S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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NASHVILLE, TENNESSEE 37243

August 7, 2000

Opinion No. 00-124

Arrest Warrants Process

QUESTIONS

1. Does an arrest warrant issued following the steps outlined in Proposal #1[1] constitute a valid charging instrument under Tennessee law?

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[1] Proposal #1

1. Officer prepares original affidavit of complaint.
2. Officer signs original affidavit.
3. Officer faxes original affidavit to Judicial Commissioner.
4. Officer and Judicial Commissioner review affidavit via video link.
5. Judicial Commissioner administers oath to officer via video link.
6. Judicial Commissioner examines officer to confirm that faxed affidavit matches original.
7. Judicial Commissioner issues arrest warrant incorporating faxed affidavit and attaches faxed affidavit to warrant.
8. Court clerk ultimately attaches original affidavit to original warrant and faxed affidavit.

This proposal results in three pieces of paper constituting a single warrant, unless Step #8 is omitted and the original affidavit is destroyed.

2. Does an arrest warrant issued following the steps outlined in Proposal #2[2] constitute a valid charging instrument under Tennessee law?

3. If an affiant who personally appeared before a Judicial Commissioner to swear to the allegations of the arrest warrant affixed his/her signature to the warrant using an electronic signature pad as described in Proposal #2, would the arrest warrant bearing such "electronic signature" constitute a valid charging instrument under Tennessee law?

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[2] Proposal #2

> 1. All warrant information entered into JIMS [Judicial Information Management System] by officer/clerk/Judicial Commissioner.
> 2. Officer reviews data on JIMS terminal at his/her location while Judicial Commissioner reviews data on his/her JIMS terminal.
> 3. Judicial Commissioner administers oath to officer via video link.
> 4. Judicial Commissioner examines officer to confirm accuracy of entered data.
> 5. Officer affixes electronic signature to affidavit of complaint by using electronic signature pad connected to computer at officer's location. As used in this proposal, "electronic signature pad" denotes a piece of computer hardware wired into the computer terminal at the officer's location that requires the officer to "sign" the pad using a special stylus. The electronic signature pad captures the movement of the stylus on the pad, converts it to a digital image of the officer's signature, and incorporates the image of the officer's signature into the computer - generated arrest warrant in the space provided for the affiant's signature. After the warrant bearing the electronic signature has been printed, JIMS will delete the digital image of the affiant's signature so that it cannot be replicated in other warrants.
> 6. Judicial Commissioner prints arrest warrant bearing officer's electronic signature beneath affidavit of complaint.
> 7. Judicial Commissioner affixes his/her original signature to appropriate spaces on arrest warrant.
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> This proposal results in a one page arrest warrant with one electronic signature (Affiant's) and two original signatures (Judicial Commissioner's).

OPINIONS

1. Yes, an arrest warrant issued following the steps outlined in Proposal #1 constitutes a valid charging instrument under Tennessee law.

2. Yes, an arrest warrant issued following the steps outlined in Proposal #2 constitutes a valid charging instrument under Tennessee law.

3. Yes, an arrest warrant bearing an electronic signature of an affiant, as described in Proposal #2, who personally appears before a Judicial Commissioner to swear to the allegations of the arrest warrant constitutes a valid charging instrument under Tennessee law.

FACTUAL BACKGROUND

Accompanying your request for an opinion is a brief factual background as follows:

> Knox County Judicial Commissioners currently generate warrants using the Knox County Justice Information Management System ("JIMS"). Arresting officers provide court clerks assisting the Judicial Commissioner with narratives describing each offense committed and information regarding defendants and witnesses. Clerks input the information provided by officers into JIMS. The Judicial Commissioner then reviews the information on the computer with the officer to verify its accuracy. The Judicial Commissioner prints the arrest warrant that JIMS has formatted based on the date provided by the affiant and entered by the Clerk. The affiant reviews the warrant, is placed under oath by the Judicial Commissioner, and signs the warrant in the appropriate locations. Currently, all these steps occur during a face-to-face meeting between the arresting officer and Judicial Commissioner.
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> Effective July 1, 2000, Judicial Commissioners will work from an office centrally located in downtown Knoxville at the City-County Building. The Intake Center for the Knox County Sheriff's Jail will be located at the Knox County Sheriff's Detention Facility on Maloneyville Road in east Knox County approximately fifteen (15) miles from downtown.
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> Due to differing transportation policies among local law enforcement agencies, some officers will be required both to report to the Detention Facility with their detainees and seek the issuance of arrest warrants from the Judicial Commissioner on duty at the City-County Building. Other officers will have their detainees transported by a separate vehicle while they report to the City-County Building to obtain arrest warrants directly from the Judicial Commissioner.

