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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable William C. Segrest
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Alabama Board of Pardons and Paroles
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Pardons and Paroles Board – Parole and
Probation Revocation – Detention – Jails

A parole officer is required to execute an Alabama Department of Corrections (“DOC”) warrant delivered to him or her for the arrest of a parole violator by returning the parolee to the prison designated in the warrant. The parole officer may issue a written statement authorizing the arrest of the parolee without a warrant. The parole officer is required to execute the warrant or have it executed.

The parolee arrested without a warrant can be detained in the county jail or prison nearest the place of the parole violation or arrest. The sheriff or warden must accept a parolee presented for detention.

A parolee arrested without a warrant must be returned to prison when the DOC warrant is issued. The parole officer is required to execute the warrant if it is delivered to him or her by returning the parolee to the prison designated in the warrant. The sheriff or warden must transfer custody to the law enforcement officer presenting the warrant.

Dear Mr. Segrest:

This opinion of the Attorney General is issued in response to your request on behalf of the Alabama Board of Pardons and Paroles.

QUESTIONS

1. What is an "appropriate place of detention" for a parole violator under section 15-22-31(b) of the Code of Alabama?

2. What duty does the sheriff or warden have to honor the parole officer's written statement authorizing arrest?

3. What duty does the sheriff or warden have to honor the warrant issued by the Alabama Department of Corrections?

4. Is a parole officer under a duty to apprehend and/or execute a written statement or serve the DOC warrant?

5. If so, what is the appropriate place of detention?

FACTS AND ANALYSIS

This Office understands that law enforcement officers have traditionally arrested delinquent parolees and placed them in the county jail until a parole court hearing could be conducted. The county jail would then notify the Alabama Department of Corrections and have the delinquent parolee transported to prison to await the revocation decision of the Alabama Board of Pardons and Paroles. If the Parole Board voted to revoke parole, the inmate would already be in prison. If the Parole Board reinstated parole, the inmate would be released.

Section 15-22-31 of the Code of Alabama sets forth the process for the arrest and initial detention of a parolee who has violated his or her parole, stating as follows:

(a) If the parole officer having charge of a paroled prisoner or any member of the Board of Pardons and Paroles shall have reasonable cause to believe that such prisoner has lapsed, or is probably about to lapse, into criminal ways or company or has violated the conditions of his parole in an important respect, such officer or board member shall report such fact to the Department of Corrections, which shall thereupon issue a warrant for the retaking of such prisoner and his return to the prison designated.

(b) Any parole officer, police officer, sheriff or other officer with power of arrest, upon the request of the parole officer, may arrest a parolee without a warrant; but, in case of an arrest without a warrant, the arresting officer shall have a written statement by said parole officer setting forth that the parolee has, in his judgment, violated the conditions of parole, in which case such statement shall be sufficient warrant for the detention of said parolee in the county jail or other *appropriate place of detention* until the warrant issued by the Department of Corrections has been received at the place of his detention; provided, however, that in no case shall a parolee be held longer than 20 days on the order of the parole officer awaiting the arrival of the warrant as provided for in this section.

(c) Any parole officer, any officer authorized to serve criminal process or any peace officer to whom such warrant shall be delivered is authorized and required to execute such warrant by taking such prisoner and returning him to the prison designated by the Department of Corrections, there to be held to await the action of the Board of Pardons and Paroles.

(d) Such officer, other than an officer of the prison or parole officer, shall be entitled to receive the same fees therefor as upon the execution of a warrant of arrest at the place where said prisoner shall be retaken and as for transporting a convict from the place of arrest to the prison, in case such officer also

transports the prisoner to the prison. Such fees shall be paid out of the funds standing to the credit of the Department of Corrections.

ALA. CODE § 15-22-31 (1995) (emphasis added). Section 15-22-31(a) addresses arrest with a warrant. Section 15-22-31(b) addresses arrest without a warrant. Section 15-22-31(c) addresses the execution of the warrant.

