S T A T E O F T E N N E S S E E
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Opinion No. 09-84

Report to US Dept. Homeland Security of Jail Arrestee's Citizenship Status

QUESTION

Is Senate Bill 1141, which would require jail officials to make a reasonable effort to review a confined jail arrestee's documents to assess citizenship status and report to the United States Department of Homeland Security that the citizenship status cannot be determined or that the jail arrestee is not lawfully present in the United States, constitutional?

OPINION

Yes. It is the opinion of this Office that the proposed legislation contained in Senate Bill 1141 is constitutional.

ANALYSIS

Senate Bill 1141 proposes to amend Title 40, Chapter 7, Part 1, of the Tennessee Code by adding the following new section:

> § 40-7-123.
>
> When a person is arrested for any offense and is confined, for any period, in the jail of the county or any municipality, a reasonable effort to review documents in the possession of the prisoner shall be made to assess the citizenship status of the person so confined. If the keeper of the jail or other officer cannot determine the lawful status of the prisoner from the documents in the possession of the prisoner or if it is determined that the person is not lawfully present in the United States, pursuant to the federal Immigration and Naturalization Act, compiled in 8 U.S.C. § 1101 et seq., the keeper of the jail or other officer shall notify the United States department of homeland security by facsimile transmission or other appropriate means.

The Fourth Amendment to the United States Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." "The basic purpose of [the Fourth] Amendment … is to safeguard the privacy and security of individuals against arbitrary invasion by government officials." *Camara v. Municipal Court*, 387 U.S. 523, 87 S.Ct. 1727, 1730, 18 L.Ed. 2d 930 (1967). This protection, however, applies only in contexts where the citizen in question has a reasonable expectation of privacy in the place or things to be searched. *See Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). The "touchstone of the Fourth Amendment is reasonableness." *Florida v. Jimeno*, 500 U.S. 248, 250, 111 S.Ct. 1801, 1803, 114 L.Ed.2d 297 (1991); *see also Ohio v. Robinette*, 519 U.S. 33, ---, 117 S.Ct. 417, 421, 136 L.Ed.2d 347 (1996).

Article I, § 7, of the Tennessee Constitution, is identical in intent and purpose with the U.S. Const., amend. 4, and the Tennessee Supreme Court will not limit the state provision more stringently than the federal cases limit the federal provision and will regard such federal cases as particularly persuasive. *Sneed v. State*, 221 Tenn. 6, 423 S.W.2d 857, 1968 Tenn. LEXIS 512 (1968); *State v. Meadows*, 745 S.W.2d 886, 1987 Tenn. Crim. App. LEXIS 2751 (Tenn. Crim. App. 1987). *See also State v. Daniel*, 12 S.W.3d 420, 2000 Tenn. LEXIS 52 (Tenn. 2000). Tenn. Const. art. I, § 7 is not broader than the U.S. Const. amend. 4. *State v. Wert*, 550 S.W.2d 1, 1977 Tenn. Crim. App. LEXIS 261 (Tenn. Crim. App. 1977).

A jail arrestee has no reasonable expectation of privacy against an inventory search of his person and property that is a routine administrative procedure incident to booking and jailing. *Illinois v. Lafayette*, 462 U.S. 640, 103 S.Ct. 2605, 77 L.Ed.2d 65 (1983). "The inventory search constitutes a well-defined exception to the warrant requirement." *Id.* at 643; *see also United States v. McCroy*, 102 F.3d 239 (6th Cir. 1996). "A range of governmental interests support an inventory process," including that, "inspection of an arrestee's personal property may assist the police in ascertaining or verifying his identity." *Id.* at 646.

Thus, jailers may conduct an inventory search of the arrestee's person and possessions to determine his identity as well as inventory and secure his possessions. As long as the search is conducted pursuant to standard jailhouse procedures, the search is reasonable as part of an inventory search. *See Florida v. Wells*, 495 U.S. 1, 110 S.Ct. 1632, 109 L.Ed. 2d 1 (1990)(inventory search must be conducted pursuant to standardized criteria or established routine designed to produce an inventory, although discretion allowed based on the concerns of the search).

