



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 20, 2022

The Honorable Martin Placke
Lee County Attorney
200 South Main, Room 305
Giddings, Texas 78942

Opinion No. KP-0417

Re: Whether a magistrate has authority to modify a bond set by a magistrate in a different county where the accused was arrested (RQ-0452-KP)

Dear Mr. Placke:

You ask about the authority of a magistrate to modify a bail bond set by a magistrate from another county in particular circumstances.¹

As background, you explain that “[w]hen a warrant for arrest is issued, an accused person may be arrested in any county in Texas. If an accused is arrested in a county that did not issue the warrant and in which the offense did not occur[,] the accused will be magistrated in the arresting county.” Request Letter at 1; *see also* TEX. CODE CRIM. PROC. arts. 15.18(a) (“Arrest for out-of-county offense”), 15.17(a) (providing that within 48 hours, an arrested person must be taken before a magistrate to receive certain warnings and information). During this process, the magistrate makes certain determinations and then must “admit the person arrested to bail if allowed by law.” TEX. CODE CRIM. PROC. arts. 15.18(a)(1), 15.17(a); *see also id.* arts. 17.028(a) (obligating the magistrate to decide whether to grant a bond, with or without conditions, or deny bail within the 48-hour time period)², 17.15(a) (setting forth rules for determining the amount and conditions for bail); TEX. CONST. art. I, § 11 (establishing a constitutional right to have bail set in most instances). A magistrate may also impose certain conditions for release on bond, and in some instances may be required to do so. *See, e.g.*, TEX. CODE CRIM. PROC. arts. 17.44 (authorizing but not requiring

¹*See* Letter from Honorable Martin Placke, Lee Cnty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Apr. 1, 2022), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2022/pdf/RQ0452KP.pdf> (“Request Letter”).

²“Bail” means “the security given by the accused that he will appear and answer before the proper court the accusation brought against him and includes a bail bond or a personal bond.” TEX. CODE CRIM. PROC. art. 17.01. A “bail bond” is “a written undertaking entered into by the defendant and the defendant’s sureties for the appearance of the principal therein before a court or magistrate to answer a criminal accusation.” *Id.* art. 17.02; *see also Ex parte Gomez*, 624 S.W.3d 573, 577 (Tex. Crim. App. 2021) (noting that chapter 17 of the Code of Criminal Procedure uses the terms “bail” and “bond” in certain contexts interchangeably, referring both to the amount set and the security given in that amount).

home confinement, electronic monitoring, and drug testing), 17.441 (requiring the installation of a vehicle ignition interlock if a defendant is charged with certain offenses). Once the magistrate completes this process, you tell us that the “accused will either be released from custody . . . or, if not released on bond, he/she would be transferred to the county in which the offense was committed and that issued the warrant.” Request Letter at 1.

You explain that if the accused is transported back to the warrant-issuing county, “there may be a need or desire to modify the bond conditions previously set.” *Id.* at 2; *see also id.* at 1 (noting that “[i]n some unfiled cases . . . the arresting county magistrate may not have imposed mandatory or discretionary bond conditions”). You first ask whether a magistrate in the warrant-issuing county may “modify (higher or lower) the bond and/or add, remove, or change bond conditions” set by the arresting county magistrate after the accused is transferred back to the warrant-issuing county but “prior to the criminal case being filed in the appropriate court.” *Id.* at 1.

Article 17.09 of the Code of Criminal Procedure addresses subsequent bond proceedings, stating in relevant part that

whenever, during the course of [a criminal] action, the judge or magistrate *in whose court such action is pending* finds that the bond is defective, excessive or insufficient in amount, or that the sureties, if any, are not acceptable, or for any other good and sufficient case, such judge or magistrate may, either in term-time or in vacation, order the accused to be rearrested, and require the accused to give another bond in such amount as the judge or magistrate may deem proper.

TEX. CODE CRIM. PROC. art. 17.09, § 3 (emphasis added); *see also id.* art. 17.38 (providing that the rules in chapter 17 regarding bail “apply to all such undertakings when entered into in the course of a criminal action, whether before or after an indictment, in every case where authority is given to any court, judge, magistrate, or other officer, to require bail” of an arrestee). Thus, to modify a bond, the magistrate must be the one “in whose court such action is pending.” TEX. CODE CRIM. PROC. art. 17.09, § 3.

