

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENTS TO
MAINE RULES OF CRIMINAL PROCEDURE

2012 Me. Rules 08

Effective: April 13, 2012

All the justices concurring therein, the following amendments to Rule 4 of the Maine Rules of Criminal Procedure are hereby adopted to be effective on the date indicated above. The specific amendments are stated below. To aid in understanding these amendments, an Advisory Note appears after the text of the amendments. The Advisory Note states the reason for recommending the amendments to Rule 4, but it is not part of the amendments to Rule 4 adopted by the Court.

1. Rule 4 of the Maine Rules of Criminal Procedure is amended to read as follows:

**RULE 4. ARREST WARRANT OR SUMMONS UPON INDICTMENT,
INFORMATION OR COMPLAINT**

(a) Definitions. For purposes of this rule the following definitions apply:

(1) “Clerk” means a clerk or deputy clerk of the District Court and a clerk or deputy clerk of the Superior Court.

(2) “Electronic Arrest Warrant” means an arrest warrant, including a bench warrant, issued pursuant to statute and this rule that exists in electronic form and is entered into, maintained, managed, enforced, executed or recalled under the statewide warrant management system pursuant to 15 M.R.S. § 653 and this rule.

(3) “Paper Arrest Warrant” means an arrest warrant issued pursuant to statute and this rule that exists in paper form rather than in electronic form because it is excluded from the statewide warrant management system pursuant to 15 M.R.S. § 652, or because it is not yet in electronic form due to it being issued by a justice of the peace, issued by any judicial officer outside of the business hours of the court, or due to the temporary unavailability of the statewide warrant management system or other exigent circumstance pursuant to 15 M.R.S. § 654(1).

(b) (a) Grounds for Issuance of Arrest Warrant or Summons.

(1) *Indictment.* An indictment is grounds for issuance of an arrest warrant or summons for the defendant named in the indictment.

(2) *Probable Cause.* Probable cause to believe that a crime has been committed and that the defendant committed it is grounds for an arrest warrant or summons for the defendant. Probable cause shall appear from the information or complaint or from an affidavit or affidavits sworn to before a Superior Court justice, a District Court judge or other officer empowered to issue process against persons charged with crimes against the state and filed with the information or complaint.

(3) *Bench Warrant.* A bench warrant may issue for a failure to appear or for contempt or as provided by statute.

(c) (b) Who May Issue Arrest Warrant or Summons.

(1) *Indictment.* A clerk shall issue an arrest warrant or summons for the defendant named in the indictment when so directed by the court or so requested by the attorney for the state.

(2) *Probable Cause.* A Superior Court Justice, a District Court Judge or, when duly authorized to do so, a justice of the peace or clerk may issue an arrest warrant or summons based on probable cause, as determined pursuant to subdivision ~~(a)~~(b)(2).

(3) *Bench Warrant.* A Justice or Judge may ~~sign~~ authorize the issuance of a bench warrant physically or electronically. A clerk shall ~~sign~~ authorize the issuance of a bench warrant physically or electronically when so directed by the court, except in cases of contempt.

~~(4) *Definition.* For purposes of this rule, “clerk” means a clerk or deputy clerk of the District Court and a clerk or deputy clerk of the Superior Court.~~

(d) (e) Form Content of Arrest Warrant or Summons.

(1) *Warrant.* The arrest warrant shall bear the caption of the court or division of the court from which it issues. It shall ~~be signed~~ contain an electronic signature of the justice, judge, or clerk issuing the arrest warrant electronically, or contain a physical signature by a justice or judge or other person authorized to issue arrest warrants in the event the arrest warrant issued is a paper warrant and. It shall contain the name of the defendant or, if the defendant’s name is unknown, any name or description by which the defendant can be identified with reasonable

certainty. The arrest warrant shall contain available information concerning the identity and location of the defendant, including, but not limited to, photographs of the defendant, the defendant's last known address identified by town, county and geographic codes, the defendant's date of birth and any distinguishing physical characteristics that will aid in the location of the defendant and the execution of the warrant. It shall describe the crime charged and indicate when applicable that it is a crime involving domestic violence. It shall command that the defendant be arrested and brought before the court. The amount of bail may be fixed by the court and physically or electronically endorsed on the warrant.

(2) *Summons*. The summons shall be in the same form as the arrest warrant except that it shall summon the defendant to appear before the court at a stated time and place.