If, in the course of the routine inventory search, the jail officials obtain documents that disclose the arrestee's citizenship status, the officials may communicate that information to the United States Department of Homeland Security or communicate that they could not determine the arrestee's citizenship status. The information obtained is not confidential. In a prior opinion, Op. Tenn. Att'y Gen. 05-084 (May 16, 2005), this Office determined that a state department's report of cause of death of a person in its custody did not violate the person's right to privacy under the Tennessee or United States Constitution. This Office found that, "[b]oth the Tennessee Supreme Court, considering the Tennessee Constitution, and the Sixth Circuit Court of Appeals,

considering the United States Constitution, have held that there is no constitutionally protected right against the disclosure of personal information. The Tennessee Supreme Court…held that confidentiality of records is a statutory matter within the province of the legislature and explicitly refused to extend constitutional protection to the non-disclosure of personal information."

This Office has previously reviewed proposed legislation similar to Senate Bill 1141 and concluded that it would be constitutional. Op. Tenn. Att'y Gen. 08-54 (March 14, 2008). Section 2 of House Bill 2860, filed as part of the 105th General Assembly, proposed the following:

> When a person is charged with a felony or with a second or subsequent violation of driving under the influence pursuant to § 55-10-401 and is confined, for any period, in the jail of the county or any municipality, a reasonable effort shall be made to determine the citizenship status of the person so confined, including but not limited to, reviewing documents in the possession of the prisoner. If the keeper of the jail or other officer cannot determine the lawful status from the documents in the possession of the prisoner, verification shall be made with forty-eight (48) hours through a query to the Law Enforcement Support Center of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If it is determined that the person is not lawfully present in the United States, pursuant to the federal Immigration and Naturalization Act, compiled in 8 U.S.C. § 1101 et seq., the keeper of the jail or other officer shall notify the United States Department of Homeland Security.

This Office opined:

> In determining whether the detainee is in the country illegally, the proposed statute provides that the jailer shall use the guidelines set forth in the federal Immigration and Nationality Act, codified at 8 U.S.C. § 1101, *et seq.* The federal act regulates the authorized entry, length of stay, residence status, and deportation of aliens, and also provides for enforcement by federal authorities. Additionally, it provides that aliens who have been convicted of certain offenses may be deported. *See* 8 U.S.C. § 1227(a)(2). If the detainee is not lawfully present in the United States, that information shall be sent to the United States Department of Homeland Security. The proposed legislation merely establishes procedures for determining whether a detainee is in this country illegally and for transmitting that information to federal officials. The proposed legislation does not itself impose any penalties for failure to provide proof of citizenship. The proposed legislation in Section 2 of House Bill 2860 does not have any apparent constitutional infirmities.

Similarly, Senate Bill 1141 establishes procedures for reviewing documents to determine whether an arrestee is in this country illegally and for transmitting information to federal officials. The bill does not impose criminal penalties.

Senate Bill 1141 does not violate the Supremacy Clause. As this Office stated in a previous opinion, "[u]nder the Supremacy Clause, federal statutes enacted pursuant to the United States Constitution are the supreme law of the land. If state law conflicts with those statutes, the state law is preempted in favor of federal law. *United States v. Gillock*, 529 U.S. 344, 120 S.Ct. 1467, 146 L.Ed.2d 374 (2000)." Op. Tenn. Att'y Gen. 02-018 (February 13, 2002).

Senate Bill 1141 does not conflict with the federal Immigration and Nationality Act. Instead, it instructs jail officials to communicate information to the federal authorities. Congress encourages the cooperation of state and local authorities at 8 U.S.C. § 1357(g)(10):

> (10) Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State—
>
> (A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or
>
> (B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

For the above reasons, it is the opinion of this Office that Senate Bill 1141 is constitutional under the Tennessee and United States Constitutions.

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