

ISSUE: What steps can be taken to secure the release of a parolee held in county jail on a blue warrant while facing a revocation proceeding?

OVERVIEW: Whether the Parole Division issues a blue warrant or a summons in parole revocation cases is governed by Texas Government Code Section 508.251, Issuance of Warrant or Summons. In the event the division issues a warrant, Section 508.254, Detention Under Warrant, provides that a magistrate of the county in which the person is being held in custody may release the person on bond pending the hearing, under certain circumstances. Where neither of those provisions proves helpful, the individual may be entitled to release under the Court of Criminal Appeals recent decision in *Ex Parte Palma*. If one is not entitled to relief from the warrant under any of the aforementioned, they may still ask the division to exercise their discretion to release the parolee from custody in lieu of a subpoena or summons to appear at the preliminary or final revocation hearing. Each of these paths is described in detail below.

NOTE: Despite the coronavirus pandemic, there seems to be little change in the Parole Division's policy on lifting blue warrants, at least with respect to cases involving parolees on parole, or currently charged with new offenses, for violent offenses or sex offenses

1. Whether the Parole Division issues a blue warrant or a summons in parole revocation cases is governed by Texas Government Code Section 508.251, Issuance of Warrant or Summons. That Section states the division "**may**" issue a summons in lieu of a blue warrant in certain cases, and **shall** issue a summons in certain other cases.

A. Subsection 508.251(c)(1) states that the division "**may**" issue a summons if the person:

(A) is **not** a releasee who is:

(i) on intensive or super-intensive supervision;

(ii) an absconder; or

(iii) determined by the division to be **a threat to public safety; or**

(B) is charged only with committing a new offense that is alleged to have been committed after the first anniversary of the date the person was released on parole or to mandatory supervision if:

(i) the new offense is a Class C misdemeanor...other than against a child younger than 17 or an offense involving family violence, as defined by Section 71.004 Family Code

(i) the person has maintained steady employment for at least one year;

(iii) the person has maintained a stable residence for at least one year; and (iv) the person has not previously been charged with an offense after the person was released on parole or to mandatory supervision

508.251(c)(1) makes clear that it is in the discretion whether to issue a summons in lieu of a warrant in those circumstances described. Where a person meets those criteria and the division has nonetheless issued a warrant, any appeal to the division to issue a summons or subpoena should note that the individual meets the criteria of 508.251. Where a person does

not meet those criteria, a strict reading Subsection (c)(1) of the statute would be that the division may not issue a summons; however, one can argue that strict interpretation is not justified since Subsection (a) only state that the a warrant “may” issue for designated releasees or inmates.

- B. Subsection 508.251(c)(2) states that the division “**shall**” issue...a summons...if the person:
- (A) is charged only with committing an administrative violation...committed after the first anniversary of the date the person was released...;
 - (B) is not serving a sentence for, and has not been previously convicted of, an offense listed or described by Article 62.000(5), Code of Criminal Procedure; and
 - (C) is not releasee with respect to whom a summons may not be issued under Subdivision (1).

(Subdivision (1) is discussed above.)

2. Gov’t Code Section 508.254 authorizes a magistrate to release an individual in custody on a blue warrant in certain circumstances.

A. Subsection 508.254(d) states that that a **magistrate in the county in which the person is held in custody may release the person on bond pending the hearing if:**

- (1) the person is arrested or held only on ...an administrative violation of release;
- (2) the division, in accordance with Subsection (e) included notice on the warrant for the person’s arrest that the person is eligible for release on bond; **and**
- (3) the magistrate determines that the person is **not a threat to public safety**.

B. Subsection (e) mandates that the parole division include a notice on the warrant indicating the person is eligible for release on bond under Subsection (d) if the division determines that the person:

- (1) has not been previously convicted of:
 - (A) an offense under Chapter 29, Penal Code [Robbery];
 - (B) an offense under Title 5, Penal Code [Offenses Against the Person – punishable as a felony]); or
 - (C) an offense involving family violence as defined by Section 71.004, Family Code;
- (2) is not on intensive supervision or super-intensive supervision;
- (3) is not an absconder; and
- (4) **is not a threat to public safety. [Emphasis added]**

As you can see, the key is that the parolee is considered not to be a threat to public safety by the magistrate as well as the division. Experience has shown that the division rarely determines that to be the case where the parolee was convicted of, or is currently in custody for a violent offense, a sex offense, or a family violence offense.

3. In the event neither 508.251 nor 508.254 provides relief for a releasee held on a blue warrant, relief may be available through a writ of habeas corpus.

In *Ex Parte Palma*, No. WR-90,415-01 and WR-90415-02, the Court of Criminal Appeals, in an unpublished opinion, concluded that the Parole Board violated the 41 day requirement of Tx. Gov't Code 508.282. There was a strong dissent by four members of the court. See, *Ex Parte Palma*, 588 SW3d. 279 (2019). In *Ex parte King*, 930 SW2d. 97 (1997), a much older case that was not cited in *Ex Parte Palma*, Kings' parole revocation took place after the older 120 day deadline and the Court of Criminal Appeals ordered the warrant withdrawn. Another case on probation revocations, *Aguliar v State*, 621 SW2d 781 (1981) deals with excessive delay after requesting a prompt revocation hearing.

4. Another means to have a blue warrant lifted is to present a compelling case at the preliminary revocation hearing, or in a written appeal to the Parole Division in Austin (not the Parole Board), submitted through the individual's parole officer.

A. In presenting an argument at the preliminary revocation hearing one can attempt to demonstrate the otherwise good performance of the releasee and try to obtain a recommendation for issuing a summons from the parole officer and the hearing officer. This is typically difficult to do, but not impossible. In some cases, it may even be appropriate to put on a case on the merits to help demonstrate this.

B. In making an appeal to the Parole Division in Austin, one is not limited in what they may argue or present. Although this is an uphill battle, it affords one more way to try to have a blue warrant lifted so that the releasee will not remain in custody pending a final revocation hearing. For a client to be considered for release pending resolution of a new criminal charge, there must almost always be a favorable recommendation by the local PO and the PO Supervisor. There are some anecdotal reports of relief through appeals directly to the Parole Board, but they are rare. Also, if the parolee has already had the warrant executed and a preliminary hearing has been conducted with a determination that the parolee should remain in custody pending final revocation, then it is extremely rare that a release from detention will occur until the revocation process is complete. As a result one should promptly contact the PO and Supervisor ASAP if considering an administrative appeal to have the blue warrant lifted.

A note regarding posting bond in any case where a blue warrant has or will be executed: When a parolee is being held on a blue warrant and has a new pending criminal charge, if a bond is posted on the new criminal charge the parolee is not entitled to time credit towards any new sentence – even if the individual remains in custody on the blue warrant. The parolee will still be entitled to time credit for time spent in custody while the blue warrant is in effect.

David O'Neil & Bill Habern