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# Additional Statutory Duties

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Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

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## Additional Statutory Duties

Reference Number: CTAS-1249

*Tennessee Code Annotated* section 8-8-201(b)(1) sets forth a list of statutes that include additional statutory duties of the office of sheriff. In addition, T.C.A. § 8-8-201(b)(2) charges the sheriff with performing such other duties as are, or may be, imposed by law or custom. The duties listed in T.C.A. § 8-8-201 are not *ex officio* duties. See *George v. Harlan*, 1998 WL 668637, \*2 (Tenn. 1998) (*ex officio* duties are defined as nonstatutory duties and *ex officio* services are defined as those services not required by statute). Some of the duties listed are applicable to the municipal chief of police as well as the sheriff.

## Courtroom Security Committee

Reference Number: CTAS-1250

Pursuant to T.C.A. § 16-2-505(d), each county must establish a court security committee. In addition to the sheriff, the committee is to be composed of the county mayor, the district attorney general, the presiding judge of the judicial district, and a court clerk from the county designated by the presiding judge. The committee is charged with examining the space and facilities to determine the security needs of the courtrooms in the county in order to provide safe and secure facilities.

Upon completing the examination of security needs, the administrative office of the courts distributes to the court security committee a copy of the minimum security standards as adopted by the Tennessee Judicial Conference. The committee must review and consider these standards in determining court security needs. No later than May 15 of each year, the court security committee must report its findings to the county legislative body and the administrative office of the courts. The county legislative body is required to review and consider the recommendations of the court security committee in preparing the budget. Any recommendation by the court security committee requiring county expenditures is subject to approval of the county legislative body. No later than December 1 of each year, the county legislative body is required to report to the administrative office of the courts any action taken to meet the security needs. No later than January 15 of each year, the administrative office of the courts is required to report to the General Assembly on the compliance by each county government with the security needs established by the court security committee.

## Disposal of Physical Evidence

Reference Number: CTAS-1251

Physical evidence other than documents and firearms used in judicial proceedings and in the custody of a court in cases where all appeals or potential appeals of a judgment have ended or when the case has been settled, dismissed or otherwise brought to a conclusion, may be disposed of following the procedure set forth in T.C.A. § 18-1-206 (except in Shelby County). Once the court has entered an order to dispose of the evidence, the clerk delivers the order and the items approved for disposition to the custody of the sheriff or of the chief of police in counties having a metropolitan form of government for disposition in accordance with the order of the court.

It is the duty of the sheriff to deliver the physical evidence to the owner(s) or to organization(s) when so ordered, personally or by return receipt mail. When ordered to sell physical evidence, the sheriff must advertise the sale(s) in a newspaper of general circulation for not fewer than three editions and not less than 30 days prior to the sale(s). The sheriff must conduct a public sale and maintain a record of each sale and the amount received. The proceeds of the sale(s) are deposited in the county general fund. When ordered to destroy physical evidence, it is the duty of the sheriff to completely destroy each item by cutting, crushing, burning or melting. The sheriff must then file an affidavit with the clerk of the court ordering the destruction showing a description of each item, the method of destruction, the date and place of destruction, and the names and addresses of all witnesses. T.C.A. § 18-1-206(a)(7).

Controlled substances and drug paraphernalia in the custody and possession of the court clerk by virtue of having been held as evidence or exhibits in any criminal prosecution where all appeals or potential appeals of a judgment have ended, or when the case has been dismissed or otherwise brought to a conclusion, are disposed of by the court clerk as set forth in T.C.A. § 53-11-451(k).

## Disposal of Unlawful Telecommunications Devices

Reference Number: CTAS-1252

It is the duty of the sheriff, upon order of the court, to destroy as contraband or to otherwise lawfully dispose of any unlawful telecommunication devices, plans, instructions, publication, or other related items

used in violation of T.C.A. § 39-14-149. T.C.A. § 39-14-149(b).

## Disposal of Alcoholic Beverages

Reference Number: CTAS-1253

It is the duty of the sheriff, or other officer, upon the conviction of any person for a violation of T.C.A. § 39-17-713, to destroy or otherwise dispose of all alcoholic beverages according to law. T.C.A. § 39-17-714. See Intoxicating Liquors.

## Disposition of Confiscated Weapons

Reference Number: CTAS-1254

It is the duty of the sheriff and the sheriff's deputies to confiscate any weapon that is possessed, used or sold in violation of the law. With few exceptions, such confiscated weapon shall be declared to be contraband by a court of record exercising criminal jurisdiction. T.C.A. § 39-17-1317(a)(1). The sheriff may petition the court for permission to dispose of the weapon in accordance with T.C.A. § 39-17-1317(a)(2).

Any weapon declared contraband, secured by a law enforcement officer or agency after being abandoned, voluntarily surrendered to a law enforcement officer or agency, or obtained by a law enforcement agency, including through a buyback program, shall be, pursuant to a written order of the court:

- (1) Sold in a public sale;
- (2) Used for legitimate law enforcement purposes, at the discretion of the court; or
- (3) Relinquished in accordance with T.C.A. § 39-17-1317(I).

T.C.A. § 39-17-1317(b).

If the weapon was confiscated, or obtained after being abandoned and secured, after being voluntarily surrendered, or through a buyback program, and if the court orders the weapon to be sold, then:

- (1) It shall be sold at a public auction not later than six months from the date of the court order. The sale shall be conducted by the sheriff of the county in which it was seized or obtained;
- (2) The proceeds from the sale shall be deposited in the county general fund and allocated solely for law enforcement purposes;
- (3) The sale shall be advertised:
  - (A) In a daily or weekly newspaper circulated within the county. The advertisement shall run for not less than three editions and not less than thirty days prior to the sale; or
  - (B) By posting the sale on a website maintained by the state or a political subdivision of the state not less than thirty days prior to the sale; and
- (4) If required by federal or state law, then the sale can be conducted under contract with a licensed firearm dealer, whose commission shall not exceed twenty percent of the gross sales price. Such dealer cannot not hold any elective or appointed position within the federal, state, or local government in this state during any stage of the sales contract.

T.C.A. § 39-17-1317(c).

If the weapon is sold, then the sheriff shall file an affidavit with the court issuing the sale order. The affidavit shall:

- (1) Be filed within thirty days after the sale;
- (2) Identify the weapon, including any serial number, and shall state the time, date, and circumstances of the sale; and
- (3) List the name and address of the purchaser and the price paid for the weapon.

T.C.A. § 39-17-1317(f).