(e) (d) Possession Management of Issued Electronic or Paper Arrest Warrant. ~~There shall be an original and an attested copy of the warrant. The original shall remain in the issuing court. The attested copy shall remain in the possession of the arrest warrant repository or the investigation agency, as provided by 15 M.R.S. ch. 99 and the standards issued pursuant to that chapter.~~

~~When a warrant is signed by a judicial officer outside of the regular business hours of a court, the original warrant must be filed on the next regular business day. The filing must be made in person, or by mail, with the court that would have jurisdiction and venue over a criminal action resulting from the warrant.~~

(1) *Electronic Arrest Warrant and Recall Order*. Electronic arrest warrants, and all orders recalling electronic arrest warrants, shall be entered into, stored, and retained in the Judicial Bench warrant docket management system as provided in 15 M.R.S. § 653(1). The warrant docket management system shall be the sole official record of electronic arrest warrants issued and recalled pursuant to this rule.

(2) *Mandatory Filing and Entering Electronically of the Original of Certain Paper Arrest Warrants*. Unless the paper arrest warrant has already been executed or recalled, the original of the following paper arrest warrants must be filed and entered electronically into the warrant document management system as follows:

(A) Any paper arrest warrant issued by a justice of the peace or issued by any judicial officer outside of the regular business hours of a court must be filed on the next regular business day and entered electronically by the court as soon as possible thereafter. The filing must be made with the court that would have jurisdiction and venue over a criminal action resulting from the warrant. The original of any paper arrest warrant filed with the court shall remain with the court.

(B) Any paper arrest warrant issued due to the temporary unavailability of the statewide warrant management system or other exigent circumstances must be filed on the next regular business day and entered electronically by the court as soon as possible thereafter. The filing must be made with the court that would have jurisdiction and venue over a criminal action resulting from the warrant. The original of any paper arrest warrant filed with the court shall remain with the court.

Once a paper arrest warrant described in paragraph (A) and (B) is entered electronically into the warrant document management system, the resulting electronic arrest warrant becomes the sole official arrest warrant.

(3) *Filing of Paper Arrest Warrants Excluded from the Electronic Warrant Docket Management System.* Any paper warrants specifically excluded from the electronic warrant docket management system pursuant to 15 M.R.S. § 652 shall continue to be filed as follows:

(A) The original shall be filed with the court that would have jurisdiction and venue over a criminal action resulting from the warrant; and

(B) An attested copy shall be filed with the arrest warrant repository or the investigating agency, as provided by former 15 M.R.S. ch. 99 and the former standards issued pursuant to that chapter.

(f) ~~(e)~~ Execution of Electronic or Paper Arrest Warrant or Service of Summons.

(1) *By Whom.* The electronic arrest warrant or paper arrest warrant shall be executed by any officer authorized by law. The summons may be served by any constable, police officer, sheriff, deputy sheriff, marine patrol officer of the Department of Marine Resources, warden of the Department of Inland Fisheries and Wildlife, or any person authorized to serve a summons in a civil action.

(2) *Territorial Limits.* The electronic arrest warrant or paper arrest warrant may be executed or the summons may be served at any place within the State of Maine.

(3) *Manner of Execution of Electronic or Paper Arrest Warrant.* The electronic arrest warrant or paper arrest warrant shall be executed by the arrest of the defendant. If execution is of an electronic arrest warrant, showing the warrant to the defendant is not possible. If execution is of a paper arrest warrant, ~~The~~ the officer need not have the warrant in the officer's possession at the time of the arrest but, upon request, the officer shall show the warrant to the defendant as soon as possible. If the officer is executing an electronic arrest warrant or ~~If~~ if the officer does not have the paper arrest warrant in his or her possession at the time of the

arrest, he or she shall inform the defendant of the crime charged and of the fact that an arrest warrant has been issued. The officer executing the electronic arrest warrant or paper arrest warrant shall bring the arrested person promptly before the court or, for the purpose of admission to bail, before a bail commissioner.

(4) *Service of Summons.* The clerk shall mail a summons to the defendant's last known address or shall deliver it to any officer authorized by law to execute or serve it or to the attorney for the state, unless the defendant is in custody or otherwise before the court. More than one summons may issue for a defendant. Personal service is effected by delivering a copy to the defendant personally or by leaving it at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. A summons to a corporation shall be served in the same manner as a summons to a corporation is served in a civil case.

(5) *Failure of Service or Failure to Appear in Response to Summons.* If a mailed summons is returned undelivered or if a defendant cannot be personally served or if a defendant fails to appear in response to a summons, the clerk shall request the court to authorize a bench warrant.

(g) (f) Return of Electronic or Paper Arrest Warrant or Summons.

