

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
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NASHVILLE, TENNESSEE 37202

January 3, 2006

Opinion No. 06-001

Arrest Warrants - Applicability of Tenn. Code Ann. §40-6-206 to Felony Cases

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**QUESTIONS**

1. Does Tenn. Code Ann. §40-6-206 apply to felony cases?
2. What is the time of issuance and return for a warrant or other process in a felony case.
3. Does Tenn. Code Ann. §40-6-206 apply to misdemeanor violations of probations?

**OPINIONS**

1. Yes. Tenn. Code Ann. §40-6-206 applies to felony cases.
2. Because the first sentence of Tenn. Code Ann. §40-6-206 applies to felony cases, warrants and other processes issued in such cases “may be issued at any time and made returnable to any day of the term.”
3. No. Tenn. Code Ann. §40-6-206 does not apply to probation violation warrants.

**ANALYSIS**

1. Tenn. Code Ann. §40-6-206 provides:

Any process, warrant, precept or summons authorized to be issued by any of the judges or clerks of the court, in any criminal prosecution on behalf of the state, may be issued at any time and made returnable to any day of the term. In a misdemeanor case, if such a process, warrant, precept or summons has not been served, returned or quashed within five (5) years from the date of its issuance, such process, warrant, precept or summons shall be automatically terminated and removed from the records.

Because Tenn. Code Ann. §40-6-206, provides that warrants and other processes issued “in *any* criminal prosecution on behalf of the State” (emphasis added), the first sentence of the statute applies to felony cases. *See* Op. Tenn. Att’y Gen. 98-153 (Aug. 17, 1998) (Neither [§40-6-206]

nor any other section establishes any distinction between the authority to execute felony warrants and the authority to execute misdemeanor warrants). (copy attached).

2. Because the first sentence of Tenn. Code Ann. §40-6-206 applies to felony cases, warrants and other processes issued in such cases “may be issued at any time and made returnable to any day of the term.”<sup>1</sup>

3. In a previous opinion issued by this Office, we stated:

A probation violation warrant is not a warrant in a “criminal prosecution on behalf of the state.” A defendant in violation of his probation has already been prosecuted, convicted and sentenced. Accordingly, Tenn. Code Ann. §40-6-206 has no application to probation violation warrants.

Op. Tenn. Att’y Gen. 02-126 (November 25, 2002) (copy attached). The five-year termination provision of Tenn. Code Ann. §40-6-206 does not apply to probation violation warrants since probation violation warrants are not warrants issued in a “criminal prosecution on behalf of the state.” *See State v. Davis*, No. E2003-03079-CCA-R3-CD, 2005 WL 737111 at \*2-3 (Tenn. Crim. App. Apr. 1, 2005); and *State v. Allen*, No. 02C01-9503-CR-0087, 1995 WL 764996 (Tenn. Crim. App. Dec. 28, 1995 (criminal prosecution does not encompass warrants issued for execution of sentence after a defendant is convicted) (copies attached).

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<sup>1</sup>However, Tenn. Code Ann. §40-6-206 may be subject to the potential limitations as outlined in Tenn. Code Ann. §§40-2-101 and 40-2-102 (Limitations of prosecutions of felony and misdemeanor cases).

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