



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 18, 1998

The Honorable Mark F. Pratt  
Hill County Attorney  
Courthouse Annex  
P. O. Box 253  
Hillsboro, Texas 76645

Letter Opinion No. 98-021

Re: Whether a judge who has issued a warrant of arrest for a defendant under article 42.12(10)(c), Texas Code of Criminal Procedure, is authorized to set bail for that defendant (ID# 39565)

Dear Mr. Pratt:

You have asked whether a judge who issues a warrant for the arrest of a defendant under article 42.12 of the Code of Criminal Procedure, which addresses community supervision, is also authorized to set bail for that defendant. You explain that many persons on community supervision were convicted in courts other than the 66th Judicial District, but now reside and report for community supervision in Hill County. You relate that "a policy has been adopted whereby any person on [community supervision] testing positive for drugs and/or alcohol [when] reporting to the Hill County Community Supervision and Corrections Department is detained, a magistrate is contacted, and an arrest warrant and commitment are immediately issued."

To clarify matters, we address the subject of community supervision. A defendant is placed on "community supervision" by a court under a continuum of programs and sanctions, with conditions imposed by the court for a specified period. Code Crim. Proc. art. 42.12, § 2(2). During this specified period criminal proceedings are deferred without an adjudication of guilt or a sentence of imprisonment or confinement, imprisonment and fine, or confinement and fine, is probated and the imposition of sentence is suspended in whole or in part. *Id.* § 2(2)(A), (B). Only the court in which the defendant was tried may grant community supervision, impose conditions, revoke the community supervision, or discharge the defendant, unless the judge has transferred jurisdiction of the case to another court. *Id.* § 10(a). "Court" is defined as meaning the "court of record having original criminal jurisdiction." *Id.* § 2(1).

The Community Justice Assistance Division (hereinafter "CJAD") of the Texas Department of Criminal Justice establishes minimum standards for programs and services provided by community supervision and corrections departments (hereinafter "CSCD"). See Gov't Code § 493.003(a)(1). CJAD is mandated by statute to propose and adopt rules establishing the minimum standards for the operation of departments and a list and description of core services that should be provided by each department. Code Crim. Proc. art. 42.13, § 2(a)(1), (2). Chapter 163 of the Texas Administrative Code, Community Justice Assistance Division Standards, names "courtesy supervision" as one of the services that a CSCD must provide. 37 T.A.C. § 163.35(d)(10). From

your letter we deduce that the persons you speak of report under the program of “courtesy supervision,” where their community supervision has been transferred to another county, but the original jurisdiction of the case has not. “Courtesy supervision” is to be requested if a offender will be in another jurisdiction for more than thirty days, but only the court retaining jurisdiction over a defendant has the authority to modify or alter a condition of community supervision. *Id.* CSCD directors are to ensure that community supervision officers providing direct supervision to offenders transferred from other Texas jurisdictions fully enforce the order of the court that placed the individual on community supervision. *Id.*

The statute in question, section 10 of article 42.12, Code of Criminal Procedure, is entitled, “Authority to Impose, Modify, or Revoke Community Supervision,” and subsection (c) states:

Any judge of a court having geographical jurisdiction where the defendant is residing or where a violation of the conditions of community supervision occurs may issue a warrant for his arrest, but *the determination of action to be taken after arrest shall be only by the judge of the court having jurisdiction of the case at the time the action is taken.* [Emphasis added.]

You express concern that the language emphasized above prohibits a judge who issues a warrant from setting bail on a motion to revoke community supervision when the defendant’s original conviction was in another court. *Webster’s Dictionary* defines the word “action” to mean, “a proceeding in a court of justice by which one demands or enforces one’s right.” WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 54 (9th ed. 1983). The *Oxford English Dictionary* defines “action” as “[t]he transactions, acts, or records of a court or deliberative body,” and also as the “taking of legal steps to establish a claim or obtain judicial remedy; legal process.” THE OXFORD ENGLISH DICTIONARY 127 (2d ed. 1989). We believe the statute’s use of the word, “action,” in this context indicates “a proceeding in a court.”<sup>1</sup> Section 10 of article 42.12 implies, by its title and language, that imposition, modification, or revocation of a sentence are the actions a court may take in community supervision proceedings.<sup>2</sup> Bail, on the other hand, is security given by an accused person to insure that he will appear and answer before the proper court the accusation brought against him, and it can be a bail bond or a personal bond. Code Crim. Proc. art. 17.01. A judge’s setting bail is not an action that affects a defendant’s sentence as the imposition, modification, or revocation of community supervision would in a court proceeding, and therefore is not indicated as an action of the court in article 42.12, section 10(c).

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<sup>1</sup>The Code of Criminal Procedure provides that all words, phrases and terms are to be taken and understood in their usual acceptation in common language, except where specially defined. 67 TEX. JUR. 3D *Statutes* § 100 (citing Code Crim. Proc. art. 3.01).

<sup>2</sup>See Attorney General Opinion JM-194 (1984) (interpreting subsection (c): “Subsection (c) states that either court may issue a warrant for a probationer’s arrest, but only the court having jurisdiction of the case at the time may act on the motion to revoke probation.”) (emphasis added). Section 10(c) of article 42.12, Code of Criminal Procedure, was formerly section 5(c).

The goal of section 10(c), article 42.12 of the Code of Criminal Procedure appears to be to insure that the judge who originally sentenced a defendant is the judge who makes the decision as to whether the defendant's community supervision should be modified or revoked. It does not necessarily further the purpose of the statute to have that judge set bail.

**S U M M A R Y**

Any court having geographical jurisdiction where a defendant is residing or where a violation of the conditions of community supervision occurs may issue a warrant for arrest under Code of Criminal Procedure article 42.12, section 10(c), and set bail for the defendant.

Yours very truly,



Rick Gilpin  
Deputy Chief  
Opinion Committee