If the court orders the weapon to be retained and used for legitimate law enforcement purposes, then:

- (1) Title to the weapon shall be placed in the law enforcement agency retaining the weapon; and
- (2) When the weapon is no longer needed for legitimate law enforcement purposes, it shall be sold in accordance with T.C.A. § 39-17-1317.

T.C.A. § 39-17-1317(e).

A weapon that may be evidence in an official proceeding shall be retained or otherwise preserved in accordance with the rules or practices regulating the preservation of evidence. The weapon shall be sold or retained for legitimate law enforcement purposes not less than sixty days nor more than one hundred eighty days after the last legal proceeding involving the weapon; provided, that the requirements of T.C.A. § 39-17-1317(g)(2) have been met. T.C.A. § 39-17-1317(g)(1).

A law enforcement agency possessing a weapon declared contraband, retained as evidence in an official proceeding, secured after being abandoned, or surrendered by someone other than the owner shall use best efforts to determine whether the weapon has been lost by or stolen or borrowed from an innocent owner, and if so, the agency shall return the weapon to the owner, if ascertainable, unless that person is ineligible to possess, receive, or purchase such weapon under state or federal law. T.C.A. § 39-17-1317(g)(2).

No weapon seized by the sheriff's office shall be used for law enforcement purposes, sold, or destroyed, except in accordance with T.C.A. § 39-17-1317. And, no weapon seized by the sheriff's office shall be used for any personal use. T.C.A. § 39-17-1317(h)(1) & (2).

If the sheriff certifies to the court that a weapon is inoperable or unsafe, then the court shall order the weapon:

- (1) Destroyed or recycled; or
- (2) Transferred to a museum or historical society that displays such items to the public and is lawfully eligible to receive the weapon.

T.C.A. § 39-17-1317(i).

The sheriff may petition the criminal court or the court in the sheriff's county having criminal jurisdiction for permission to exchange firearms that have previously been properly titled, as specified by T.C.A. § 39-17-1317, to the sheriff's office, for other firearms, ammunition, body armor, or equipment suitable for use for legitimate law enforcement purposes by sheriff's office. T.C.A. § 39-17-1317(l)(1).

The exchange of firearms for the specified items used for legitimate law enforcement purposes is permitted only between the sheriff's office and a licensed and qualified law enforcement firearms dealer. T.C.A. § 39-17-1317(l)(2).

No firearm obtained by a law enforcement agency through a buyback program shall be eligible to be exchanged. T.C.A. § 39-17-1317(l)(3).

## Disposition of Conveyance Used in Robbery or Felony Theft

Reference Number: CTAS-1255

Once a conveyance, including a vehicle, aircraft or vessel that was used to transport, conceal or store money or goods that were the subject of a robbery offense under Title 39, Chapter 13, Part 4, or felony theft under Title 39, Chapter 14, Part 1, has been forfeited under Title 40, Chapter 33, Part 1, it is the duty of the sheriff to remove it for disposition in accordance with the law. T.C.A. § 40-33-105.

At the direction of the court having jurisdiction over the property, all seized conveyances are required to be sold at a public sale by the sheriff in the manner provided for by law for judicial sales in civil cases.

However, any vehicle seized by the sheriff and forfeited under the provisions of Title 40, Chapter 33, Part 1, may, at the direction of the court having jurisdiction over the property, be retained by the sheriff's office and used for purposes of law enforcement provided that any liens filed against the vehicle are satisfied by the sheriff's office. Proceeds that inure to the county under the provisions of Title 40, Chapter 33, Part 1, shall be earmarked and used exclusively by the sheriff's office for law enforcement purposes. T.C.A. § 40-33-107(2). See *also* T.C.A. § 40-33-110.

## Disposition of Controlled Substances and Related Property

Reference Number: CTAS-1256

Once property has been forfeited under Title 39, Chapter 17, Part 4, or Title 53, Chapter 11, Parts 3 and 4, it is the duty of the sheriff to remove it for disposition in accordance with the law. T.C.A. § 53-11-451(e).

Regardless of any other method of disposition of the property, the sheriff may, with the permission of the court and under such terms and conditions as are approved by the court, use the property taken or detained in the drug enforcement program of the county. In addition, with the approval of the court having jurisdiction over the property, the sheriff may sell the property and use the proceeds for the drug enforcement program of the county. T.C.A. § 53-11-451(d)(4). If goods are seized by a combination of the Tennessee Bureau of Investigation and the sheriff's office, the court ordering their disposal shall determine the allocation of proceeds upon disposition of the goods. In all other cases, fines, forfeitures, and goods and their proceeds shall be disposed of as otherwise provided by law. T.C.A. § 39-17-420(a)(1).

Pursuant to T.C.A. §§ 39-17-420(a)(1) and 40-33-211(a), all fines and forfeitures of appearance bonds received because of a violation of any provision of Title 39, Chapter 17, Part 4, that are specifically set forth therein, that resulted from an arrest made by the sheriff's office and the proceeds of all goods seized by the sheriff and forfeited under the provisions of T.C.A. § 53-11-451 and disposed of by the sheriff shall be paid to the county trustee and shall be accounted for in a special revenue fund. Note that pursuant to T.C.A. § 39-17-428(c)(1), only 50 percent of the fine collected pursuant to T.C.A. § 39-17-428(b) is allocated to the special revenue fund. The remaining 50 percent is paid to the county general fund. All financial activities related to funds received under Title 39, Chapter 17, Part 4, must be accounted for in the special revenue fund. T.C.A. §§ 39-17-420(a)(1) and 53-11-415(a).

Moneys in the special revenue fund may be used only for the local drug enforcement program, local drug education program, local drug treatment program, and nonrecurring general law enforcement expenditures. T.C.A. §§ 39-17-420(a)(1) and 39-17-428(c)(2). The attorney general has opined that these funds may be used for private drug education and treatment programs in addition to county drug education and treatment programs. Op. Tenn. Atty. Gen. 97-125 (September 2, 1997). Funds derived from drug seizures, confiscations and sales may not be used to supplement the salaries of any public employee or law enforcement officer. T.C.A. § 40-33-211(b). However, the attorney general has opined that T.C.A. §§ 39-17-420 and 53-11-451 authorize the sheriff to use funds obtained from fines and appearance bond forfeitures and proceeds derived from the sale of property seized and forfeited in connection with illegal drug activities to pay the salaries of staff personnel who are employed in drug enforcement, education and treatment programs and only for work performed for such programs. Op. Tenn. Atty. Gen. 99-202 (October 6, 1999).

