised again to clarify and streamline the practices for handling JP Court capiases issued for failure to appear and failure to pay, as well as for civil court capiases. This revision is renamed “Handling Justice of the Peace Court Capiases” to more appropriately reflect the majority of the content matter of the policy directive. For guidance on how to handle capiases issued by higher courts, refer to the above referenced policy directives.

For all persons brought to any JP Criminal Court location, the Court shall handle and appropriately dispose of all outstanding capiases issued by other JP Court locations, in accordance with the following procedures, and with the “Justice of the Peace Court Protocol for Virtual Hearings in Criminal Court Locations,” regardless of the original court location’s county or hours of operation. The JP Court is one entity with various locations throughout the State of Delaware. There should be no differentiation between how a JP Court capias is handled whether the original court location is closed or open and whether the original court location is within or outside of the county of the court location handling the capias. The judge handling a capias should take into consideration any bail recommendation given by the judge who issued the capias, but retains judicial discretion in any bail-setting process, using a “totality of the circumstances” analysis.

## **PROCEDURES FOR HANDLING JP CRIMINAL COURT CAPIASES**

**\*\*March 4, 2023, is the effective date for the enactment of the section of HB 244AAB HA 2, which discontinued capias fees for Failure to Pay capiases.<sup>3</sup> The fees may still be included in the total amount the defendant owes due to capiases issued prior to this date. Capias fees for Failure to Appear will continue to be assessed at this time.**

**\*\*For every Failure to Appear capias, the judge should make a decision at the time of the defendant’s appearance on the capias about the assessed capias fees, as the DMV will, at times, not permit a person to reinstate their license if a capias fee remains in the computer unaddressed. The judge has several options, depending upon the status of the defendant’s case:**

- 1) Collect the fee, if the defendant is seen in person;
- 2) Add the fee to an existing balance due;
- 3) Order the defendant to “pay the fee at their next court appearance” as a condition of bail printed on their bond; or
- 4) Suspend the fee.

### **A) Capiases for Failure to Pay (FTP) - ADULTS**

- 1) The judge before whom an adult defendant with a FTP capias is appearing should make every effort to resolve the capias by one of the following methods:
  - a) Collect the amount of fines and court assessments owed;

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<sup>3</sup> HB 422 AAB HA 2, was signed by Governor Carney on October 23, 2022. Some sections of this legislation went into effect at that time, but other sections, including the mandate to discontinue the imposition of FTP capias fees, went into effect on March 4, 2023.

- b) Place the defendant on work referral or wage assignment;
- c) Establish a new “Time to Pay” (TTP) plan; or
- d) Collect a partial payment and suspend the remaining balance.

If the judge (in a court location that is NOT the original court location) finds that the case may be ripe for a civil contempt of court charge, *and the judge decides that no option listed under #1 above is appropriate*, the judge shall determine bail and set the case for a capias return hearing at the original location the next day that the court is open whether or not the defendant is incarcerated or released on non-secured monetary conditions of bond. **ONLY the original court location can process a civil contempt of court charge. The judge should include documentation on the capias paperwork if the case may be ripe for civil contempt.**

- 2) A defendant who appears on a JP Court FTP capias stemming from a case when the defendant was a juvenile, but who is now 18 years of age or older, is to be treated as an adult by the Court.

**\*REMINDER:** A judge may not charge a defendant with civil contempt of court unless:

- a) The defendant has been given at least one (1) TTP plan, but the defendant failed to pay, which resulted in at least one (1) FTP capias;
- AND**
- b) The defendant has been ordered to work referral, but the defendant has failed to appear at the work referral office *or* has failed to complete the assigned hours<sup>4</sup>.

## **B) Capiases for FTP – JUVENILES**

The only circumstance in which the Court issues a FTP capias on a juvenile defendant is when the defendant and parent/guardian/co-signer have failed to appear for a show cause hearing that was set to determine why the juvenile defendant has not paid the fines and court assessments owed.<sup>5</sup>

- 1) The judge before whom a juvenile defendant with a FTP capias is appearing, should make every effort to resolve the capias by one of the following methods:
  - a) Collect the amount of fines and court assessments owed;
  - b) Collect a partial payment and suspend the remaining balance;
  - c) Establish a new TTP plan, which could include a schedule for payment in full on the defendant’s 18<sup>th</sup> birthday; or
  - d) If the judge determines that the juvenile has willfully failed to pay and will

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<sup>4</sup> See Legal Memorandum 84-118 (3<sup>rd</sup> Supplement) for discussion of civil contempt as provided in *Bonecutter v. Oberly*, Del. Super., C.A. No. 91M-10-04, Gebelein, J. (October 15, 1991) – “persons should not be incarcerated for civil contempt unless they have been ordered to report to work release and have failed to do so.”

