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April 16, 2019

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**RQ-0283-KP**

**FILE# ML-48536-19**

**I.D.# 48536**

Pursuant to Texas Government Code Section 402.042, I hereby request a Texas Attorney General's Opinion concerning the following question:

Whether the State may seek and the trial court may, without a hearing, sign an arrest warrant for a defendant who has been released on pre-trial bond conditions, upon credible evidence that he has violated one or more of those conditions?

Respectfully submitted,

*/s/ Mark A. Gonzalez*

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Mark A. Gonzalez

## BRIEF IN SUPPORT OF REQUEST

The State concedes that Article 17.40 (concerning reasonable conditions of bond and revocation for violation of those conditions) does not explicitly provide for pre-hearing arrest, nor does it forbid such arrest. *See* Tex. Code Crim. Proc. art. 17.40 (b). Article 17.40(b) specifically provides, upon a finding that a violation occurred, “the magistrate shall revoke the defendant's bond and order that the defendant be immediately returned to custody.” The provision, however, seems to assume that the defendant is already before the magistrate at the time of the revocation hearing.<sup>1</sup> Moreover, Article 17.40 must be read in conjunction with Article 17.09 (concerning original and subsequent proceedings and new bail), Section 3 of which provides that, among other reasons, “for any other good and sufficient cause, such judge or magistrate may, either in term-time or in vacation, order the accused to be rearrested, and require the accused to give another bond in such amount as the judge or magistrate may deem proper.” Tex. Code Crim. Proc. art. 17.09, § 3. The Fourteenth Court of Appeals has held that “[n]o precise standard exists for determining what constitutes ‘good and sufficient cause’ under Article 17.09.” *Miller v. State*, 855 S.W.2d 92, 93-94 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1993, pet. ref’d). The State contends that

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<sup>1</sup> Separately, the Code of Criminal Procedure specifically requires the defendant’s presence “during any pre-trial proceeding.” *See* Tex. Code Crim. Proc. art. 28.01.

probable cause to believe that the Defendant violated a bond condition amounts to a good and sufficient cause to arrest the defendant and secure his presence at a hearing to determine whether the condition was violated and whether bond should be revoked. The probation officer's sworn allegations clearly constitute "good and sufficient cause" to re-arrest Defendant in contemplation of an Article 17.40 hearing on revocation of bond. Nothing in Section 3 requires a hearing before the judge or magistrate may order rearrest, nor does Section 3 limit the manner in which the judge or magistrate may find "good and sufficient cause." Accordingly, it is the State's position that, as with probable cause for an arrest warrant, any credible evidence that the defendant has violated the terms of his bond should be enough to meet the requirements of good and sufficient cause for re-arrest.