Note: All fines and forfeitures of appearance bonds received from the violation of the provisions of Title 39, Chapter 17, Part 4, and which are specifically set forth therein, the proceeds of goods seized and forfeited under the provisions of T.C.A. § 53-11-451 and disposed of according to law that arise from the activities of a judicial district drug task force are paid to an expendable trust fund maintained by the county mayor in a county designated by the district attorney general and can be used only in a drug enforcement or drug education program of the district as directed by the board of directors of the judicial district drug task force. All requests for disbursement from the expendable trust fund maintained by the county mayor for confidential purposes must be by written request signed by the drug task force director and the district attorney general. T.C.A. §§ 39-17-420(c) and 40-33-211(a).

Cash transactions related to undercover investigative operations of the county drug enforcement program must be administered in compliance with procedures established by the comptroller of the treasury. T.C.A. § 39-17-420(a)(1). The comptroller of the treasury and the Department of Finance and Administration, in consultation with the Tennessee Bureau of Investigation, the Tennessee Sheriffs' Association and the Tennessee Association of Chiefs of Police, were required to develop procedures and guidelines for handling cash transactions related to undercover investigative operations of county or municipal drug enforcement programs. These procedures and guidelines are applicable to the disbursement of proceeds from the drug enforcement program. T.C.A. § 39-17-420(e).

The sheriff is required to recommend a budget for the special revenue fund, to be approved by the county legislative body. T.C.A. § 39-17-420(a)(2). Upon the demand of the sheriff, the county trustee must pay to the sheriff's office the funds demanded for use in cash transactions related to undercover investigative drug enforcement operations. T.C.A. § 53-11-415(a). Expenditures from the special revenue fund are subject to the availability of funds and budgetary appropriations for the expenditure. T.C.A. §§ 39-17-420(a)(2) and 53-11-415(a). Any purchase made with moneys from the fund must be made in accordance with all existing purchasing laws applicable to the particular county, including private acts, that establish purchasing provisions or requirements for the county. T.C.A. §§ 39-17-420(a)(2) and 40-33-211(b). Special rules apply to Davidson County. See T.C.A. §§ 39-17-420(a)(3) and (b) and 53-11-415(b).

The sheriff is accountable to the county legislative body for the proper disposition of the proceeds of goods seized and forfeited under the provisions of T.C.A. § 53-11-451, and for the fines imposed by T.C.A. § 39-17-428. An annual audited report of these funds must be submitted by the sheriff to the county legislative body. In years when the Office of the Comptroller of the Treasury conducts an audit, it shall satisfy this requirement. If no audit is conducted by the comptroller, then an audit must be performed by a certified public accountant in order to satisfy this requirement. T.C.A. § 39-17-429.

Pursuant to T.C.A. § 39-17-420(f), if the sheriff's office receives proceeds from fines, forfeitures, seizures or confiscations under Title 39, Chapter 17, Part 4, or Title 53, Chapter 11, the sheriff may set aside a sum from such proceeds to purchase supplies and other items to operate and promote the DARE program, created by Title 49, Chapter 1, Part 4, or any other drug abuse prevention program conducted in the school system or systems within the county served by the sheriff's office. The local school board must approve the program before the program may become eligible to receive funds under T.C.A. § 39-17-420(f). Supplies and items that may be purchased with such proceeds include, but are not limited to, workbooks, T-shirts, caps and medallions.

In order to comply with state and federal fingerprinting requirements, except in Davidson County, 20 percent of the funds received by a sheriff's office pursuant to T.C.A. § 39-17-420 must be set aside and earmarked for the purchase, installation, maintenance of and line charges for an electronic fingerprint imaging system that is compatible with the Federal Bureau of Investigation's integrated automated fingerprint identification system. Prior to purchasing the equipment, the sheriff must obtain certification from the Tennessee Bureau of Investigation that the equipment is compatible with the Tennessee Bureau of Investigation's and Federal Bureau of Investigation's integrated automated fingerprint identification system. Once the electronic fingerprint imaging system has been purchased, the sheriff's office may continue to set aside up to 20 percent of the funds received pursuant to T.C.A. § 39-17-420 to pay for line charges and maintaining the electronic fingerprint imaging system. T.C.A. § 39-17-420(g)(1).

Instead of purchasing the fingerprinting equipment, a local law enforcement agency may enter into an agreement for use of the equipment with another law enforcement agency that possesses the equipment. The agreement may provide that the local law enforcement agency may use the fingerprinting equipment for identifying people arrested by that agency in exchange for paying an agreed upon portion of the cost and maintenance of the fingerprinting equipment. If no agreement exists, it shall be the responsibility of the arresting officer to obtain fingerprints and answer for the failure to do so. T.C.A. § 39-17-420(g)(1). See *also* Op. Tenn. Atty. Gen. 01-088 (May 24, 2001).

## Disposition of Vehicles

Reference Number: CTAS-1257

### Disposition of Vehicle Used in the Commission of DUI Offense

Pursuant to T.C.A. § 55-10-414, it is the duty of the sheriff to properly dispose of a vehicle used in the commission of a person's second or subsequent violation of T.C.A. § 55-10-401 (driving under the influence of intoxicant, drug or drug producing stimulant), that was seized by the sheriff's office, once it has been forfeited pursuant to Title 40, Chapter 33, Part 2. T.C.A. § 40-33-201 et seq.

Forfeited vehicles may be used by the sheriff's office in the drug enforcement program for a period not to exceed five years. T.C.A. §§ 40-33-211(e) and 53-11-201(b)(2)(C). See *also* Op. Tenn. Atty. Gen. 99-190 (September 28, 1999). Vehicles not used in the local drug enforcement program must be sold. Revenue derived from the sale of vehicles seized by the sheriff's office and forfeited under T.C.A. § 55-10-414 is retained by the sheriff's office and used during each fiscal year to compensate the sheriff's office for the reasonable and direct expenses involved in confiscating, towing, storing, and selling the forfeited vehicles. All expenses claimed by the sheriff's office are subject to audit and review by the comptroller of the treasury to determine that the expenses claimed are direct and reasonable. Any remaining revenue must be transmitted to the Department of Health no later than June 30 of each fiscal year. T.C.A. § 40-33-211(f).

### Disposition of Vehicle Used by Person Driving On Revoked License

It is the duty of the sheriff to properly dispose of a vehicle, that was seized by the sheriff's office pursuant to T.C.A. § 55-50-504(h), once it has been forfeited pursuant to Title 40, Chapter 33, Part 2. T.C.A. § 40-33-210(d).

