# **Out of County Felony Arrests**

What is the procedure when a suspect is arrested for a felony that occurred in another county? Specifically, may officers immediately transport the suspect to the county in which the crime occurred, or must they first take him before a judge in the county of arrest? As we will explain in this article, it depends on two things: (1) Did the suspect have a right to a bail hearing in the county of arrest? (2) If the suspect is transported, will he be arraigned within the required time limits? There are a few other issues that might arise, and we will cover them, too.

#### No-bail warrant

If the suspect was arrested on a no-bail felony warrant, he does not have a right to a bail hearing in the county of arrest. He may therefore be transported without delay to the county in which the crime occurred. If the arrest was made by local officers, they must "immediately" notify officers in the county in which the warrant was issued that their suspect is in custody. Those officers must then pick up the suspect without unnecessary delay but, in any event, within five calendar days if the two counties are 400 miles apart or less, or within five court days if the two counties are over 400 miles apart.

What about arraignment? A suspect must ordinarily be arraigned within 48 hours of his arrest.<sup>4</sup> Although the courts will give officers some flexibility when the arrest occurs in a distant county,<sup>5</sup> officers should attempt to comply with the 48 hour time limit. If, however, there is an unavoidable delay beyond the 48 hours, officers should consider having the suspect arraigned in the county in which he was arrested. This can be accomplished by having the prosecuting agency that filed the charge fax a copy of the complaint to the judge who will conduct the arraignment.<sup>6</sup>

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<sup>&</sup>lt;sup>1</sup> See Penal Code § 821 ["If the warrant on which the defendant is arrested in another county does not have bail set thereon . . . the arresting officer shall immediately notify the law enforcement agency requesting the arrest in the county in which the warrant was issued that such defendant is in custody, and thereafter such law enforcement agency shall take custody of the defendant within five days, or five court days if the law enforcement agency requesting the arrest is more than 400 miles from the county in which the defendant is held in custody . . . "].

<sup>&</sup>lt;sup>2</sup> See Penal Code § 821.

<sup>&</sup>lt;sup>3</sup> See Penal Code § 821; People v. Combes (1961) 56 C.2d 135, 143.

<sup>4</sup> See Penal Code §§ 825, 849(a). NOTE: Although § 825 is contained within the Penal Code chapter entitled "The Warrant of Arrest," it is generally assumed that its 48-hour time limit also applies to warrantless arrests. See People v. Turner (1994) 8 Cal.4th 137, 173, fn.6. In any event, § 849(a), which applies to warrantless arrests, requires an arraignment "without unnecessary delay." Because the U.S. Supreme Court in *Riverside* and the legislature in § 849(a) generally consider 48-hours to be a reasonable limit for probable cause determinations and arraignments on warrant arrests, there is no reason to believe the standard would be different for warrantless arrests. It is, however, possible that more time may be allowed for warrantless arrests because when an arrest is made on a warrant "the authorities will normally have already investigated and evaluated the case . . . " See *People* v. *Bonillas* (1989) 48 Cal. 3d 757, 787, fn.11. ALSO SEE Cal. Const. Art. 1, § 14 [person charged with a felony must be arraigned "without unnecessary delay."]. CALCULATING 48 HOURS: The clock stops running on Sundays and court holidays. If time expires when court is in session, the defendant may be arraigned anytime that day. If time expires when court is not in session, the defendant may be arraigned anytime the next court day. If the defendant was arrested after the court closed on Wednesday, he must be arraigned sometime Friday, unless Wednesday or Friday are court holidays. See Penal Code §§ 825(a)(1), 825(a)(2); People v. Turner (1994) 8 Cal.4th 137, 175; People v. Gordon (1978) 84 Cal.App.3d 913, 922. <sup>5</sup> See County of Riverside v. McLaughlin (1991) 500 US 44, 56-7 ["Courts cannot ignore the often unavoidable delays in transporting arrested persons from one facility to another . . . and other practical realities."].

<sup>&</sup>lt;sup>6</sup> See Penal Code §§ 826-7.

# Warrant with bail set

If bail has been set on the warrant, the suspect has a right to appear before a judge in the county of arrest for the limited purpose of posting bail or seeking a bail reduction. As a practical matter, out-of-county judges will seldom presume to have a better understanding of the appropriate bail than the judge who issued the warrant. Nevertheless, the arresting officer must give the suspect *written* notice of this right "without unnecessary delay." A sample notice is provided at the end of this article.

After notice is given, officers may ask the suspect if he will waive this right. If so, he may be transported right away. If there will be a delay, officers must make sure it does not exceed the five day limit discussed in the section on no-bail warrants.

If the suspect invokes his right to an immediate bail hearing, he must be promptly taken before a judge in the county of arrest. If he is unable able to post bail "forthwith," he may be transported to the prosecuting county. If he posts bail and is released, the judge must order him to appear before a judge in the prosecuting county on a date certain, but no more than 25 days after he is released.

If the suspect asks the judge for a bail reduction or release on his own recognizance, and if he was arrested for a "serious" felony or certain other crimes, <sup>10</sup> the judge may not reduce bail until there has been a bail hearing, for which the prosecution must be given written notice, two-court days in advance. <sup>11</sup>

As noted earlier, the suspect must ordinarily be arraigned within 48 hours of his arrest.

