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OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. CR 78-47
	:	
of	:	<u>February 16, 1979</u>
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SUBJECT: JURISDICTIONAL REGULATIONS OF SUSPECT—The law enforcement agency in the county which issues an arrest warrant must take custody of the suspect within five days of notification and bring him before a magistrate, thus making the phrase “for bail purposes only” inoperative.

The Honorable Dale Blickenstaff, District Attorney of Fresno County, has requested an opinion of this office on the following questions.

1. Is there any state law or regulation which requires a law enforcement agency in the county which issues an arrest warrant to transport the suspect back to the issuing county once he has been arrested in another jurisdiction?

2. Is it effective for a law enforcement agency in the county which issues an arrest warrant to add the phrase “for bail purposes only” with the expectation that a law enforcement agency in another jurisdiction, upon taking the suspect into custody, will either have the suspect post bail or unconditionally release him if he fails to do so?

The conclusions are:

1 Penal Code sections 821 and 822 require the law enforcement agency in the county which issues an arrest warrant to take custody of the suspect within five days of notification and to bring him before a magistrate within the issuing county.

2. The phrase “for bail purposes only” is inoperative in an arrest warrant abstract since it circumvents the above-mentioned duty, imposed by Penal Code sections 821 and 822, to take an arrested person before a magistrate in the issuing county.

ANALYSIS

Penal Code sections 821 and 822 prescribe the procedure to be followed when a person is arrested in one county on an arrest warrant issued by a magistrate in another county. They provide an opportunity for the arrested person to be released on bail in the county of arrest. The code sections provide in pertinent part as follows:

Section 821:

“If the offense charged is a *felony*, . . . [and]

“. . . the defendant is arrested in another county, the officer must, without unnecessary delay, inform the defendant in writing of his right to be taken before a magistrate in that county, note on the warrant that he has so informed defendant, and, upon being required by defendant, take him before a magistrate in that county, who must admit him to bail in the amount specified in the endorsement referred to in Section 815a, and direct the defendant to appear before the court or magistrate by whom the warrant was issued on or before a day certain which shall in no case be more than 10 days after such admittance to bail. If bail be forthwith given, the magistrate shall take the same and endorse thereon a memorandum of the aforesaid order for the appearance of the defendant, or, if the defendant so requires, he may be released on bail set on the warrant by the issuing court, as provided in Section 1269b of this code, without an appearance before a magistrate.” (Emphasis added.)

Section 822:

“If the offense charged is a *misdemeanor*, and the defendant is arrested in another county, the officer must, without unnecessary delay, inform the defendant in writing of his right to be taken before a magistrate in that county, note on the warrant that he has so informed defendant, and, upon being required by defendant, take him before a magistrate in that county, who must

admit him to bail in the amount specified in the indorsement referred to in Section 815a, or if no bail is specified, the magistrate may set bail; if the defendant is admitted to bail the magistrate shall direct the defendant to appear before the court or magistrate by whom the warrant was issued on or before a day certain which shall in no case be more than 10 days after such admittance to bail. If bail be forthwith given, the magistrate shall take the same and indorse thereon a memorandum of the aforesaid order for the appearance of the defendant.” (Emphasis added.)

Penal Code section 1318 allows for the alternative procedure of releasing the arrested person on his own recognizance in the county of arrest. The code section states:

“Upon good cause being shown, any court or magistrate who could release a defendant from custody upon his giving bail including a defendant arrested upon an *out-of-county warrant* may release such defendant on his own recognizance if it appears to such court or magistrate that such defendant will surrender himself to custody as agreed, by following the provisions of this article.” (Emphasis added.)

The problem arises in those cases in which the person arrested has not been released on his own recognizance and has not posted bail. In such cases both Penal Code sections 821 and 822 impose a duty upon the law enforcement agency making the arrest to *immediately* notify the law enforcement agency requesting the arrest that the arrestee is in custody. The law enforcement agency requesting the arrest is then required to take custody of the prisoner within five days of such notification and to take him before a magistrate in the issuing county.

Penal Code sections 821 and 822 provide the precise procedure as follows:

Section 821:

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“If the warrant on which the defendant is arrested in another county does not have bail set thereon, or if the defendant arrested in another county does not require the arresting officer to take him before a magistrate in that county for the purpose of being admitted to bail, or if such defendant, after being admitted to bail, does not forthwith give bail, the arresting officer shall immediately notify the law enforcement agency requesting the arrest in the county in which the warrant was issued that such defendant is in custody, and thereafter such law enforcement agency shall take custody of such defendant

within five days in the county in which he was arrested and shall take such defendant before the magistrate who issued the warrant, or before some other magistrate of the same county.” (Emphasis added.)

Section 822:

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“If the defendant arrested in another county on a misdemeanor charge does not require the arresting officer to take him before a magistrate in that county for the purpose of being admitted to bail, or if such defendant, after being admitted to bail, does not forthwith give bail, the arresting officer shall immediately notify the law enforcement agency requesting the arrest in the county in which the warrant was issued that such defendant is in custody, and thereafter such law enforcement agency shall take custody of such defendant within five days in the county in which he was arrested and shall take such defendant before the magistrate who issued the warrant, or before some other magistrate of the same county.

“”

By adding the phrase “for bail purposes only” to a telegraphic copy or an abstract of an arrest warrant abstract, we understand that law enforcement agencies in the counties issuing warrants have come to expect law enforcement agencies in other counties to arrest the person named in the warrant, to collect bail if he posts it, and then to release him, whether or not he has posted bail. Thus, the agency in the issuing county is informing agencies in other counties that it does not intend to take the prisoner before a magistrate in the issuing county in the event that the prisoner does not post bail and does not qualify to be released on his own recognizance.

The addition of this phrase circumvents the duty which Penal Code sections 821 and 822 impose upon the law enforcement agency in the issuing county to take custody of such person within five days of notification. The addition of the phrase “for bail purposes only” is, therefore, a nullity.

A law enforcement agency which chooses to inform other counties of an arrest warrant (via CLETS or any other system) is obligated to take custody of the person arrested on such warrant within five days after notification by the arresting county that such person has been arrested and has not been released on bail or on his own recognizance in the county of arrest.
