

IN THE SUPERIOR COURT OF UPSON COUNTY
STATE OF GEORGIA

ORDER AUTHORIZING MAGISTRATE COURT TO SET BOND

The below-signed judges of the Magistrate Court of Upson County, Georgia are hereby granted and delegated the authority under O.C.G.A. § 17-6-1(h)¹ to issue appearance bonds in all Upson County criminal cases “[e]xcept in [O.C.G.A. § 17-6-1(a)] cases in which life imprisonment or the death penalty may be imposed”² both before and after indictment or accusation, but not after conviction. “A magistrate court may grant bond for offenses that may be punishable by life imprisonment, provided that the offense is not one of those listed in O.C.G.A. § 17-6-1(a).”³ Pursuant to O.C.G.A. § 17-6-1(b)(1), “[a]ll offenses not included in subsection (a) of this Code section are bailable by a court of inquiry.” “[T]he magistrate court should inquire into its jurisdiction” to hear bond in those offenses listed in O.C.G.A. § 17-6-1(a) but which may or may not be punishable by life imprisonment depending on the defendant’s criminal history.⁴ “Judicial officers should normally have access to

¹ 1997 Ga. Op. Atty. Gen. 52 (1997) (“[O]nce the clerk of the superior court properly files an indictment or once a valid accusation is entered, the superior court has exclusive jurisdiction over the case, including all bond issues, unless the superior court invokes its authority to delegate concurrent jurisdiction to the magistrate court under O.C.G.A. § 17-6-1(h) or O.C.G.A. § 15-1-9.1(e).”)

² O.C.G.A. § 17-6-1(h).

³ Exhibit 1, Section 3 of the December 18, 2015 letter from Office of the Attorney General for the State of Georgia.

⁴ Exhibit 1, Section 2 of the December 18, 2015 letter from Office of the Attorney General for the State of Georgia.

criminal history information, and have a duty to take note of that information to make an informed decision regarding their jurisdiction, the issuance or denial of bond, as well as the amount of the bond and the placing of any restrictions upon its grant.⁵ However, when a magistrate is not provided access to adequate reliable evidence of criminal history to authorize the certain exercise of jurisdiction to consider granting bond, the magistrate should promptly enter an order stating, "this magistrate is without adequate reliable evidence of criminal history to authorize the exercise of jurisdiction hence no bond is granted"; and further, the magistrate shall notify the chief judge of Superior Court by facsimile transmission and by U.S. mail that no bond was considered due to lack of jurisdiction, to allow the chief judge to schedule bond hearing before the assigned Superior Court judge.⁶

Magistrates cannot consider bond in cases after conviction, so magistrates shall not grant or act on any bond on appeal nor grant or act on any bond for an offender arrested for violating the terms of his probation or parole. However, if the act constituting a violation of probation or parole is a new criminal offense and the defendant is charged and arrested, then bond may be considered and issued, if appropriate, on the new criminal charge.

This order shall be valid through January 31, 2016, and may be renewed or revoked by a majority of the judges of Superior Court by written order at any time.

⁵ Id.

⁶ Id.

This order supersedes from date of entry forward all prior orders issued by Superior Court granting Magistrate Court authority to consider, grant, or modify appearance bonds.

SO ORDERED, this 3rd day of February, 2015.

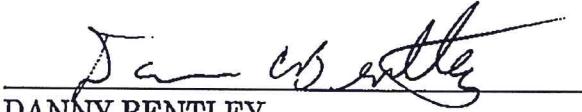

CHRISTOPHER C. EDWARDS
CHIEF JUDGE, SUPERIOR COURT
UPSON COUNTY


TOMMY R. HANKINSON
JUDGE, SUPERIOR COURT
UPSON COUNTY
1-30-15

Robert M. Crawford 1-30-15
ROBERT M. CRAWFORD
JUDGE, SUPERIOR COURT
UPSON COUNTY


W. FLETCHER SAMS
JUDGE, SUPERIOR COURT
UPSON COUNTY
1-27-15

ACCEPTED:


DANNY BENTLEY
CHIEF JUDGE, MAGISTRATE COURT OF UPSON COUNTY


ED SEARCY
JUDGE, MAGISTRATE COURT OF UPSON COUNTY



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December 18, 2014

Chief Judge Christopher C. Edwards
Superior Court, Griffin Judicial Circuit
Fayette County Justice Center
One Center Drive
Fayetteville, Georgia 30214

Re: Questions concerning the authority delegable by superior courts to magistrate courts under O.C.G.A. § 17-6-1(h).

