

CHAPTER NO. 889

HOUSE BILL NO. 3008

By Representatives Hagood, Russell Johnson, Montgomery, Buck, Overbey

Substituted for: Senate Bill No. 2922

By Senators Crutchfield, McNally, Bryson

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 6, Part 2, relative to the issuance of warrants and summons.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-6-205, is amended by deleting the section in its entirety and by substituting instead the following language:

(a) If the magistrate is satisfied from the written examination that there is probable cause to believe the offense complained of has been committed and that there is probable cause to believe the defendant has committed it, then the magistrate shall issue a warrant of arrest. The finding of probable cause shall be based on evidence, which may be hearsay in whole or in part; provided, that there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. Except as provided in subsection (b), if the affiant is not a law enforcement officer, as defined by § 39-11-106(21), or if none of the affiants in the case of multiple-affiants is a law enforcement officer, as defined by §39-11-106(21), then a criminal summons as provided in § 40-6-215 shall issue instead of a warrant of arrest.

(b) Notwithstanding the provisions of subsection (a), the magistrate may issue a warrant of arrest instead of a criminal summons if:

(1) The offense complained of is a felony, as defined in §39-11-110;

(2) There are multiple-affiants and one or more of the affiants is a law enforcement officer as defined in § 39-11-106(21);

(3) After examination of the affiant and the affidavit of complaint, the magistrate has probable cause to believe that the issuance of a warrant of arrest rather than a criminal summons is necessary to prevent an immediate danger of domestic abuse to a victim as defined in § 36-3-601(8);

(4) The affiant has a written police report concerning the incident for which the arrest warrant is sought or it can be verified that such written report is on file with the appropriate law enforcement agency;

(5) A reasonable likelihood exists that the person will fail to appear in court;

(6) There are one (1) or more outstanding warrants or criminal summons for such person; or

(7) The person cannot, has not or will not offer satisfactory evidence of identification.

SECTION 2. Tennessee Code Annotated, Section 40-6-215, is amended by deleting the section in its entirety and by substituting instead the following language:

(a)

(1) As an alternative to a warrant of arrest as provided in §§ 40-6-201 – 40-6-214, the magistrate or clerk may issue a criminal summons instead of a warrant of arrest except when an affiant is not a law enforcement officer as defined by § 39-11-106(21), or none of the affiants in the case of multiple-affiants is a law enforcement officer as defined by § 39-11-106(21), in which instance the magistrate or clerk shall issue a summons.

(2) Notwithstanding the provisions of subsection (a)(1), the magistrate may issue a warrant of arrest instead of a criminal summons if:

(A) The offense complained of is a felony, as defined in § 39-11-110;

(B) There are multiple-affiants and one or more of the affiants is a law enforcement officer as defined in § 39-11-106(21);

(C) After examination of the affiant and the affidavit of complaint, the magistrate has probable cause to believe that the issuance of a warrant of arrest rather than a criminal summons is necessary to prevent an immediate danger of domestic abuse to a victim as defined in § 36-3-601(8);

(D) The affiant has a written police report concerning the incident for which the arrest warrant is sought or it can be verified that such written report is on file with the appropriate law enforcement agency;

(E) A reasonable likelihood exists that the person will fail to appear in court;

(F) There are one (1) or more outstanding warrants or criminal summons for such person; or

(G) The person cannot, has not or will not offer satisfactory evidence of identification.

(b) The criminal summons shall be in substantially the same form as a warrant of arrest except that it shall summon the defendant to appear before the magistrate or court at a stated time and place. It shall give notice to the person summoned that:

(1) the defendant is being charged with a state criminal offense,

(2) the summons is being issued in lieu of an arrest warrant,

(3) the failure to appear in court on the date and time specified is a separate criminal offense regardless of the disposition of the charge for which the person is originally summoned,

(4) failure to appear for booking and processing is a separate criminal offense,

(5) an arrest warrant will issue for failure to appear for court or failure to appear for booking and processing,

(6) the failure to appear for court or failure to appear for booking and processing shall be punished as provided in § 39-16-609, and

(7) the defendant is encouraged to consult with an attorney about the summons.

(c) The summons shall be executed in triplicate and shall include a copy of the affidavit of complaint. When the summons is served, the original is to be returned to the court specified in the summons, one (1) copy, including a copy of the affidavit of complaint, given to the person summoned, and one (1) copy to be sent to the sheriff or other law enforcement agency in the county responsible for booking procedures.