<sup>5</sup> PD 84-091 (Revised) “Procedures Regarding the Issuance of Capiases,” March 15, 2019, p. 3.

continue to willfully fail to pay, the judge shall determine bail and set the case for a capias return hearing at the original court location the next day that the court is open. The judge at the original court location, after reviewing the defendant's complete file and discussing the failure to pay with the defendant and parent/guardian/co-signer, shall determine whether charging the defendant with delinquency and transferring the case to Family Court is appropriate.<sup>6</sup> As with a civil contempt of court charge, ONLY the original court location can process a delinquency charge, as it has the entire original case documents.

**C) Capiases for Failure to Appear (FTA) for Arraignment on Criminal Charges or for Police Prosecution Call of the Calendar**

The judge handling a capias for FTA for arraignment on criminal charges or for police prosecution call of the calendar shall conduct an arraignment of the defendant if the charging document is an electronically-generated summons. The case documents for electronically-generated summonses can be printed at any court location.<sup>7</sup>

- 1) If the defendant pleads **guilty**, then the JP Court location handling the capias assumes the case and the judge shall sentence the defendant accordingly; and
- 2) If the defendant pleads **not guilty**, the judge shall schedule the defendant for the next appropriate hearing (police prosecution, trial in JP Court, or arraignment in the Court of Commons Pleas.) **Defendants with Title 21 charges requesting a trial or a transfer to the Court of Common Pleas prior to speaking with a police prosecutor, should be strongly encouraged to schedule with the police prosecutor first.** Scheduling shall be in accordance with PD 00-182 (4<sup>th</sup> Revision) "Scheduling Trials/Hearings in Other Justice of the Peace Court Locations" and PD 10-235 "Disposition of Cases Through the Police Prosecution Process."<sup>8</sup> The judge should set bail

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<sup>6</sup> 10 Del. C. § 921(10)(d). "Any child 16 or 17 years old who fails or refuses to pay a fine imposed by a court having jurisdiction of the offenses in Title 21, except those offenses within the jurisdiction of the Family Court, and after exhaustion of all other legal remedies for collection provided by the State, shall be charged with delinquency and referred to the Family Court..."

<sup>7</sup> If the charging document is not an electronically-generated summons and cannot be printed except at the original court location, the clerk can request that a copy of the case be sent via fax or email by the original court location if open. If the original court location is closed, the judge should determine bail and schedule the defendant for a capias return hearing at the original court location on the next day that the court is open.

<sup>8</sup> See Policy Directive 00-182 (4<sup>th</sup> Revision) "Scheduling Trials/Hearings for Other Justice of the Peace Courts" for procedures regarding this process. Also see Policy Directive 10-235 "Disposition of Cases Through the Police Prosecution Process," p. 6 "Defendants who appear in advance of a scheduled call of the calendar or who have missed a scheduled appearance at a call of the calendar and appear later should have the process and benefit of participating explained to them by a judge. Those electing to participate in the call of the calendar should be rescheduled for the next such event involving the arresting agency. Those wishing to plead guilty as charged, requesting a trial in the Justice of the Peace Court or requesting a transfer to the Court of Common Pleas should be arraigned and the appropriate action completed. Defendants who appear at a court location during a call of the calendar for which they are not

according to the bail guidelines and include any relevant information regarding the bail decisions on the capias printout. Clerks shall enter this information into the Bail Notes section of DELJIS for review by the next court handling the case;

**D) Capiases for FTA for Trial**

- 1) If the defendant now wishes to plead **guilty**, the JP Court location handling the capias assumes the case and the judge sentences the defendant accordingly;
- 2) If the defendant has the right to transfer his/her case to the Court of Common Pleas (CCP) and wishes to now exercise that right, the judge shall verify the defendant's address and set bail according to the bail guidelines. If the defendant is not committed on a monetary conditions of release bond, the court shall issue a bond for an arraignment date in CCP. If the defendant is committed, the court shall issue a commitment and schedule a bail review in CCP; and
- 3) If the defendant wishes to be rescheduled for trial in JP Court, the judge shall verify the defendant's address. If the judge releases the defendant on her/his own recognizance or on an unsecured monetary conditions of release bond, the court shall provide the defendant with bond paperwork indicating that the original court location will notify him/her of the date and time for the trial. This scheduling is in accordance with PD 00-182 (4<sup>th</sup> Revision) "Scheduling Trials/Hearings for Other Justice of the Peace Court Locations". If the judge commits the defendant on a monetary conditions of release bond, the court shall follow the process under Section "G" below.