Section 15-22-31(a) provides that the parole officer shall report to DOC that the parolee violated his or her parole, in which case DOC shall issue the warrant. On arrest, the parolee shall be returned to the prison designated in the warrant. This section must be read with section 15-22-31(c) providing for the execution of the warrant. That section states that “[a]ny parole officer . . . to whom such warrant is delivered is . . . required to execute such warrant” *Id.* Section 15-22-31(b) provides for arrest on the written statement of the parole officer. It is within the parole officer’s discretion to proceed on a written statement or await the issuance of the DOC warrant. The warrantless arrest may be made by the parole officer or any other law enforcement officer at the parole officer’s request. Therefore, the parole officer has a duty to execute or cause to be executed the written statement authorizing arrest.

Section 15-22-31(b) specifically cites the local county jail as an appropriate place of detention. Only two other alternatives exist -- city jails and prisons. There is no statutory authority requiring city jails to accept delinquent parolees (state inmates). Municipalities do not have jurisdiction over persons arrested for a felony (parolees are convicted felons), and city jails are under no duty to house convicted felons. Previous Attorney General’s opinions concluded that a municipal police officer arresting a person for a felony should turn that person over to the county as soon as possible. Opinions to Honorable James W. Bennett, Mayor, City of Piedmont, dated January 23, 1990, A. G. No. 90-00116, and to Honorable Mahlon McConnell, Constable, City of Jasper, dated September 25, 1989, A. G. No. 89-00438.

The state prisons fall under the definition of “other appropriate place of detention.” Section 15-22-26 of the Code of Alabama states that a parolee remains in the legal custody of the warden of the prison from which he is paroled. ALA. CODE 15-22-26 (1995). Section 15-22-31(c) requires execution of the DOC warrant by returning the parolee to the prison designated by DOC.

In trying to define “other appropriate place of detention,” the minimum requirements of due process must be considered. *Morrissey v. Brewer*, 408 U.S. 471 (1972). *Morrissey* requires that the delinquent parolee have a due process

hearing “at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest. . .” *Id.* at 471. There are no prisons near the place of the parole violation or arrest in a significant number of cases. There will be times when the most appropriate place would be the county jail and other times when the most appropriate place might be a prison facility. The arresting officer would make that choice by where he or she presented the delinquent parolee for detention.

As indicated in your request, section 15-22-31(b) unequivocally states that the parole officer’s written statement authorizing arrest “***shall be sufficient warrant for the detention of said parolee*** in the county jail or other appropriate place of detention” *Id.* (emphasis added). Therefore, the sheriff or warden must accept a parolee presented to him or her for detention.

Section 15-22-31(b) also provides for the time in which a parolee can be held in the county jail or prison. The parolee can be held for no more than 20 days pending the arrival of the DOC warrant. Section 15-22-31(c) provides that, when the warrant is issued, the parolee shall be returned to the prison designated in the warrant “to await the action of the Board of Pardons and Paroles.” *Id.* As in the case of an initial arrest with a warrant, the parole officer is required to execute a DOC warrant delivered to him or her. The duty of the sheriff or warden is simply to transfer custody of the parolee to the parole officer or other law enforcement officer to whom the warrant has been delivered for execution. The parolee is to be returned when the warrant is presented to the sheriff or warden, whether on the twentieth day or before that time.

If the warrant does not arrive in 20 days, the parolee must be released. This Office understands that this interpretation of the statute is contrary to the interpretation by the Parole Board and DOC and may cause logistical difficulties in the transfer of prisoners. Both agencies should cooperate in adopting rules and otherwise to ensure a parolee’s right to a timely due-process hearing in the appropriate location.

CONCLUSION

A parole officer is required to execute a DOC warrant delivered to him or her for the arrest of a parole violator by returning the parolee to the prison designated in the warrant. The parole officer may issue a written statement authorizing the arrest of the parolee without a warrant. The parole officer is required to execute the warrant or have it executed.

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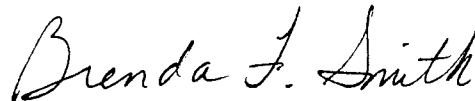
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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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