Whether an action is “pending” in a court depends on whether the court currently has jurisdiction over the matter. In *Ex parte Clear*, the Texas Court of Criminal Appeals held that the filing of a felony complaint in a justice court gave that court “[s]ole jurisdiction over th[e] complaint . . . to the exclusion of all other courts” until the complaint was dismissed or formal charges were filed.³ *Ex parte Clear*, 573 S.W.2d 224, 229 (Tex. Crim. App. 1978) (emphasis added); *see also* TEX. CODE CRIM. PROC. art. 4.16 (stating that generally “the court in which an indictment or a complaint shall first be filed shall retain jurisdiction”). Accordingly, a district court could not modify the accused’s bond. *See Ex parte Clear*, 573 S.W.2d at 229. The Court later reiterated the principle that “to change the bonds already properly set by a magistrate,”

³*See* TEX. CODE CRIM. PROC. art. 15.04 (explaining that an affidavit made before a magistrate or district or county attorney charging the commission of a crime is a “complaint”).

another judge “must first have jurisdiction over” the case. *Guerra v. Garza*, 987 S.W.2d 593, 593 (Tex. Crim. App. 1999) (explaining that to allow the modification of a bond by a court without jurisdiction “could lead to a chaotic bail system, where unilateral, unbidden judicial actions abound, where all judges have jurisdiction over all things at all times, and where forum shopping to reduce or increase bail amounts flourishes,” which “would be unacceptable”). Thus, if a magistrate receives a complaint and issues an arrest warrant, that magistrate exercises jurisdiction over the action until formal charges are filed in the appropriate court. *See* TEX. CODE CRIM. PROC. art. 15.03(a) (authorizing a magistrate to issue an arrest warrant upon receipt of a complaint); *see also* Tex. Att’y Gen. Op. No. GA-1021 (2013) at 3 (concluding in the context of surety that after a person is released on bond but before a formal charging instrument is filed in the proper court, the prosecution is “pending” before the “magistrate who properly received a complaint”).⁴

By contrast, when a person is arrested on a warrant issued in another county, the court of the magistrate who sets bail does not necessarily have jurisdiction over the case. *See* TEX. CODE CRIM. PROC. art. 15.18(a)(1) (providing that the magistrate before whom an out-of-county arrestee is taken shall “take bail, if allowed by law, and, *if without jurisdiction*, immediately transmit the bond taken to the court having jurisdiction of the offense” (emphasis added)). Based on these principles, a court would likely conclude that article 17.09 authorizes a magistrate who issued an arrest warrant executed in another county to modify a bond set by a magistrate from the arresting county until charges are filed in the appropriate court.

“If the in-county magistrate has the authority to modify bonds set outside the warrant issuing county,” you also ask whether that authority depends “upon whether the conditions sought are mandatory for release or discretionary in nature[.]” Request Letter at 3. Article 17.09 does not expressly condition the authority to modify bonds on whether the conditions sought are mandatory or discretionary. If the authorized magistrate “finds that the bond is defective, excessive or insufficient in amount, or that the sureties, if any, are not acceptable, or for any other good and sufficient cause,” he or she may modify the bond as the “magistrate may deem proper.” TEX. CODE CRIM. PROC. art. 17.09, § 3. “No precise standard exists for determining what constitutes ‘good and sufficient cause’ under Article 17.09. Therefore, each case must be reviewed on a fact-by-fact basis.” *Miller v. State*, 855 S.W.2d 92, 93–94 (Tex. App.—Houston [14th Dist.] 1993, pet. ref’d).

⁴Opinion GA-1021 concerned article 17.16 (regarding discharging a surety’s liability on a bond) and article 17.19 (providing a method for a surety to surrender the principal), both of which contain language referring to the entity “before which the prosecution is pending.” *See* Tex. Att’y Gen. Op. No. GA-1021 (2013) at 1–3; *see also* TEX. CODE CRIM. PROC. arts. 17.16, .19.

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A court would likely conclude that a magistrate who issued an arrest warrant executed in another county may, until charges are filed in the appropriate court, modify a bond set by a magistrate from the arresting county pursuant to article 17.09, section 3, of the Code of Criminal Procedure. Article 17.09 does not expressly condition the authority to modify bonds on whether new bond conditions sought are mandatory or discretionary under the law.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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