

Date Issued: February 13, 1986 (AGO 86-8)

Requested by: John R. Gregg
Bottineau County State's Attorney

- QUESTION PRESENTED -

Whether a county court must furnish a jailer with an order of commitment pursuant to N.D.C.C. section 12-44.1-11 where a person arrested has appeared initially before a magistrate for the setting of bond and the original warrant for arrest has been returned to the court.

- ATTORNEY GENERAL'S OPINION -

A county court need not furnish a jailer with an order of commitment pursuant to N.D.C.C. section 12-44.1-11 where a person arrested has appeared initially before a magistrate for the setting of bond and the original warrant for arrest has been returned to the court absent the commitment order requiring a return to the court.

- ANALYSIS -

N.D.C.C. section 12-44.1-11 provides as follows:

12-44.1-11. COMMITMENT PAPERS - COPIES - ENDORSEMENT. When an inmate is confined by virtue of any process directed to the jail administrator and the process requires a return to the court from which it was issued, the jail administrator shall keep a copy of the process with the return made thereon. The copy, certified by the jail administrator, shall be prima facie evidence of his right to retain the inmate in custody. All such instruments or copies by which an inmate is committed or released shall be endorsed and filed by the jail administrator. The file and its contents shall be delivered to the jail administrator's successor.

This provision requires the jail administrator to keep a copy of process which is evidence of his right to retain an inmate in custody. The requirements of N.D.C.C. section 12-44.1-11 do not apply to all documents which may pertain to the incarceration of an inmate. That section has application only to those situations wherein an inmate is confined "by virtue of any process directed to the jail administrator" and "the process requires a return to the court from which it was issued."

A warrant of arrest is process which "requires a return to the court from which it was issued." N.D.C.C. sections 29-05-14, 29-05-18, 29-05-25 and N.D.R.Cr.P. 4 and 9 specifically require that a return be made to the court after an arrest. This procedure will also be applicable to bench warrants and orders to apprehend a defendant. In addition, it is my understanding that it is a general practice to require a return to be made to a criminal judgment and commitment after delivery of the defendant to the place of incarceration.

The setting of bail does not ordinarily involve process which "requires a return to the court from which it was issued." Although

an inmate will be committed to the custody of the jail administrator until such time as the bail is posted, such a procedure does not normally require a return to the court from which the commitment was made. No North Dakota statutory provision requires a return to be made by the jail administrator to a court after the setting of an inmate's bail.

Should the order setting bail require a return of the jail administrator to the court from which the order was issued, N.D.C.C. section 12-44.1-11 will apply. As stated above, the jail administrator is required to maintain a copy of the process by which an inmate is confined if such process "requires a return to the court from which it was issued." It is my understanding that in most cases bail is set after an arrest of a defendant at a hearing before the court at which time the bail and other conditions of release will be orally recited to the defendant by the court. Although N.D.R.Cr.P. 46(a)(1)(iii) requires the court to issue an appropriate order containing a statement of conditions imposed, this rule does not require a return by the jail administrator after issuance of such order. Absent a return requirement, such an order is not "process" as contemplated by N.D.C.C. section 12-44.1-11.

Absent a written order or process of commitment pursuant to the setting of bail which requires a return by the jail administrator to the court, the jail administrator will not be in violation of N.D.C.C. section 12-44.1-11 for not possessing a copy of the bail conditions set by the court. Although not mandated by statute, I do believe that it would be a preferable procedure for the court to ensure that the correctional facility has correct information, in written form, regarding the conditions of bail of an inmate to ensure that there is no misunderstanding or confusion concerning those conditions.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. section 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

NICHOLAS J. SPAETH
Attorney General

Assisted by: Robert P. Bennett
Assistant Attorney General