Forfeited vehicles may be used by the sheriff's office in the drug enforcement program for a period not to exceed five years. T.C.A. §§ 40-33-211(e) and 53-11-201(b)(2)(C). Vehicles not used in the local drug enforcement program must be sold. Revenue derived from the sale of vehicles seized by the sheriff's office and forfeited under T.C.A. § 55-50-504(h) is retained by the sheriff's office and used during each fiscal year to compensate the sheriff's office for the reasonable and direct expenses involved in the confiscating, towing, storing, and selling the forfeited vehicles. All expenses claimed by the sheriff's office are subject to audit and review by the comptroller of the treasury to determine that the expenses claimed are direct and reasonable. Any remaining revenue must be transmitted to the Department of Health no later than June 30 of each fiscal year. T.C.A. § 40-33-211(c).

### Disposition of Abandoned, Immobile or Unattended Motor Vehicles

Pursuant to T.C.A. § 55-16-106(a), it is the duty of the sheriff to sell at a public auction the abandoned, immobile, or unattended motor vehicles that the sheriff's office has taken into custody and that have not been reclaimed as provided for in T.C.A. § 55-16-105. The sheriff's office must issue the purchaser of the motor vehicle a sales receipt. The purchaser takes title to the motor vehicle free and clear of all liens and claims of ownership. Upon presentation of the sales receipt, the Department of Safety must issue a certificate of title to the purchaser. T.C.A. § 55-16-106(b).

The proceeds of the sale of an abandoned, immobile, or unattended motor vehicle are to be used to pay the expenses of the auction; the costs of towing, preserving and storing the vehicle; and all notice and publication costs incurred pursuant to T.C.A. § 55-16-105. Any remainder from the proceeds of a sale must be held for the owner of the vehicle or entitled lienholder for 45 days, and then may be deposited in a special fund that is to remain available to pay auction, towing, preserving, storage and all notice and publication costs that result from placing other abandoned, immobile, or unattended vehicles in custody, whenever the proceeds from a sale of other abandoned, immobile, or unattended motor vehicles are insufficient to meet these expenses and costs. Whenever the chief fiscal officer of the county finds that moneys in the special fund are in excess of reserves likely to be needed for the purposes thereof, the officer may transfer the excess to the county general fund, but in such event, claims against the special fund, if the special fund is temporarily exhausted, shall be met from the general fund to the limit of any transfers previously made thereto. T.C.A. § 55-16-106(d) and (e).

## Enforcement of Ammunition Tax Laws

Reference Number: CTAS-1258

It is the duty of all sheriffs to enforce the provisions of Title 70, Chapter 3, dealing with the taxation of shotgun shells and metallic cartridges. T.C.A. § 70-3-113.

## Enforcement of Hunting Laws

Reference Number: CTAS-1259

It is the duty of all sheriffs to enforce the provisions of Title 70, Chapter 4, dealing with hunting on posted property. T.C.A. § 70-4-106.

## Enforcement of Wildlife Laws

Reference Number: CTAS-1260

It is the duty of all sheriffs and their deputies to seize and take possession of any and all furs, fish, wild animals, wild birds, guns, rods, reels, nets, creels, boats or other instruments, tackle or devices that have been used, transported or possessed contrary to any laws or regulations promulgated by the Wildlife Resources Commission, and impound and take them before the court trying the person arrested. T.C.A. § 70-6-201

## Execution of Class 3 Weapons Purchase Documents

Reference Number: CTAS-1261

Pursuant to T.C.A. § 39-17-1361, it is the duty of the sheriff of the county of residence of a person purchasing any firearm, defined by the National Firearms Act, 26 U.S.C. § 5845 *et seq.*, to execute, within 15 business days of any request, all documents required to be submitted by the purchaser if the purchaser



is not prohibited from possessing firearms pursuant to T.C.A. § 39-17-1316.

## Handgun Carry Permit Application Checks

Reference Number: CTAS-1262

In October of 1996, the Department of Safety began issuing handgun carry permits pursuant to 1996 Public Chapter 905. Previous to this change, handgun carry permits were issued by local sheriffs' offices. Handgun carry permits are no longer issued by sheriffs' offices. The Department of Safety has the sole responsibility to issue handgun carry permits. T.C.A. § 39-17-1351.

When the Department of Safety receives a handgun carry permit application, the department is required to send a copy of the application to the sheriff of the county in which the applicant resides. Within 30 days of receiving an application, the sheriff is required to provide the department with any information concerning the truthfulness of the applicant's answers to the eligibility requirements set forth in T.C.A. § 39-17-1351(c) that is within the knowledge of the sheriff. T.C.A. § 39-17-1351(g)(2). This does not require the sheriff to conduct a full criminal background investigation, only a check of local records within the sheriff's office.

As part of the process of applying for a handgun carry permit, an applicant is required to provide two full sets of classifiable fingerprints at the time the application is filed with the department. The applicant may have his or her fingerprints taken by the department at the time the application is submitted, or the applicant may have his or her fingerprints taken at any sheriff's office and submit the fingerprints to the department along with the application and other supporting documents. The sheriff may charge a fee not to exceed \$5 for taking the applicant's fingerprints. At the time an applicant's fingerprints are taken either by the department or a sheriff's office, the applicant is required to present a photo identification. If the person requesting fingerprinting is not the same person as the person whose picture appears on the photo identification, the department or sheriff must refuse to take the applicant's fingerprints. T.C.A. § 39-17-1351(d)(1).

## Intoxicating Liquors

Reference Number: CTAS-1263

### Intoxicating Liquors - Traffic in Intoxicating Liquors

It is the duty of all sheriffs and other peace officers charged with enforcing the laws of the state to enforce the provisions of Title 57, Chapter 3, dealing with the trafficking of intoxicating liquors. T.C.A. § 57-3-410.

### Intoxicating Liquors - Beer and Alcoholic Beverages

The police and penal provisions of Title 57, Chapter 5, dealing with beer and alcoholic beverages containing less than 8 percent alcohol are to be enforced by all sheriffs, deputy sheriffs, police officers and members of the state highway patrol. In addition, such officers, along with inspectors, agents, representatives or officers appointed by the commissioner of revenue, are charged with enforcing the revenue provisions of this Chapter 5. T.C.A. § 57-5-202(c).

### Intoxicating Liquors - Destruction of Stills and Paraphernalia

It is the duty of all sheriffs and deputy sheriffs to search for, seize and capture all:

1. Illicit distilleries, stills and worms, distilling and fermenting equipment and apparatus, and other paraphernalia connected therewith or used or to be used in the illicit manufacture of intoxicating liquors;
2. Raw materials and substances connected with or to be used in the illicit manufacture of intoxicating liquors; and
3. Containers connected with or used in the packaging of illicitly manufactured intoxicating liquors.