Dear Chief Judge Edwards:

You have asked, in your letter received electronically on November 17, 2014, four questions concerning the authority delegable by superior courts to magistrate courts under O.C.G.A. § 17-6-1(h). Addressing your questions in order, they are as follows:

1. Does O.C.G.A. § 17-6-1(h) apply to cases where the death penalty is not applicable?

O.C.G.A. § 17-6-1(h) reads as follows: "Except in cases in which life imprisonment or the death penalty may be imposed, a judge of the superior court by written order may delegate the authority provided for in this Code section to any judge of any court of inquiry within such superior court judge's circuit." By statute, a superior court judge must be the hearing officer regarding bail for the offenses set out in O.C.G.A. § 17-6-1(a). On all other offenses, a court of inquiry may set bond pursuant to O.C.G.A. § 17-6-1(b)(1). O.C.G.A. § 17-6-1(h) allows the superior court to delegate, by written order, the hearing of bond to courts of inquiry on all offenses from O.C.G.A. § 17-6-1(a), except those punishable by life *or* the death penalty. The use of the term "or" grammatically would indicate that the superior court may delegate its authority to hear bond, except in cases where the offense is punishable by life imprisonment or where the offense is punishable by death. Thus, the superior court may not delegate cases where life imprisonment may be imposed, even though the death penalty may not be imposed.

2. How does a magistrate determine jurisdiction over a case to consider bond under O.C.G.A. § 17-6-1(h)?

O.C.G.A. § 17-6-1(h) specifically refers to "cases in which life imprisonment or the death penalty may be imposed," which would appear to include those cases in which a formerly

convicted felon could receive life imprisonment as a recidivist (emphasis added). The statute uses the term “cases” in this section, thus distinguishing it from the other subsections which use the term “offenses.” Thus, if by written order the superior court has delegated its authority to consider bond in those cases involving offenses listed in O.C.G.A. § 17-6-1(a), the magistrate court should inquire into its jurisdiction to handle such cases. Judicial officers should normally have access to criminal history information, and have a duty to take note of that information to make an informed decision regarding their jurisdiction, the issuance or denial of bond, as well as the amount of the bond and the placing of any restrictions upon its grant.

3. How are O.C.G.A. § 17-6-1(b) and O.C.G.A. § 17-6-1(h) reconciled?

O.C.G.A. § 17-6-1(a) lists the offenses for which a superior court may grant or deny bond. O.C.G.A. § 17-6-1(b) allows a court of inquiry to determine bond on *every other offense* (emphasis added). O.C.G.A. § 17-6-1(h) allows the superior court to delegate its authority over those offenses listed in subsection (a) to a court of inquiry, except in those cases where life imprisonment or the death penalty may be imposed. This limitation in subsection (h) is a limitation on the superior court’s power of *delegation*; it is not a limit on the magistrate court’s jurisdiction. A magistrate court may grant bond for offenses that may be punishable by life imprisonment, provided that the offense is not one of those listed in O.C.G.A. § 17-6-1(a).

4. Chief Magistrate Ruppenthal’s email questions:

- a. What is the time period permitted for the occurrence of the “first appearance hearing” required under O.C.G.A. § 17-4-26 when there was an arrest without a warrant and the person was held in custody until a warrant could be obtained (up to but not exceeding 48 hours pursuant to O.C.G.A. § 17-4-62)?
- b. When does the 72 hour requirement of O.C.G.A. § 17-4-26 begin in an instance where the person is first arrested without a warrant, but a warrant is then timely obtained?
- c. How long does the magistrate court have to conduct “such a hearing” for these persons and when does such time period begin?

Pursuant to O.C.G.A. § 17-4-62, a person may be held after arrest, without a warrant, for up to 48 hours; thereafter, unless a warrant has been issued, the person must be released. O.C.G.A. § 17-4-26 provides that a person arrested on a warrant must be brought before a judicial officer within 72 hours of arrest.

The 72 hour requirement of O.C.G.A. § 17-4-26 contemplates that a person arrested on a warrant be taken before a judicial officer potentially to be informed of the charges against him, to have bond considered, and for scheduling of a commitment hearing if needed. *See Whitfield v. State*, 115 Ga. App. 231 (1967); *Beavers v. State*, 132 Ga. App. 94 (1974). There is no requirement in the statutes that a committal hearing be held within a specific period of time.

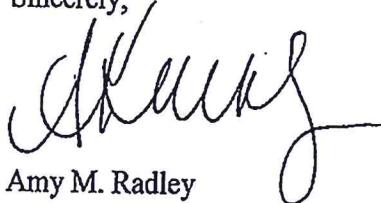
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Where a warrant was obtained and an arrest has been affected, the first appearance must take place within 72 hours of the arrest. O.C.G.A. § 17-4-26 extends the time that a criminal defendant may be held from 48 hours up to a total of 72 hours if a warrant is obtained by law enforcement. A person arrested without a warrant must be released after 48 hours if no warrant or other authority for retention is obtained; however, if a warrant or other authority is obtained before the end of those 48 hours, then the time before required release is extended up to 72 hours after arrest, at which point the person arrested must be brought before the court to be informed of the charges against him, be considered for bond, and be given a date for his committal hearing. "OCGA § 17-4-26 requires that 'the person arrested [be brought] before a committing judicial officer within 72 hours after arrest.' It does not require a commitment hearing within that time." *Tidwell v. Paxton*, 282 Ga. 641 (2007).

Please note that the foregoing is the view of the author and not a formal opinion, official or unofficial, of the Office of the Attorney General.

Let us know if we can be of other assistance.

Sincerely,



Amy M. Radley
Assistant Attorney General