



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 24, 2021

The Honorable Joan Huffman
Chair, Senate Committee on Jurisprudence
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Opinion No. KP-0381

Re: Whether a peace officer is prohibited from forcing entry into a residence or dwelling to enforce a parole revocation warrant for the arrest of a releasee (RQ-0416-KP)

Dear Senator Huffman:

You ask whether a peace officer is “prohibited from forcing entry into a residence or dwelling to enforce a parole-revocation warrant for the arrest of a releasee.”¹

Chapter 15 of the Code of Criminal Procedure establishes the general procedures for arrests under warrant. TEX. CODE CRIM. PROC. arts. 15.01–.27. Under those procedures, a magistrate issues a warrant of arrest “directed to a peace officer or some other person specially named, commanding him to take the body of the person accused of an offense, to be dealt with according to law.” *Id.* art. 15.01. The Legislature has provided that in making an arrest, “all reasonable means are permitted to be used to effect it.” *Id.* art. 15.24 (titled “What force may be used”). “No greater force, however, shall be resorted to than is necessary to secure the arrest and detention of the accused.” *Id.* The Legislature has expressly authorized breaking down a door under certain circumstances to execute an arrest warrant for a suspect accused of a felony: “In case of felony, the officer may break down the door of any house for the purpose of making an arrest, if he be refused admittance after giving notice of his authority and purpose.” *Id.* art. 15.25.

In addition to chapter 15 of the Code of Criminal Procedure, chapter 508, subchapter H, of the Government Code authorizes the issuance of parole revocation warrants, also referred to as “blue warrants” or “parole violation warrants.” *See* TEX. GOV’T CODE §§ 508.251–.256; *Ex parte White*, 400 S.W.3d 92, 93 (Tex. Crim. App. 2013) (referring to a subchapter H warrant as a “blue warrant”); *Diaz v. State*, 110 S.W.3d 181, 183 (Tex. App.—San Antonio 2003, pet. ref’d)

¹Letter from Honorable Joan Huffman, Chair, Senate Comm. on Jurisprudence, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (July 8, 2021), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2021/pdf/RQ0416KP.pdf> (“Request Letter”).

(referring to a subchapter H warrant as a “parole violation warrant”). A parole revocation warrant is issued by the director of the pardons and parole division of the Texas Department of Criminal Justice, the director’s designee, or the board of the pardons and parole division on order of the Governor. TEX. GOV’T CODE § 508.251. Subchapter H establishes four grounds for issuance of a parole revocation warrant:

- (1) there is reason to believe that the person has been released although not eligible for release;
- (2) the person has been arrested for an offense;
- (3) there is a document that is self-authenticating as provided by Rule 902, Texas Rules of Evidence, stating that the person violated a rule or condition of release; or
- (4) there is reliable evidence that the person has exhibited behavior during the person’s release that indicates to a reasonable person that the person poses a danger to society that warrants the person’s immediate return to custody.

Id. § 508.252. Once issued, the warrant “authorizes any officer named by the warrant to take custody of the person and detain the person.” *Id.* § 508.254(b). You note that the Government Code does not “specify whether force may be used when executing this type of warrant,” and you therefore seek guidance on this issue. Request Letter at 2–3.

Texas courts have explained that a valid arrest warrant provides an officer authority “to enter the residence of the person named in the warrant in order to execute that warrant.” *Morgan v. State*, 963 S.W.2d 201, 203 (Tex. App.—Houston [14th Dist.] 1998, no pet.) (citing *Payton v. New York*, 445 U.S. 573, 603 (1980)). This authority exists whether the warrant issued is a traditional arrest warrant or parole revocation warrant. *See Reno v. State*, 882 S.W.2d 106, 108 (Tex. App.—Fort Worth 1994, pet. ref’d) (considering an officer’s use of a parole revocation warrant to enter a residence where the officer reasonably believed the defendant to be). “Officers executing an arrest warrant must have a reasonable belief that the suspect resides at the place to be entered . . . and [have] reason to believe that the suspect is present at the time the warrant is executed.” *Morgan*, 963 S.W.2d at 204 (quoting *U.S. v. Lauter*, 57 F.3d 212, 215 (2d. Cir. 1995)).

The language chosen by the Legislature in article 15.24 of the Code of Criminal Procedure is not limited to certain types of arrests but instead applies broadly when officers make an arrest:

In making an arrest, all reasonable means are permitted to be used to effect it. No greater force, however, shall be resorted to than is necessary to secure the arrest and detention of the accused.

TEX. CODE CRIM. PROC. art. 15.24. The fact that chapter 508, subchapter H, of the Government Code does not mention that officers executing parole revocation warrants may use force when necessary does not change this analysis. A parole revocation warrant is a “valid arrest warrant”

that “provides an officer authority to enter the residence of the person named in the warrant in order to execute the warrant.” *Rice v. State*, No. 01-02-00094-CR, 2003 WL 1342605, at *5 (Tex. App.—Houston [1st Dist.] Mar. 20, 2003, pet. ref’d). Thus, if a peace officer has a reasonable belief that a defendant resides at the place to be entered, the peace officer possesses authority to use reasonable force to enter a residence and execute a parole revocation warrant for the arrest of a releasee.

S U M M A R Y

Chapter 508, subchapter H, of the Government Code authorizes the issuance of parole revocation warrants if a parolee violates a condition of a parole or in other specified circumstances. Under article 15.24 of the Code of Criminal Procedure, an officer executing a parole revocation warrant is authorized to use reasonable force to effectuate the warrant (like any other valid arrest warrant). If an officer has a reasonable belief that the suspect resides at the place to be entered and is present, the officer has authority to use reasonable force to enter the residence in order to execute the warrant.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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