T.C.A. § 57-9-101(a).

It is the duty of all sheriffs and deputy sheriffs to destroy any and all whiskey, beer, or other intoxicants found at or near illicit distilleries or stills except with respect to intoxicating liquors upon which federal tax has been paid as provided in T.C.A. § 57-9-115. Further, it is the duty of all sheriffs and deputy sheriffs capturing such illicit distilleries, stills, distilling and fermenting equipment and apparatus, and other paraphernalia, to summarily destroy and render the property useless. T.C.A. § 57-9-101(b) and (c). Any intoxicants or other articles of personal property destroyed under the authority of T.C.A. § 57-9-101 must be destroyed in the presence of at least two credible witnesses. Within five days after the destruction, the officer destroying the intoxicants or other articles of personal property must file a written statement listing all the items destroyed, signed by the officer and the witness or witnesses thereto, with the circuit or

criminal court clerk of the county where seized and, in addition, must file a copy of the written statement with the Alcoholic Beverage Commission. T.C.A. § 57-9-101(c).

It is the duty of all sheriffs and deputy sheriffs to arrest any and all people implicated, aiding or abetting in the manufacture of intoxicating liquors and take them before the proper officials and have them tried upon such charge. T.C.A. § 57-9-102. *See Hagan v. Black*, 17 S.W.2d 908, 909 (Tenn. 1929) (County court had no power to adopt resolution offering to pay reward to officers for conviction of liquor law violators.).

#### Intoxicating Liquors - Seizure of Illegal Liquor

Pursuant to T.C.A. § 57-9-103, it is the duty of all sheriffs and deputy sheriffs to take into their possession any intoxicating liquors, including wine, ale, and beer, that have been received by or are in possession of or are being transported by any person in violation of any law of this state. Furthermore it is the duty of the sheriff to hold such liquors pending further orders of the court. *Casone v. State*, 140 S.W.2d 1081, 1082 (Tenn. 1940). When the sheriff seizes liquors under his general authority as a law enforcement officer and not as an agent or representative of the commissioner of revenue, the liquor remains in the sheriff's custody until it is determined by the court whether or not the liquor was legally in the possession of the person from whom it was seized. If the court determines that the liquor is contraband goods under the statute, then the court may entertain an application from the commissioner of revenue asserting his jurisdiction to possess the liquors and sell them for the benefit of the treasury. *Casone v. State*, 140 S.W.2d 1081, 1082 (Tenn. 1940). Note: The enactment of Title 57, Chapter 3 did not repeal in toto the provisions of T.C.A. § 57-9-103 *et seq.* Primarily, T.C.A. § 57-3-411 is a revenue measure to enforce payment of the liquor tax. *Casone* at 1082.

Every officer, other than the sheriff, who seizes intoxicating liquors, must within five days of the seizure deliver the intoxicating liquors to the sheriff of the county wherein the liquor was seized. Upon delivery, the sheriff must give the officer a written receipt for the liquor showing the kind and quantity of intoxicating liquors delivered, and the name or names of the person(s) from whom the intoxicating liquors were taken if the name(s) are known to the officer. T.C.A. § 57-9-106. *See Nichols v. State*, 181 S.W.2d 368 (Tenn. 1944). In addition, the seizing officer must, within five days after taking possession of any intoxicating liquors, file a written statement with the circuit or criminal court clerk of the county wherein the liquor was seized showing the kind and quantity of intoxicating liquors taken and, if known, the name or names of the person from whom the liquor was taken. T.C.A. § 57-9-104. Failure to file the required statement negates the seizure. *State v. Bellamy*, 1986 WL 10567 (Tenn. Crim. App. 1986). The filing of this statement is the only notice that is required to be given to the person from whom the liquors were taken, where the person resides within the jurisdiction of the court or where the person was arrested at the time of the seizure. T.C.A. § 57-9-109. Any person claiming an interest in the seized liquors must file a petition in the circuit or criminal court of the county in which the liquors were seized within 10 days after the filing of the statement showing the seizure. T.C.A. § 57-9-111. *See Nichols v. State*, 181 S.W.2d 368 (Tenn. 1944). If the sheriff or other officer seizing the liquor does not know the name of the person transporting, receiving or possessing the intoxicating liquors, the sheriff or other officer seizing the liquor must certify such fact in the statement required by T.C.A. § 57-9-104 and the clerk of the circuit or criminal court must give notice to whom it may concern by posting a notice at the courthouse door setting forth in substance that such liquors have been seized in accordance with the law and notifying all persons claiming the liquor to do so within 30 days from the date of the posting of the notice. If a claim is not filed within the prescribed time, the seized property will be forfeited and disposed of as provided by law. T.C.A. §§ 57-9-110 and 57-9-111.

It is the duty of the sheriff to safely keep in his or her possession all intoxicating liquors, either taken by the sheriff or delivered to the sheriff, until ordered by the court to dispose of the liquor. T.C.A. § 57-9-107. Pursuant to T.C.A. § 57-9-108, at each term of the circuit or criminal court, the sheriff must deliver to the circuit or criminal court judge a written statement showing all the intoxicating liquors in the sheriff's possession, setting forth the kind and quantity of the liquor and the name of the person from whom the liquor was taken if the name of the person is known to the sheriff. If the sheriff does not know the name of the person, the statement must indicate the date of the posting of the notice required by T.C.A. § 57-9-110. The court may not order the sale or destruction of any of the liquors seized until the time for filing petitions alleging ownership thereof or an interest therein has elapsed. T.C.A. § 57-9-119. When any person claims an interest in any seized liquor the court shall hear the claim without a jury and determine whether the person is entitled to the return of the liquor. However, no person is deemed to have any property right in any intoxicating liquors transported, received, or possessed in violation of the laws of this state. If the court, upon hearing any petition alleging ownership of or an interest in intoxicating liquors, ascertains that the liquor has been received, transported or possessed in violation of any law of this state, the court shall direct the sale or destruction of the liquor by the sheriff as provided by law. T.C.A. § 57-9-114. *See Canepari v. State*, 89 S.W.2d 164 (Tenn. 1936); *Ambrester v. State*, 110 S.W.2d 332

(Tenn. 1937); *Casone v. State*, 140 S.W.2d 1081 (Tenn. 1940); and *Alcoholic Beverage Comm'n v. Simmons*, 512 S.W.2d 585 (Tenn. 1973).