(d) By accepting the summons, the defendant agrees to appear at the sheriff's department, or other law enforcement agency in the county responsible for booking procedures, to be booked and processed as directed by the sheriff's department or other such law enforcement agency. If the defendant fails to appear for booking and processing as directed, the court shall issue a bench warrant for such person's arrest. Failure to appear for booking and processing is a separate criminal offense and shall be punished as provided in § 39-16-609.

(e) The sheriff or other law enforcement agency in the county responsible for serving the summons shall provide the defendant with notice of a court time and date the defendant is to appear. Such notice shall be given either at the time the summons is served or at the time the defendant is booked and processed, if booking and processing is ordered to occur prior to the first court date. The court date so assigned shall be not less than ten (10) calendar days nor more than forty-five (45) days from service of the summons or booking and processing, if booking and processing is ordered to occur prior to the first court date. The notice shall be explicit as to where and when the court is to convene and shall advise the defendant that the defendant is encouraged to consult with an attorney about the summons. The court clerk, sheriff, or other law enforcement agency, shall provide notice to the affiant, or affiants in the case of multiple-affiants, of the date and time when the defendant is required to appear before the court.

(f) If the person summoned fails to appear in court on the date and time specified, the court shall issue a bench warrant for such person's arrest. Failure to appear for court is a separate criminal offense and shall be punished as provided in § 39-16-609.

(g) The summons shall have printed on it in conspicuous block letters the following:

NOTICE: YOU ARE CHARGED WITH A STATE CRIMINAL OFFENSE. THIS SUMMONS HAS BEEN ISSUED IN LIEU OF AN ARREST WARRANT. YOUR FAILURE TO APPEAR IN COURT ON THE DAY AND TIME ASSIGNED BY THIS SUMMONS OR THE FAILURE TO APPEAR FOR BOOKING AND PROCESSING WILL RESULT IN YOUR ARREST FOR A SEPARATE CRIMINAL OFFENSE PUNISHABLE AS PROVIDED IN T.C.A. §39-16-609 REGARDLESS OF THE DISPOSITION OF THE CHARGE FOR WHICH YOU WERE ORIGINALLY SUMMONED. YOU ARE ENCOURAGED TO CONSULT WITH AN ATTORNEY ABOUT THIS SUMMONS. THE SIGNING AND ACCEPTANCE OF THIS SUMMONS IS NOT AN ADMISSION OF GUILT OF THE CRIMINAL OFFENSE.

(h) Each person receiving a summons under this section shall sign the summons indicating knowledge of the notice in subsection (g). The signing of the summons is not an admission of guilt of the criminal offense charged. The signature of each person creates the presumption of knowledge of the notice and a presumption to violate this section if the person should not appear in court as directed or for booking and processing. If the person to receive the summons refuses to sign and accept the summons the person shall be taken immediately before a magistrate. The magistrate shall order the terms and conditions of the defendant's release to include the posting of a bail as provided by title 40, chapter 11.

(i) At the initial or any subsequent appearance of a defendant before the court, the judge may order the posting of bail as provided by title 40, chapter 11, as a condition of the continued or further release of the defendant pending the disposition of the summons.

(j) The criminal summons shall be directed and served as provided by §§ 40-6-209 and 40-6-210 and shall be returned as provided by subsection (c).

(k) The provisions of this section shall govern all aspects of the issuance of criminal summons, notwithstanding any provision of Rule 4 of the Tennessee Rules of Criminal Procedure to the contrary.

(l) If any subsection, paragraph, sentence, clause or phrase of this section is for any reason held or declared to be invalid, void, unlawful or unconstitutional, such decision shall not affect the validity of the remaining portions of this section.

SECTION 3. Tennessee Code Annotated, Title 40, Chapter 6, Part 2, is amended by adding the following as a new section:

Section 40-6-117. Notwithstanding any other provision of this part or § 40-5-102, to the contrary, a judge who is licensed to practice law in this state and elected for an eight (8) year term of office may, upon a finding of probable cause, issue an arrest warrant in lieu of a criminal summons under any circumstances and regardless of whether any of the exceptions set out in §§40-6-205 and 40-6-215 are applicable.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 19, 2004


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 8th day of June 2004


PHIL BREDEESEN, GOVERNOR