**E) Capiases for FTA for Show Cause Hearings – DUI FOP Non-Compliance**

- 1) The judge before whom the defendant with an FTA capias for failure to appear for a show cause hearing (alleged non-compliance with conditions of FOP sentencing) is appearing should make every effort to resolve the capias by one of the following methods:
  - a. If the reason for the show cause hearing was to determine why the defendant has not paid outstanding court costs and assessments (the defendant has completed the instructional program): 1) Collect the outstanding amount owed; 2) Place the defendant on work referral or wage assignment; 3) Establish a new TTP plan; or 4) Collect a partial payment and suspend the remaining balance; and
  - b. If the reason for the show cause hearing was to determine why the defendant has not completed the instructional program assigned within

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scheduled may, at the discretion of the Court, be accommodated in this fashion or rescheduled for the next appropriate call of the calendar."

the time frame ordered by the judge, has been discharged non-compliant, or has been discharged at risk: 1) Reschedule a FOP compliance review in the originating JP Court location, giving the defendant additional time to complete the program; or 2) Withdraw the FOP, find the defendant guilty of a first offense, and modify the sentence accordingly. This option is available **ONLY** after reviewing the entire case file. If the judge cannot adequately review the case file because they are not in the originating JP Court location, a capias return hearing to the originating location must be scheduled.

**F) Capiases for FTA for Work Referral**

- 1) The judge before whom the defendant with a FTA capias for failure to appear for work referral or failure to complete the assigned hours is appearing should make every effort to resolve the capias by one of the following methods:
  - a. Collect the amount of fines and court assessments owed;
  - b. Place the defendant back on work referral or order a wage assignment;
  - c. Collect a partial payment and suspend the remaining balance;
  - d. Establish a new "Time to Pay" (TTP) plan; or
  - e. If the judge (in a court location that is NOT the originating location) determines that the case is ripe for a civil contempt of court charge, the judge shall determine bail and set the case for a capias return hearing at the original court location the next day that the court is open.  
(REFER TO ABOVE: SECTION A).

**G) Defendants Being Committed on a FTA Capias Issued by Another J.P. Court Location on a Case that has not yet been Adjudicated and the Case is Remaining in JP Court:**

- 1) The defendant shall be scheduled to appear for a capias return & bail review hearing at the original court location on the next day that the court is open. This will allow the original court location to: a) schedule police prosecution dates more expeditiously for defendants to avoid any lengthy incarceration waiting for the next "available" police prosecution dates in the computer; or b) schedule trials expeditiously. The Court shall actively work to avoid any unreasonable periods of incarceration. If a committed defendant is later found or pleads guilty, the judge has the discretion to consider the length of time the defendant served when determining that defendant's sentence, including charging off fines and fees where statute allows; and
- 2) If a defendant must be scheduled for multiple capias return and/or bail review hearings **and** must be transported to various courts throughout the state at such times or in such circumstances when virtual hearings cannot take place, the judge shall take into consideration any conflicts and schedule the hearings accordingly.

## H) Capiases for FTA for Truancy<sup>9</sup>

- 1) FTA for Arraignment: Set unsecured bail to appear in the truancy court location on the next truancy calendar;
- 2) FTA for Case Review: Check the capias notes for the issuing judge's recommendation. Bail may be unsecured or secured pursuant to 11 *Del. C.* § 2108. *Bail for juveniles should be unsecured.* Schedule for the next truancy calendar;
- 3) FTA for Criminal Contempt of Court hearing: Check the capias notes for the issuing judge's recommendation. Bail may be unsecured or secured pursuant to 11 *Del. C.* § 2108. *Juveniles may be secured only if the conditions imposed by 10 Del. C. § 1007 are met.* Schedule for the next JP Court truancy calendar.

## PROCEDURES FOR HANDLING CAPIASES WHEN THE DEFENDANT IS INTOXICATED

The police agency holding a defendant who is intoxicated will hold the defendant in police custody until sober or request an "Intox Hold". The judge **must see and speak with** every intoxicated person in police custody prior to making a "determination of incapacity."<sup>10</sup>

The defendant will be brought before the Court with: 1) Only one or more capiases from a higher court; 2) Only one or more capiases from JP Court locations (*no new charges*); or 3) One or more capiases AND new charges.

➤ If the defendant is brought before the Court with only one or more capiases from a higher court (*no JP Court capiases*), the judge should **NOT** order an "Intoxication Hold," even though the judge determines "the person is **unable** (*emphasis added*) to knowingly and intelligently participate in the presentment proceedings as a result of the consumption of alcohol or the use of drugs." If the judge orders an "Intoxication Hold" on a higher court capias, the defendant's capias return hearing in the higher court may be delayed for an *extra day or more*. Appropriate options under this circumstance are:

- a) Order a secured or cash financial conditions of bail for a capias return hearing at the appropriate higher court location; or
- b) Order a non-secured financial condition of bail for a capias return hearing at the appropriate upper court location and the officer drives the defendant home or finds a sober person to take custody of the defendant.