The court must order the destruction of seized liquor that does not have a federal stamp on the bottle or package, or the court may order it turned over to federal authorities for evidence. If the seized liquor has a federal tax stamp but is not fit for consumption, the court shall order it to be destroyed. T.C.A. § 57-9-117. Seized liquor upon which the federal tax has been paid must be turned over to the Alcoholic Beverage Commission (ABC) for public sale by the commissioner of general services as contraband in accordance with the provisions of Title 57, Chapter 9, Part 2. T.C.A. § 57-9-115(a).

It is the duty of the sheriff to notify the ABC in writing within 10 days after the seizure of intoxicating liquors, describing the brands and quantity, and to turn over the liquor to the ABC at the time and place designated by the ABC. It is the responsibility of the ABC to provide transportation and storage for the liquor. In the event the ABC requests the sheriff to transport the liquor, all expenses incurred by the sheriff in the transportation of the liquor is borne by the ABC, and the sheriff is allowed the same mileage fee as for transporting prisoners, in addition to the other actual cost of transportation. Each sheriff, deputy sheriff or constable of any county or any police officer of any municipality who has seized and confiscated any intoxicating liquors must make an itemized list of such beverages, showing the quantity, brand, name and size of bottle, and must deliver a signed copy of the itemized list to the ABC at the time the beverages are delivered or turned over to the ABC for disposal. The agent or representative of the ABC receiving the beverages must likewise issue a receipt to the officer for the beverages. A copy of the list of beverages prepared by the officer making the seizure and confiscation must be delivered by the officer to the county mayor of the county if the seizure is made by a county officer, and a copy must be furnished to the mayor of the municipality if the seizure is made by a municipal officer. The ABC likewise must furnish the county mayor or city mayor with a copy of the list of beverages which it has received from the particular law enforcement officer. T.C.A. § 57-9-115.

All money received from the sale of the intoxicating liquors is deposited in the general fund of the state treasury provided that, in the case of all liquor captured or confiscated by a police officer of any incorporated municipality, the funds derived from the sale of the liquor, less 10 percent to be retained by the state for costs of administration, must be turned over to the municipality served by the police officer and provided further, that in the case of all liquor captured or confiscated by the sheriff, deputy sheriff or constable of any county, the funds derived from the sale of the liquor, less 10 percent to be retained by the state for costs of administration, must be turned over to the county served by the sheriff, deputy sheriff or constable. T.C.A. § 57-9-115(f). It is the duty of the sheriff to keep separate inventories of liquor captured by police officers and liquor captured by other officers so that the funds derived from the sale of the liquor may be properly divided between the county and incorporated city, town or municipality. T.C.A. § 57-9-118.

Any sheriff or deputy violating any of these provisions is guilty of a Class C misdemeanor and shall forfeit their office and be ineligible to reappointment or reelection to the same office for a period of five years. T.C.A. § 57-9-121. See *Mathis v. State*, 46 S.W.2d 44 (Tenn. 1932) and *Broyles v. State*, 341 S.W.2d 722 (Tenn. 1960).

## Investigation of Child Abuse

Reference Number: CTAS-1264

### Investigation of Child Abuse Cases

Any person who has knowledge that a child has been the victim of child abuse has a duty to report the abuse to the appropriate agency or official, which includes the sheriff of the county where the child resides. T.C.A. § 37-1-403(a). If the sheriff becomes aware of known or suspected child abuse through personal knowledge, receipt of a report, or otherwise, the sheriff has a duty to immediately report such information to the Department of Children's Services. In appropriate cases, the child protective team must be notified to investigate the report. Further criminal investigation by the sheriff shall be conducted in coordination with the child protective team or the Department of Children's Services to the maximum extent possible. T.C.A. § 37-1-403(c)). If the sheriff has reasonable cause to suspect that a child has died as a result of child abuse, the sheriff has a duty to report such suspicion to the appropriate medical examiner. The medical examiner must accept the report for investigation and must report the medical examiner's findings, in writing, to the local law enforcement agency, the appropriate district attorney general, and the Department of Children's Services. T.C.A. § 37-1-403(d)).

All child abuse cases reported to the sheriff's office must be referred immediately to the local director of the county office of the Department of Children's Services for investigation. The sheriff must also give notice of the report to the judge having juvenile jurisdiction where the child resides. If the court or the sheriff finds that there are reasonable grounds to believe that the child is suffering from an illness or

injury or is in immediate danger from the child's surroundings and that the child's removal is necessary, appropriate protective action must be taken under Title 37, Chapter 1, Part 1 (regarding the juvenile court). Whenever there are multiple investigations, the Department of Children's Services, the district attorney general, the sheriff's office, and, where applicable, the child protection team, must coordinate their investigations to the maximum extent possible so that interviews with the victimized child will be kept to an absolute minimum. Reference to the audio or videotape or tapes made by the child protection team or department should be used whenever possible to avoid additional questioning of the child. T.C.A. § 37-1-405.

#### Investigation of Child Sexual Abuse Cases

Any person who knows or has reasonable cause to suspect that a child has been sexually abused has a duty to report such knowledge or suspicion to the Department of Children's Services. T.C.A. § 37-1-605(a). Pursuant to T.C.A. § 37-1-605(b)(1), reports of known or suspected child sexual abuse must be made immediately to the local office of the Department of Children's Services, which is responsible for the investigation of such reports, or to the judge having juvenile jurisdiction or to the office of the sheriff or the chief law enforcement official of the municipality where the child resides. Each report of known or suspected child sexual abuse occurring in a facility licensed by the Department of Mental Health and Developmental Disabilities or any hospital must also be made to the local law enforcement agency in the jurisdiction where the alleged offense occurred.

If the sheriff becomes aware of known or suspected child sexual abuse through personal knowledge, receipt of a report or otherwise, the sheriff must immediately report such information to the Department of Children's Services. In addition, for the protection of the child, the child protective team must be notified to investigate the report. Further criminal investigation by the sheriff's office must be conducted appropriately. T.C.A. § 37-1-605(b)(2). If the sheriff has reasonable cause to suspect that a child died as a result of child sexual abuse, the sheriff must report such suspicion to the appropriate medical examiner. The medical examiner must accept the report for investigation and must report the medical examiner's findings, in writing, to the local law enforcement agency, the appropriate district attorney general, and the Department of Children's Services. T.C.A. § 37-1-605(c).

Through legislation, the General Assembly has encouraged each sheriff to establish a child sex crime investigation unit within the sheriff's office for the purpose of investigating crimes involving the sexual abuse of children. T.C.A. § 37-1-603(b)(4)(A)(v). To further this end, as part of the annual in-service training requirement, the sheriff and every deputy must receive training in the investigation of cases involving child sexual abuse, including police response to and treatment of victims of such crimes. T.C.A. § 37-1-603(b)(4)(A)(ii).