(1) *Warrant.* The officer executing an electronic arrest warrant shall make a return of the warrant as provided by 15 M.R.S. ch. ~~99~~ 100 and the standards issued pursuant to that chapter. The officer executing a paper arrest warrant shall make a return of the warrant as provided by former 15 M.R.S. ch. 99 and the former standards issued pursuant to that chapter.

(2) *Summons.* On or before the return day the person to whom a summons was delivered for service shall make return thereof. At the request of the attorney for the state made at any time while the charge is pending, a summons returned unserved or a duplicate thereof may be delivered by the clerk to any authorized person for service.

Advisory Note – April 2012

The amendment modifies Rule 4 to accommodate the recent statutory creation of the electronic arrest warrant accompanied by an electronic arrest warrant repository system pursuant to 15 M.R.S. ch. 100, enacted by P.L. 2011, ch. 214, § 2, effective February 1, 2012. The act eliminates in large measure reliance upon paper arrest warrants and the paper arrest warrant repository system with the repeal of 15 M.R.S. ch. 99 by P.L. 2011, ch. 214 § 1. However, the act

leaves in place the previously existing paper arrest warrant repositories to manage and enforce the limited number of paper warrants that will nonetheless continue to exist. *See* P.L. 2011, ch. 214, § 5. Although the actual application process, the grounds for issuance and who may issue an arrest warrant remains unchanged, Rule 4 is changed to address the content, management, execution and return of both electronic and paper arrest warrants.

The specific changes to Rule 4 are as follows:

First, because it is now necessary to provide an explanation as to the meaning of an “electronic arrest warrant” and identify those arrest warrants that will, at least initially, be issued in paper form rather than electronically, a new subdivision (a) has been added entitled “Definitions.” In addition to the terms “electronic arrest warrant” and “paper arrest warrant,” the preexisting definition of “clerk,” formerly located in subdivision (b)(4), is relocated to new subdivision (a). The addition of the new subdivision (a) necessitates the redesignation of subdivisions (a) through (f) to be subdivisions (b) through (g), respectively.

Second, newly redesignated subdivision (d)(1) respecting the content of the arrest warrant now requires an electronic signature (10 M.R.S. § 9402(8)) in the case of an electronically issued warrant rather than a physical signature as in the case of a paper warrant. Further, notwithstanding which form is employed, the content of the arrest warrant must include, when applicable, an indication that the crime charged is a crime involving domestic violence as required by 15 M.R.S. § 654(3)(D). *See also* 15 M.R.S. § 1003(3-A).

Third, newly redesignated subdivision (e) now addresses the management of both electronic arrest warrants (paragraph (1)) and paper arrest warrants (paragraph (3)), once issued. Paragraph (2) of subsection (e) mandates that all paper arrest warrants issued by a justice of the peace, issued by any judicial officer outside of the business hours of the court, or issued during the temporary unavailability of the statewide warrant management system or other exigent circumstances pursuant to 15 M.R. S. § 654 (1), be promptly filed and entered electronically when feasible unless already executed or recalled. Further, whether an arrest warrant is issued from the outset in electronic form (paragraph (1)) or converted from an initially issued paper form (paragraph (2)), the warrant docket management system is the sole official record of the electronic arrest warrant, its execution and return or recall.

Fourth, newly redesignated subsection (f) now addresses the execution of both electronic arrest warrants and paper arrest warrants. In paragraph (3) it makes

clear that, unlike a paper warrant, it isn't possible to show an electronic warrant to the defendant. However, as in the case of an officer not having in his or her possession the paper arrest warrant at the time of arrest, the defendant must be informed of the crime charged and the fact that an arrest warrant has been issued.

Fifth, newly redesignated subsection (g)(1) now addresses the return of both electronic arrest warrants and paper arrest warrants. The return in electronic form is as provided by 15 M.R.S. ch. 100 and the standards issued pursuant to that chapter. The return in paper form is as formerly provided by 15 M.R.S. ch. 99 and the former standards issued pursuant to that chapter.

Sixth, distinct from the changes necessitated by the addition of electronic paper warrants addressed above, to enhance clarity the word "arrest" has been added preceding the word "warrant" in redesignated subdivisions (b) through (g) and the word "bench" has been added before the word "warrant" in redesignated subdivision (f)(5).

These amendments shall be effective April 12, 2012.

Dated: April 13, 2012

FOR THE COURT¹

/s/

LEIGH I. SAUFLEY
Chief Justice

DONALD G. ALEXANDER
JON D. LEVY
WARREN M. SILVER
ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
Associate Justices

¹ This Rule Amendment Order is approved after conference of the Court, all Justices concurring therein.