## Warrantless arrest

If an out-of-county arrest is made without a warrant, officers may immediately transport the suspect to the county in which the crime occurred.<sup>12</sup> In other words, the suspect does not have a right to a bail hearing in the county of arrest.

### Other issues

BOOKING: The Penal Code does not specify when, or under what circumstances, an arrestee must be booked.<sup>13</sup> Consequently, there is no need to book the suspect in the county of arrest unless he will be temporarily housed in a local jail facility or unless the arresting agency requires it as a matter of policy.<sup>14</sup>

TRANSPORTING EVIDENCE: Any evidence that was obtained from the suspect, his car, or any personal possessions may be taken by officers from the issuing county if it was seized without a warrant or if it was seized pursuant to a warrant issued by a judge in the issuing county. If the evidence was seized pursuant to a warrant issued by a judge in the county in which the suspect was arrested, it may be taken by the officers only if the issuing judge orders it released to them. <sup>15</sup> [A sample order is provided at the end of this article.]

8 See Penal Code § 821.

<sup>&</sup>lt;sup>7</sup> See Penal Code § 821.

<sup>9</sup> See Penal Code § 821.

<sup>10</sup> See Penal Code § 1270.1.

<sup>11</sup> See Penal Code § 1270.1(b).

<sup>12</sup> See Penal Code § 849(a).

<sup>&</sup>lt;sup>13</sup> See 4 Witkin, *California Criminal Law* (3<sup>rd</sup> edition 2000), p. 258 ["(T)here is little statutory or case law coverage of the police practices of . . . booking arrested persons."].

<sup>&</sup>lt;sup>14</sup> See *People* v. *Superior Court (Logue)* (1973) 35 Cal.App.3d 1, 6 ["Booking, being merely a ministerial function, is no part of the arrest process, and delay in or an absence of booking will not affect an otherwise legal arrest."].

<sup>&</sup>lt;sup>15</sup> See Penal Code §§ 1523, 1536; Oziel v. Superior Court (1990) 223 Cal.App.3d 1284, 1292-3; People v. Icenogle (1985) 164 Cal.App.3d 620, 623. People v. Superior Court (Laff) (2001) 25

IF CHARGES ARE PENDING IN THE ARRESTING COUNTY: If the suspect is charged with a crime in the county in which he was arrested, and if he is being held in custody on that charge, he does not have a right to arraignment on the out-of-county case until the case in the county of arrest has been resolved. This is because he would remain in custody regardless of what would have happened if he were arraigned on the out-of-county case. <sup>16</sup>

#### SAMPLE FORMS

\*Officers and prosecutors may download this notice in Microsoft Word format at www.acgov.org/da. Click on "Forms for officers," then "Out of County Arrest: Notice and Waiver."

# NOTICE TO ARRESTEE (Out-of-County Felony Arrest with Bail Set)

You have been arrested in	County on a warrant
issued by a judge in	County. The judge set bail
at \$50,000.	
You have a right to be promptly taken before a judge in the county in which you were arrested for the purpose of posting bail, seeking a bail reduction, or asking for release on your own recognizance.	
If you waive this right, you will be promptly transported to the county which issued the arrest warrant where you will be arraigned. At the arraignment, you may seek a bail reduction or release on your own recognizance.	
Acknowledgment: I hereby acknowledge that I have been advised of the rights	
listed above and that I have received a copy of this notice.	
(Signed)	
Waiver: I hereby waive the right to a bail hearing in Alameda County.	
(Signed)	
(Penal Code § 821)	
*Officers and prosecutors may download this order in Microsoft Word format at www.acgov.org/da. Click on "Forms for officers," then "Search Warrant Forms."	
SUPERIOR COURT OF	CALIFORNIA

Cal.4<sup>th</sup> 703, 713 ["Law enforcement officials who seize property pursuant to a warrant issued by the court do so on behalf of the court, which has authority pursuant to Penal Code section 1536 to control the disposition of the property.... [T]he superior court possesses the inherent power to conduct proceedings and issue orders regarding property seized from a criminal suspect pursuant to a warrant issued by the court."]; *People v. Von Villas* (1992) 10 Cal.App.4<sup>th</sup> 201, 239.

<sup>16</sup> See *Ng v. Superior Court* (1992) 4 Cal.4<sup>th</sup> 29, 36 ["(A)ssuming the charges in other counties play no role in the defendant's custody status, prompt arraignment in the first county that actively prosecutes the charges, followed by arraignment in other counties upon commencement of actual prosecution of the charges in those counties, is sufficient. Prosecution in the first county may

County of \_\_\_\_\_

proceed to its conclusion without interference by the need to transport the defendant to other

counties in which he is charged by complaint."].

IN RE Search Warrant Number:	ORDER Transfer of Evidence
Date warrant issued:	
Good cause appearing, all evidence swarrant shall be transferred to the c	•
	of the <u>[name of agency]</u> pending
further order of the Superior Court	of California.
Date	Judge of the Superior Court