The legislature has mandated that at least one child protective team shall be organized in each county. The Department of Children's Services is responsible for coordinating the services of these teams. T.C.A. § 37-1-607(a)(1). Each team must be composed of one person from the Department of Children's Services, one representative from the office of the district attorney general, one juvenile court officer or investigator from a court of competent jurisdiction, and one properly trained law enforcement officer with countywide jurisdiction (i.e., a sheriff's deputy) from the county where the child resides or where the alleged offense occurred. It is in the best interest of the child that, whenever possible, an initial investigation shall not be commenced unless all four disciplines are represented. An initial investigation may, however, be commenced if at least two of the team members are present at the initial investigation. The team may also include a representative from one of the mental health disciplines. Furthermore, in those geographical areas in which a child advocacy center meets the requirements of T.C.A. § 9-4-213(a) or (b), child advocacy center directors or their designees shall be members of the team for the purposes of providing services and functions established by T.C.A. § 9-4-213 or delegated pursuant to that section. T.C.A. § 37-1-607(a)(2).

It is the intent of the General Assembly that child protective team investigations be conducted by team members in a manner that not only protects the child but that also preserves any evidence for future criminal prosecutions. It is essential, therefore, that all phases of the child protective investigation be conducted appropriately and that further investigations, as appropriate, be conducted and coordinated properly. T.C.A. § 37-1-607(a)(3). All state, county and local agencies must give the team access to records in their custody pertaining to the child and shall otherwise cooperate fully with the investigation. T.C.A. § 37-1-406(c).

Immediately upon receipt of a report alleging, or immediately upon learning during the course of an investigation, that child sexual abuse has occurred, or an observable injury or medically diagnosed internal injury occurred as a result of the sexual abuse, the Department of Children's Services must orally notify the child protective team, the appropriate district attorney general and the appropriate law enforcement agency. Criminal investigations conducted by a law enforcement agency must be

coordinated, whenever possible, with the child protective team investigation. If independent criminal investigations are made, interviews with the victimized child must be kept to an absolute minimum and, whenever possible, the videotape or tapes made by the child protective teams should be used. T.C.A. § 37-1-607(b)(3).

The sheriff may take a child into custody if there are reasonable grounds to believe that the child is a neglected, dependent or abused child, and there is an immediate threat to the child's health or safety to the extent that delay for a hearing would be likely to result in severe or irreparable harm. The sheriff may also take a child into custody if there are reasonable grounds to believe that the child may abscond or be removed from the jurisdiction of the court, and in either case, there is no less drastic alternative to removing the child from the custody of the child's parent, guardian or legal custodian available that would reasonably and adequately protect the child's health or safety or prevent the child's removal from the jurisdiction of the court pending a hearing. T.C.A. §§ 37-1-608(a), 37-1-113(a)(3), and 37-1-114(a)(2).

## Investigation of Drug Trademark Counterfeiting Cases

Reference Number: CTAS-1265

It is the duty of the sheriff to assist and cooperate with the prosecuting attorney in investigating any violation of the provisions of Title 47, Chapter 25, Part 4, including procuring evidence to support the prosecution, which may be instituted by the prosecuting attorney. For such services, the sheriff is allowed and paid the same fees for meals and travel as are usually allowed in other criminal proceedings. T.C.A. § 47-25-404.

## Investigation of Osteopathic Physicians

Reference Number: CTAS-1266

It is the duty of the sheriff and the sheriff's deputies to investigate every supposed violation of Title 63, Chapter 9, dealing with the licensing of osteopathic physicians that comes to the sheriff's or deputy's notice and of apprehending and arresting all violators. T.C.A. § 63-9-110(b).

## Notification to Next of Kin - Serious Accidents

Reference Number: CTAS-1267

Sheriffs, sheriff's deputies, and employees of sheriff's offices are required to make a reasonable effort to promptly notify the next of kin of any person who has been killed or seriously injured in an accidental manner before any statement, written or spoken, is delivered or transmitted to the press by the sheriff, sheriff's deputy or employee, disclosing the decedent's or seriously injured person's name. For the purposes of the notification requirement, the investigating officer is responsible for making the determination, based upon the officer's personal opinion, as to whether a person is "seriously injured." Neither the officer nor the officer's employer shall incur any liability based upon the officer's opinion as to whether or not a person is seriously injured. T.C.A. § 38-1-106.

## Prevention of Forest Fires

Reference Number: CTAS-1268

It is the duty of all sheriffs (and state highway patrol officers) to use all effective methods in their power to prevent the spread of forest fires. Whenever the sheriff becomes aware that there is a forest fire in the vicinity, it is the duty of the sheriff to summon a sufficient number of the male citizens of the county in which the fire is burning, who are between 18 and 30 years of age, to control the fire. The sheriff is to be in complete charge and direction of the efforts to restrain the fire until duly relieved by Division of Forestry personnel. T.C.A. § 68-102-145.

## Quarantine of Property Where Meth Was Manufactured

Reference Number: CTAS-1269

In 2004 and 2005, the General Assembly passed several bills relating to the illegal manufacture of methamphetamine. Each of these new laws included new duties for Tennessee's sheriffs.

Public Chapter 855 of the Acts of 2004 gives the sheriff the authority to quarantine any property or any structure or room in any structure on any property located in the county where the manufacture of methamphetamine, its salts, isomers, and salts of its isomers is occurring or has occurred. If the sheriff quarantines such property, the sheriff becomes responsible for posting signs indicating that the property

has been quarantined and, to the extent they can be reasonably identified, for notifying all parties having any right, title or interest in the quarantined property, including any lienholders. T.C.A. § 68-212-503(b). Once the property has been quarantined it must remain quarantined until a certified industrial hygienist or other qualified person or entity certifies to the sheriff that the property is safe for human use. T.C.A. § 68-212-505.

Public Chapter 18 of the Acts of 2005 enacted the Meth-Free Tennessee Act of 2005. The act amends T.C.A. § 68-212-503 to clarify that the purpose of the provision allowing for the quarantine of properties where methamphetamine manufacturing has occurred is to prevent people from being exposed to the hazards associated with methamphetamine and the chemicals associated with the manufacture of methamphetamine. The act also amends Title 68, Chapter 212, Part 5, by adding a new section that requires the sheriff, within seven days of issuing an order of quarantine, to transmit to the commissioner of environment and conservation the following minimal information regarding the site: date of the quarantine order, county, address, name of the owner of the site, and a brief description of the site (single family home, apartment, motel, wooded area, etc.). The sheriff must also notify the commissioner once the quarantine has been lifted.

