

AUG 15 2005

OPINION COMMITTEE



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Dear General Abbot,

I hereby request an opinion on the following matter:

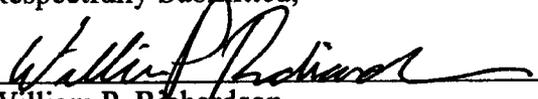
**Question:** Can the State properly pursue a defendant with a *capias pro fine* if the term of deferred adjudication has expired and no *motion to adjudicate* has been filed?

**Facts:** Burnet County is currently using a collections office to set up and maintain payment plans for fines and court costs. The office is also tasked with collecting past due fines and court costs that remain on the county books. In collecting past due fines and court costs, the office has discovered expired deferred adjudications with outstanding court costs and fines.

**Brief:** The Code of Criminal Procedure (CCP) is ambiguous on how to handle expired deferred adjudications. The Code is worded as follows, "On expiration of a community supervision period imposed under Subsection (a) of this section, if the judge has not proceeded to adjudication of guilt, the judge shall *dismiss* the proceedings against the defendant and *discharge* him." CCP §42.12(5)(c). The words "dismiss" and "discharge" could indicate either an absolute or partial bar to further pursuit of the defendant.

An absolute bar is indicated by reading CCP §42.12 as releasing the defendant from further adjudication, court costs and fines. A partial bar is indicated by reading the same provision as releasing the defendant only from further adjudication. An absolute bar would seem to reward a defendant for failing to comply with probation (i.e. no payment of fine or court cost), on the basis that the State did not file a motion to adjudicate. A partial bar would allow the State to pursue fines and court costs (clearing up the county books) while being barred from post-expiration adjudication. Guidance on this matter would be appreciated.

Respectfully Submitted,

  
William P. Richardson  
Assistant County Attorney