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<sup>9</sup> See Bail Bench Book. Truancy hours for each J.P. Court location with truancy dockets appear on a chart in both the "Capiases, Initial FTA & Rule 9" and the "Truancy" sections.

<sup>10</sup> LM 98-232 (1<sup>st</sup> Supplement) Revised.



➤ If the defendant is brought before the Court with only one or more capiases from JP Court locations (*no new charges*), the following procedures apply:

- a) The judge may determine that, even though the person has consumed alcohol or used drugs, they are able to knowingly and intelligently participate in the proceeding. If so, the judge should proceed as discussed above under “PROCEDURES FOR HANDLING JP CRIMINAL COURT CAPIASES”; and
- b) The judge may determine that an “Intox Hold” for presentment to the 24-hour JP Court location in the county where the capias was issued may be reasonable or appropriate, depending upon an individual analysis of the defendant’s cognitive abilities. If so, the judge should follow all guidance for an “Intox Hold” in Legal Memorandum 98-232 (2<sup>nd</sup> Supplement) issued jointly with this policy directive.

➤ If the defendant is brought before the Court with one or more capiases AND new charges, the following procedure applies in addition to the above in this section:

a) The capiases shall be attached to the case with new charges and shall not be handled until the presentment on the defendant’s new charges; and

b) The judge may determine that an “Intox Hold” for presentment may be reasonable or appropriate, depending upon an individual analysis of the defendant’s cognitive abilities. If so, the judge should follow all guidance for an “Intox Hold” in Legal Memorandum 98-232 (2<sup>nd</sup> Supplement) issued jointly with this policy directive.

**REMINDER:** If the penalty for the charge does not include jail time, the person should **NOT** be committed on an “Intox Hold”, as this raises constitutional concerns.<sup>11</sup>

### **PROCEDURES FOR HANDLING CAPIASES FROM JP CIVIL COURT LOCATIONS**

Litigants who have a civil court capias issued against them for failure to appear for a show cause hearing from a JP Court civil location may be brought to any civil court location in the county in which the litigant is located. Although it would be a rare occurrence, the litigant may be taken to the nearest criminal court location, if the civil court location is closed. The court shall bond the litigant to appear at the original civil court location on the next day that civil court location is open. This process would not involve the case management system, but would be a manual process requiring information from the court (civil courts are not listed in DELJIS).

When the civil court location that issued the capias has access to equipment for virtual hearings (through its attached criminal court if applicable) then the person can be brought to any JP Court location in which virtual equipment is available, **except those locations in which the equipment is housed in judges’ chambers**. The capias return hearing for the failure to appear

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<sup>11</sup> Id.

for a show cause hearing can then be held via a virtual hearing with the original civil court location.

### **BAIL, CASE AND/OR ACCOUNTS RECEIVABLES NOTES**

It is imperative that Judges keep in mind the accessibility of notes in DELJIS which are available to all JP Court users. DELJIS allows the addition of notes in three sections: bail notes (information provided on the bail and disposition form or other case related information), case notes, as well as accounts receivable notes (notes on payment arrangements, work referrals and other payment information). By ensuring that appropriate notes are entered into DELJIS, the amount of paperwork transmitted between JP Court locations should be minimal in order for the judge to resolve the matter before the Court or schedule the matter at the appropriate court location. It is critical that judges provide bail recommendations upon the issuance of a capias as well as notes documenting any information helpful to the judge resolving the pending matter.

### **CONCLUSION**

Throughout the State of Delaware, there are several JP criminal court locations in each county. Historically, there were exceptions made as to how each JP criminal court location would handle capias issued out of other JP criminal court locations. This policy rescinds that practice and puts into place a system whereby a capias issued out of one JP criminal court location shall be handled by any other criminal court location. All efforts shall be made to resolve the capias when possible with the exceptions of civil contempt proceedings, delinquency charges for a juvenile, defendants committed on secured or cash monetary conditions of bail, and trials, which must be returned to the original court location. This policy also outlines how to handle capias for failure to appear for a show cause hearing issued by civil court locations as well as capias issued by truancy court locations.

In addition, this policy presents the procedures to follow when defendants with capias are intoxicated.

cc: Hon. Collins J. Seitz, Jr.  
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Hon. Eric M Davis  
Hon. Carl Danberg  
Hon. Michael K. Newell  
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