



KEN ARMBRISTER
District 18

**The Senate of
The State of Texas
Austin 1871**

September 27, 2002

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OPINION COMMITTEE

COMMITTEES:
CRIMINAL JUSTICE, *Chairman*
STATE AFFAIRS
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RQ-0618-JC

The Honorable John Cornyn
Attorney General
P.O. Box 12548
Austin, TX 78711-2548

FILE # ML 42828-02
I.D. # 42828

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OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

2980

Dear General Cornyn:

I am asking for an Attorney General's opinion to clarify the law regarding the legality of certain types of criminal bail bond requirements being imposed in some Texas courts.

It is apparently the practice in some counties for judges to approve the release of criminal defendants upon the deposit with the county of 10% of the face amount of the bond. The most common form for these releases is to authorize the defendant's release on a personal bond with an additional condition that the defendant make this financial deposit. Thus, this practice appears to be some hybrid form of personal bond and cash bond.

This practice raises several questions:

- (1) May a judge or magistrate permit (or require) a defendant to deposit cash in less than the full amount of the bail that has been set?
- (2) May a judge or magistrate attach a financial condition to a personal bond?

Code of Criminal Procedure, Art. 17.01 defines "bail" as "the security given by the accused that he will appear and answer before the proper court the accusation brought against him, and includes a bail bond or a personal bond." Art. 17.02 defines a "bail bond" as "a written undertaking by the defendant and his sureties for the appearance of the principal therein before some court or magistrate to answer a criminal accusation" It further provides that in lieu of sureties, the defendant "may deposit with the custodian of funds of the court in which the prosecution is pending current money of the United States in the amount of the bond. . . ." Under that latter article, it appears that a deposit of less than the amount of the bond would not be authorized.

Art. 17.03(a) provides, in relevant part: "a magistrate may, in the magistrate's discretion, release the defendant on his personal bond without sureties or other security." This article appears not to authorize the attachment of a financial condition to a personal bond, since that would be inconsistent with a personal bond without sureties or other security.

Since it appears that the current law makes no provision for a court to attach a financial condition to a personal bond or to require a defendant released on personal bond to deposit cash in less than the full amount of the bond, such practices seem to violate current law.

Thank you for your attention to this matter. If I may be of further assistance, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Armbrister". The signature is fluid and cursive, with a large initial "K" and a long, sweeping underline.

Ken Armbrister
Chairman, Senate Committee on Criminal Justice