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Re: Authority of Warrant Issuing County Modifying Bonds and Adding Conditions
Of An Out of County Bond Set by Magistrate

Dear Attorney General Paxton and Opinion Committee:

This letter requests a formal written opinion on whether a magistrate in the county that issued a warrant may modify a bond set by an out of county magistrate once the accused is transferred to the county that issued the warrant.

Factual Scenario

When 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. The accused will either be released from custody on a bond set by magistrate in the arresting county 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. In some unfiled cases, i.e., the criminal case has not been formally filed in the appropriate county or district court, the arresting county magistrate may not have imposed mandatory or discretionary bond conditions, e.g., TxCCP 17.441, 17.40, 17.465, 17.292, 17.49. There is a question among our magistrates whether a local magistrate has jurisdiction or authority to re-magistrate an accused and modify (higher or lower) the bond and/or add, remove, or change bond conditions after being transferred to Lee County for Lee County charges. The uncertainty is whether it is only the original magistrate with the authority and jurisdiction to change or amend bond or bond conditions prior to the criminal case being filed in the appropriate court.

Applicable Statutes

Code of Criminal Procedure Art. 15.16(a). How Warrant Is Executed.

“The officer or person executing a warrant of arrest shall without unnecessary delay take the person or have him taken before the magistrate who issued the warrant or before the magistrate named in the warrant, if the magistrate is in the same county where the person is arrested. If the issuing or named magistrate is in another county, the person arrested shall without unnecessary delay be taken before some magistrate in the county in which he was arrested.”

C.C.P. Art. 15.17(a). Duties of Arresting Officer and Magistrate.

“In each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in any other county of this state....”

Code of Criminal Procedure Article 15.18(a). Arrest for Out-of-County Offense.

“A person arrested under a warrant issued in a county other than the one in which the person is arrested shall be taken before a magistrate of the county where the arrest takes place or, to provide more expeditiously to the arrested person the warnings described by Article 15.17, before a magistrate in any other county of this state, including the county where the warrant was issued. The magistrate shall:

- (1) take bail, if allowed by law, and, if without jurisdiction, immediately transmit the bond taken to the court having jurisdiction of the offense; or
- (2) in the case of a person arrested under warrant for an offense punishable by fine only, accept a written plea of guilty or nolo contendere, set a fine, determine costs, accept payment of the fine and costs, give credit for time served, determine indigency, or, on satisfaction of the judgment, discharge the defendant, as the case may indicate.

Code of Criminal Procedure 17.15(a). Rules For Fixing the Amount of Bail.

“The amount of bail and any conditions of bail to be required in any case in which the defendant has been arrested are to be regulated by the court, judge, magistrate, or officer taking the bail in accordance with Articles 17.20, 17.21, and 17.22 and are governed by the Constitution and the following rules (emphasis added):

1. Bail and any conditions of bail shall be sufficient to give reasonable assurance that the undertaking will be complied with.
2. The power to require bail is not to be used to make bail an instrument of oppression.
3. The nature of the offense and the circumstances under which the offense was committed are to be considered, including whether the offense:

- (A) is an offense involving violence as defined by Article 17.03; or
- (B) involves violence directed against a peace officer.

Questions


1. In an unfiled case, does an in-county magistrate have the authority to modify bonds set by the arresting county's magistrate?
2. If the in-county magistrate has authority to modify bonds set outside the warrant issuing county, is the authority conditioned upon whether the conditions sought are mandatory for release or discretionary in nature?

Summary

Often times an accused is arrested outside of the warrant issuing county and has a bond set by an out of county magistrate. In an unfiled case, when the accused is then transported back to the county of offense and warrant issuing county, there may be a need or desire to modify the bond conditions previously set. The Code of Criminal Procedure appears to be silent as to whether the in-county magistrate has authority to modify the existing bond conditions.

This office looks forward to, and appreciates, your expedited response.

Respectfully submitted,



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