> For those officers who must transport their own detainees to the Detention Facility, the Judges plan to install a video link between the Detention Facility and the Judicial Commissioners' office to allow those officers to swear to the allegations of arrest warrants without making separate trips to the City-County Building and the Detention Facility. Both of the proposals described herein anticipate that the affiant will be located in a facility remote from the Judicial Commissioners' officer in the City-County Building.
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> Tennessee Code Annotated §§ 16-1-115 and 40-6-203 appear to be applicable to the Judges' proposals.

ANALYSIS

1. The sole legal requirement for the affidavit of complaint is that it "shall be made upon oath before a magistrate or a neutral and detached court clerk who is capable of the probable cause determination required by Rule 4." Rule 3, Tenn. R. Crim. P. In 1999, the legislature amended Tenn. Code Ann. § 40-6-203 to add subsection (b) that permits a magistrate or clerk's examination of an informant to be conducted through electronic audiovisual equipment:

> (b)(1) The examination of the informant by the magistrate or lawfully authorized court clerk does not have to take place in a face-to-face meeting of the parties but may be conducted through the use of electronic audiovisual equipment which allows the informant and the examining official to both view and hear each other simultaneously.
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> (2) Prior to the examination, the informant shall prepare an affidavit of complaint in conformance with Rule 3 of the Tennessee Rules of Criminal Procedure and shall electronically transmit a facsimile copy of such affidavit to the examining official. After the receipt of a legible facsimile copy of the affidavit of complaint, the examining official shall proceed with the examination upon taking the oath of the informant. Upon the determination by the examining official that the transmitted facsimile copy is a true copy of the affidavit of complaint of the informant, such copy shall have the same legal effect as the original affidavit of complaint executed by the informant.

The procedure in Proposal #1 comports with the amended provision by requiring the officer to prepare a written and signed statement that the officer faxes to a judicial commissioner for review. Consistent with the 1999 amendment, the proposed procedure requires the judicial commissioner to administer an oath to the officer and to determine that the facsimile copy is a true copy of the affidavit of complaint. The seventh step in Proposal #1 also comports with the amendment that grants the facsimile copy, once it is determined to be a true copy of the original affidavit of

complaint, the same legal effect as the original affidavit of complaint executed by the officer. On its face, the amendment does not require the eighth step in Proposal #1 based on the statutory mandate that the faxed copy is to have the same legal effect as the original affidavit. Thus, whether the resulting warrant consists of two or three pages, it would constitute a valid charging instrument under Tennessee law.

2. Tenn. Code Ann. § 16-1-115 provides:

> Notwithstanding any provision of law to the contrary, courts in this State may implement procedures for the use of electronic signatures in the signing of pleadings, court orders, judgment orders, affidavits of complaint, arrest warrants, mittimus or other court documents. An electronic signature may be used to sign a document and shall have the same force and effect as a written signature.

In allowing an officer to use an electronic signature, Proposal #2 conforms with the statutory provision giving electronic signatures the same force and effect as written signatures in affidavits of complaint and arrest warrants. Thus, the resulting one-page arrest warrant with the electronic signature of the affiant and two original signatures of the judicial commissioner constitutes a valid charging instrument under Tennessee law.

3. Tenn. Code Ann. § 16-1-115 contains no limitation on the legal force and effect of an electronic signature in the signing of affidavits of complaint and arrest warrants. Accordingly, if an affiant personally appeared before a Judicial Commissioner to swear to the allegations of the arrest warrant and affixed his/her signature to the warrant using an electronic signature pad, the resulting arrest warrant bearing the electronic signature would constitute a valid charging instrument under Tennessee law.

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