

IMPROVING DUI SYSTEM EFFICIENCY

## **A Guide to Implementing Electronic Warrants**

# **Model Legislative Checklist**

# Critical Legislative Elements for Successful Implementation

Clearly there is variation in the statutory language and elements included across the states that have statutes or rules governing eWarrants. Although not all states have legislation on eWarrants (as in the case of Delaware), statutes and/or court rules are recommended as they provide standards and uniformity in practice, which help to guard against legal challenges.

If a state is considering the passage of legislation or amending current legislation, there are certain elements deemed to be critical. In terms of key language, experts recommended that legislation and court rules/orders facilitate a streamlined process and align the process with available technologies.

To help ensure that eWarrants are effectively implemented and used, experts pointed to several areas in which legislative language or court orders could be improved.

- Language criminalizing the refusal to submit to testing authorized by a warrant.
- Reporting of test results above the legal limit to state driver licensing agencies (e.g., department of motor vehicles).
- Incorporation of an authentication component to verify eWarrant system users' identity, which would help address issues related to in-person testimony.
- Language that addresses an option for recording the oral statement of the officer, certification by the judge that the recording of the sworn oral statement is a true recording under oath, and the retention of the recording as part of the record of proceedings.

Perhaps above all else, legislative language should not be overly prescriptive. Those who have implemented eWarrant systems note the need for flexibility that allows for advances in technology and for modifications that will ensure maximum efficiency and effectiveness for officers seeking warrants.

# Model Legislation Checklist

**B**ased on the statutory review, interviews with practitioners and policymakers, and case studies of jurisdictions that have implemented eWarrants and eWarrant systems, the following checklist enumerates the legislative elements deemed to be the most critical for supporting effective and efficient systems. The actual elements that are desirable in a specific state or jurisdiction will vary based on the type of system used.

- ✓ Provision for the transmission of the warrant by electronic means, ideally allowing for flexibility to adapt to emerging technologies by not prescribing the specific electronic or digital methods of transmission.
- ✓ Provision for oral testimony by telephone or video to allow officers to be sworn in remotely without having to give the oath in-person.
- ✓ Language that addresses the need for recording the oral statement and certification by the judge that the sworn oral statement is a true recording under oath.
- ✓ Language that addresses the retention of the recording as part of the record of proceedings.
- ✓ Inclusion of sworn statement under penalty of perjury to provide further efficiency (i.e., allowing the officer to electronically sign a penalty of perjury statement in lieu of providing testimony).
- ✓ Permission for electronic or digital signature by the officer and the approving judge, judicial officer, or magistrate, ideally allowing for flexibility for emerging technologies, but at a minimum including electronic encrypted digital signatures, signatures affixed by electronic stylus, or typewritten signatures.
- ✓ If electronic or digital signatures are going to be permissible, inclusion of language related to identity verification protocols should be included, again without being too prescriptive to allow for flexibility as security protocols evolve.
- ✓ Language allowing the reporting of failed tests to licensing agencies, ideally allowing for electronic information exchange between eWarrant systems and licensing agency systems.