



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

July 12, 1996

The Honorable Joe F. Grubbs  
Ellis County and District Attorney  
Ellis County Courthouse  
Waxahachie, Texas 75165-3759

Letter Opinion No. 96-068

Re: Whether a county that issued a bench warrant in a misdemeanor case for a convicted felon being held in Ellis County must hold the defendant for transfer to the institutional division of the Texas Department of Criminal Justice (ID# 36038)

Dear Mr. Grubbs:

A county that sentences a convicted felon to confinement in the institutional division of the Texas Department of Criminal Justice (the "institutional division") must hold the defendant in the county jail until he or she may be transferred to the institutional division. A misdemeanant, however, whose sentence includes confinement, serves the sentence in the county jail. You indicate that Ellis County transferred to a second county on a bench warrant in a misdemeanor case a convicted felon who was in the Ellis County Jail awaiting transfer to the institutional division. After the defendant disposed of the misdemeanor charge, you ask, may the second county transfer the defendant back to Ellis County until he or she may be transferred to the institutional division?

We conclude the second county has no obligation to hold a defendant when the defendant has disposed of the misdemeanor charge, either by acquittal or by discharging the sentence. By contrast, the county in which the defendant was convicted of a felony and sentenced to confinement in the institutional division is obligated to hold the defendant until he or she may be transferred to the institutional division. Consequently, we conclude that the county in which the defendant was convicted of a misdemeanor may transfer the defendant back to the county in which the defendant was convicted of a felony to await transfer to the institutional division.

As you explain the situation about which you ask, Ellis County was holding in its county jail a defendant convicted of a felony first in Dallas County and subsequently in Ellis County. For each of the felony convictions, the defendant was sentenced to confinement in the institutional division. While the defendant was in the Ellis County jail awaiting transfer to the institutional division, you continue, another county, which you refer to as "County X," issued a bench warrant for the defendant to answer a misdemeanor charge. Accordingly, Ellis County transferred the defendant to County X. After disposing of the

misdemeanor case,<sup>1</sup> County X demands to transfer the defendant back to Ellis County to await transfer to the institutional division. You ask whether Ellis County is required to accept the defendant, or conversely, whether County X is required to hold the defendant until he or she may be transferred to the institutional division.

Your letter brief indicates that your primary concern is financial. Indeed, article 104.002(a) of the Code of Criminal Procedure provides that generally a county is liable for all expenses incurred in safekeeping prisoners held in the county jail.<sup>2</sup> We agree that the county holding a defendant is responsible for expenses associated with the prisoner's safekeeping. We do not think, however, that the statutes and cases you cite on this point are relevant to determining whether County X is obligated to hold a misdemeanor defendant until the defendant may be transferred to the institutional division to serve a felony sentence, which the defendant received in another county.

Although we find no statute or case that directly answers the question you raise, we believe the statutes setting out the possible punishments for misdemeanants and felons indicate the extent of the sentencing county's obligation. Under the Penal Code, a class C misdemeanor is punishable by fine only,<sup>3</sup> but class A and B misdemeanors are punishable by confinement in jail, by fine, or both.<sup>4</sup> By the term "jail," the Penal Code refers to a county jail.<sup>5</sup>

By contrast, no felony is punishable by confinement in the county jail. Rather, a convicted felon may be sentenced to death,<sup>6</sup> to confinement in the institutional division,<sup>7</sup> or to confinement in a state jail.<sup>8</sup> Except for a state-jail felony, a convicted felon must be transferred from the county in which he or she is sentenced to the institutional division

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<sup>1</sup>You do not indicate whether the defendant was tried on a misdemeanor charge in County X or whether the defendant testified in another's trial. Assuming the defendant was tried on a misdemeanor charge, you do not indicate whether the defendant was acquitted, convicted but sentenced to pay a fine only, or convicted and sentenced to imprisonment in the county jail, which imprisonment the defendant has satisfied. We assume in this opinion that the defendant was convicted and sentenced to serve time; we further assume that the defendant satisfied the sentence in the County X jail.

<sup>2</sup>*But see* Code Crim. Proc. art. 104.002(d) (requiring prisoner in county jail who receives medical or dental services from county or hospital district to pay for services when they are rendered).

<sup>3</sup>Penal Code § 12.23.

<sup>4</sup>*Id.* §§ 12.21, .22.

<sup>5</sup>*See Tovar v. State*, 777 S.W.2d 481, 494 (Tex. App.—Corpus Christi 1989, writ ref'd).

<sup>6</sup>Penal Code § 12.31(a).

<sup>7</sup>*See id.* §§ 12.31(a), .32(a), .33(a), .34(a).

<sup>8</sup>*See id.* § 12.35(a).

within forty-five days after the processing required for the transfer is completed.<sup>9</sup> The convicted felon awaits transfer in county jail.<sup>10</sup>

We find nothing in the statutes that obligates a county that has received from another county a prisoner on bench warrant for a misdemeanor charge to hold the defendant until he or she may be transferred to the institutional division. On the other hand, the statutes obligate a county that has convicted a defendant of a felony to hold the defendant until he or she may be transferred to the institutional division. In answer to your question, therefore, we conclude that County X, which issued a bench warrant for a defendant convicted of a felony in Ellis County, is not obligated to hold the defendant once the defendant has, as you state, "disposed of" the misdemeanor charge. But Ellis County is required to hold the defendant until he or she may be transferred to the institutional division. County X, therefore, may transfer the defendant back to Ellis County to await transfer to the institutional division.<sup>11</sup>

### S U M M A R Y

A county, "County X," that issued a bench warrant in a misdemeanor case for a defendant convicted of a felony in Ellis County is not obligated to hold the defendant for transfer to the institutional division of the Texas Department of Criminal Justice once the defendant has disposed of the misdemeanor charge. But Ellis County is required to hold the defendant until he or she may be transferred to the institutional division. County X, therefore, may transfer the defendant back to Ellis County to await transfer to the institutional division.

Yours very truly,

  
Kimberly K. Oltrogge  
Assistant Attorney General  
Opinion Committee

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<sup>9</sup>See Gov't Code § 499.121(c); Code Crim. Proc. art. 42.09, § 1.

<sup>10</sup>See Gov't Code § 499.121(c).

<sup>11</sup>You indicate that the defendant was convicted of a felony first in Dallas County and then in Ellis County. You do not ask, as between Dallas County and Ellis County, which county is responsible to hold the defendant until he or she may be transferred to the institutional division. As a result, we do not answer that question.