



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 16, 1997

The Honorable John Vance
Dallas County District Attorney
Frank Crowley Courts Building, LB 19
Dallas, Texas 75207-4399

Letter Opinion No. 97-082

Re: Computer signature on arrest warrants and
affidavits (ID# 38631)

Dear Mr. Vance:

Your office informs us that a county criminal court judge in Dallas County has inquired whether the county may establish a computer system whereby the various filing agencies and courts could share a case database. The arrest warrant and supporting affidavit would be "signed" on the computer system¹ and conveyed to the district attorney's office for filing the case without printing a paper copy of the warrant and affidavit. The purpose is to permit electronic transfers of these documents between offices so that paper copies of the warrant and affidavit will not need to be transferred.

We note initially that the conversion of a paper-handling system to a computerized system raises numerous legal questions that are not before us.² We limit our answer to the questions you raise and do not attempt to address other questions that might be raised by computerization of arrest warrants and affidavits.

You state that, through allowing only the judge access to his signature in the form of a computer graphic, you will be able to prevent other persons from placing the judge's signature on warrants.³ Thus, the facts you present do not raise a problem of warrants issued by someone other than a magistrate. *See generally Haynes v. State*, 468 S.W.2d 375 (Tex. Crim. App. 1971), *cert. denied* 405 U.S. 956 (1972).

You also note that in *Stork v. State*, 23 S.W.2d 733 (Tex. Crim. App. 1929), the court of criminal appeals held that a justice of the peace could "sign" a search warrant with a facsimile stamp

¹We understand that the affiant would be able to "sign" the affidavit by placing his or her signature directly on the computer screen.

²For example, some statutes appear to require the warrants to be printed. *See* Code Crim. Proc. art. 15.26 (officer who executes warrant of arrest "need not have the warrant in his possession at the time of the arrest, . . . but upon request he shall show the warrant to the defendant as soon as possible").

³We assume for purposes of this opinion that the security measures you implement will be adequate to prevent unauthorized persons from gaining access to the computerized warrant system.

or stencil. The court stated that it made no difference whether the justice of the peace affixed his name to the warrant “by one stroke as by the use of a stencil or rubber stamp,” by typing it, or by writing it out in longhand.⁴ What mattered was that in each case, “the facts must show the name to have been affixed by the officer himself, or under his immediate authority and direction and in his presence. In either event he has signed his name to the document.”⁵ We agree with your premise that the judge may “sign” an arrest warrant by personally entering a computer graphic of his signature on the warrant in the computer system.

Your first question is as follows: “May the county utilize a computer system to record arrest warrant affidavits and issue warrants without actually printing paper copies of these documents?”⁶

Chapter 15 of the Code of Criminal Procedure sets out requirements for issuing and serving an arrest warrant. “A ‘warrant of arrest’ is a written order from a magistrate, directed to a peace officer or some other person specially named, commanding him to take the body of the person accused of an offense, to be dealt with according to law.”⁷ A magistrate may issue a warrant of arrest, among other circumstances, “[w]hen any person shall make oath before the magistrate that another has committed some offense against the laws of the State.”⁸ The affidavit made before the magistrate is called a “complaint” if it charges the commission of an offense.⁹ Article 15.05 of the Code of Criminal Procedure sets out the following requirements for the complaint:

The complaint shall be sufficient, without regard to form, if it have these substantial requisites:

1. It must state the name of the accused, if known, and if not known, must give some reasonably definite description of him.

⁴*Stork v. State*, 23 S.W.2d 733, 735 (Tex. Crim. App. 1929); see Attorney General Opinion JM-373 (1985) (relying on *Stork* to hold that a judge may “sign” a document by allowing another person under his direction and in his presence and to place a mark on it that constitutes the judge’s approval).

⁵*Stork*, 23 S.W.2d at 735.

⁶We understand that you are inquiring only about transferring warrants electronically from the judge’s office to the district attorney’s office, and that you do not inquire about arrests made when the arresting officer has knowledge of a warrant but does not have a warrant in his possession. See Code Crim. Proc. art. 15.26; *Hudson v. State*, 662 S.W.2d 957 (Tex. Crim. App. 1984).

⁷Code Crim. Proc. art. 15.01.

⁸*Id.* art. 15.03(a)(2).

⁹*Id.* art. 15.04.

2. It must show that the accused has committed some offense against the laws of the State, either directly or that the affiant has good reason to believe, and does believe, that the accused has committed such offense.
3. It must state the time and place of the commission of the offense, as definitely as can be done by the affiant.
4. It must be signed by the affiant by writing his name or affixing his mark.

Chapter 15 does not address the use of a computerized system for issuing arrest warrants. However, as long as its provisions are complied with, we believe that the affidavit and arrest warrant may be prepared by computer and may be transferred electronically among the public officers and employees who have responsibilities connected with them.

You next ask: "May the magistrate issue a warrant based upon a computer facsimile of an affiant's signature, assuming that the affiant orally swears to the truth of the affidavit in the magistrate's presence?"

Article 15.03(a)(2) of the Code of Criminal Procedure requires the affiant to "make oath before the magistrate that another has committed some offense against the laws of the State." You note that the requirements of this provision must be met specifically. The affiant is required to personally swear to the affidavit in the presence of the magistrate. The court of criminal appeals found traffic complaints invalid, as well as a warrant based upon them, because they were not signed or sworn to by the highway patrolman who issued the citations but instead bore his stamped signature placed thereon by another person.¹⁰

In addition, the affiant must sign the complaint "by writing his name or affixing his mark" on it.¹¹ We understand that the computer facsimile of the affiant's signature would be created by the affiant signing the affidavit directly on the computer screen. We believe that the affiant may write his name or affix "his mark" in this manner, as long as he appears in person before the judge to swear to and sign the affidavit. The affiant must of course comply with other relevant provisions of law.

S U M M A R Y

Dallas County may utilize a computer system to prepare affidavits and arrest warrants and to transfer them among the public officers and employees who have responsibilities connected with these documents. A judge may

¹⁰*Kosanda v. State*, 727 S.W.2d 783, 784 (Tex. Crim. App. 1987, pet. ref'd).

¹¹Code Crim. Proc. art. 15.05(4).

“sign” an arrest warrant by personally entering a computer graphic of his signature on the warrant in the computer system. A magistrate may issue a warrant based upon a computer facsimile of an affiant’s signature, assuming that the affiant orally swears to the truth of the affidavit and signs it in the magistrate’s presence.

Yours very truly,

A handwritten signature in cursive script that reads "Susan Garrison".

Susan Garrison
Assistant Attorney General
Opinion Committee