Public Chapter 347 of the Acts of 2005 requires the sheriff, after quarantining real property or any structure or room in any structure on any real property due to the manufacture of meth, to file for recording a Notice of Methamphetamine Lab Quarantine in the office of county register in the county in which the real property or any portion thereof lies.

## Registration of Sexual Offenders and Violent Sexual Offenders

Reference Number: CTAS-1270

Public Chapter 921 of the Acts of 2004 enacted the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004. Public Chapter 316 of the Acts of 2005 amended the act. The act requires offenders who live, work, or attend college in the county to register in person at the sheriff's office. Homeless offenders are also subject to the registration requirements of the act. Offenders who are incarcerated in the county jail must register in person with the sheriff or the sheriff's designee within 48 hours prior to the offender's release. Offenders who are committed to mental health institutions or continuously confined to home or healthcare facilities due to mental or physical disabilities are exempt from the registration requirement of the act. T.C.A. § 40-39-203. The information that must be collected from each offender is set forth in T.C.A. § 40-39-203(i). All data received from the offender, as required by the TBI and T.C.A. § 40-39-203(i), must be entered in to the TIES (Internet) within 12 hours of receipt. T.C.A. § 40-39-204(a). Within three days of an offender's initial registration, the sheriff must send the original signed TBI registration form to the TBI headquarters in Nashville by U.S. mail. T.C.A. § 40-39-203(k). The sheriff is required to retain a duplicate copy of the TBI registration form as a part of the business records of the sheriff's office. T.C.A. § 40-39-204(d).

The act requires all violent sexual offenders under the jurisdiction of the sheriff to report in person to the sheriff's office at least once during the months of March, June, September, and December of each calendar year and all sexual offenders to report in person to the sheriff's office once a year no earlier than seven calendar days before and no later than seven calendar days after the offender's date of birth to update their fingerprints, palm prints and photograph, as deemed necessary by the sheriff, and to verify the continued accuracy of the information in the TBI registration form. During the March reporting period, violent sexual offenders are required to pay an administrative fee not to exceed \$100. Sexual offenders pay the administrative fee during their annual reporting period. This fee is to be retained by the sheriff to purchase equipment, to defray personnel and maintenance costs, or for any other expenses incurred as a result of implementing the act. Violent sexual offenders and sexual offenders who reside in nursing homes and assisted living facilities, and offenders committed to mental health institutions or continuously confined to home or healthcare facilities due to mental or physical disabilities are exempt from the in-person reporting and administrative fee requirement. T.C.A. § 40-39-204(b) and (c).

All data received from the offender, as required by the TBI and T.C.A. § 40-39-203(i), must be entered into the TIES (Internet) within 12 hours of receipt. T.C.A. § 40-39-204(a). Within three days of a violent sexual offender's quarterly reporting date or a sexual offender's annual reporting date, the sheriff must send the original signed TBI registration form to the TBI headquarters in Nashville by U.S. mail. The sheriff is required to retain a duplicate copy of the TBI registration form as a part of the business records of the sheriff's office. T.C.A. § 40-39-204(d).

## Reports to the Tennessee Bureau of Investigation

**Reference Number: CTAS-1271**

Sheriffs are required by statute to submit to the director of the Tennessee Bureau of Investigation reports setting forth their activities in connection with law enforcement and criminal justice, including uniform crime reports. T.C.A. § 38-10-102. The refusal to make any report or do any act required by any provision of Title 38, Chapter 10, is deemed to be nonfeasance of office and subjects the official to removal from office. T.C.A. § 38-10-105.

## Reporting of Stolen and Recovered Motor Vehicles

**Reference Number: CTAS-1272**

It is the duty of the sheriff and every deputy sheriff who receives a report based on reliable information that any motor vehicle has been stolen to report the theft of the vehicle to the Department of Safety immediately after receiving the information. Any officer who recovers or upon receiving information of the recovery of any motor vehicle, chassis, engine, transmission or other parts and accessories taken from a vehicle that has previously been reported stolen must, immediately after receiving the information, report the recovery of the vehicle to the Department of Safety. Reports of the theft of any motor vehicle and the recovery of any motor vehicle are to be made to the Tennessee Highway Patrol dispatcher in the area in which the theft or recovery occurred. T.C.A. § 55-5-101(a)(1) - (3).

It is the duty of the sheriff to file and maintain reports of motor vehicle thefts and the recovery of stolen motor vehicles. These reports are to include, but are not limited to, available information as to ownership and the address of the owner; make, year and color of the vehicle; the license number and manufacturer's identification number; the date of theft or recovery; the name of person reporting the theft and location where the theft occurred; the name of the person reporting the recovery of the vehicle and the location of the recovery; the condition of the vehicle at the place of the recovery and a list of any parts or accessories found adjacent to the recovered vehicle; and the name and the location of any wrecker or garage operator pulling or storing the vehicle, its parts or accessories. T.C.A. § 55-5-101(a)(4). It is the further duty of the sheriff to transmit the aforementioned information pertaining to the theft or recovery of any motor vehicle, its chassis, engine, transmission or other parts and accessories, to the Tennessee Highway Patrol dispatcher in the area in which the theft or recovery occurred. T.C.A. § 55-5-101(a)(5). It is the duty of both the Department of Safety and the sheriff receiving information of the recovery of any motor vehicle, its chassis, engine, transmission, or other parts and accessories, to report the recovery to the owner. T.C.A. § 55-5-101(a)(6).

## Summoning Jurors

**Reference Number: CTAS-1273**

Another duty of the sheriff, as it relates to both attending the courts and serving process, is summoning the jury. When the venire for the grand and petit jurors for any term of criminal court or circuit court has been drawn, the clerk of the court issues the state's writ of venire facias to the sheriff containing the names of the jurors drawn, commanding the sheriff to summon the jurors for the term of court for which they were drawn. The clerk must swear the sheriff when delivering the writ to keep secret the names of the jurors to be summoned. Summons is to be made by personal service or by sending by registered or certified mail to the regular address of the persons selected as jurors notice of their selection for jury duty. Service by mail must be mailed at least five days prior to the date fixed for their appearance for such jury service. The cost will be paid as are other costs of summoning jurors. In counties where jurors are selected by mechanical or electronic means pursuant to T.C.A. §§ 22-2-302 and 22-2-304, the sheriff is required to send the summons by first-class mail to the regular address of each person selected as a juror giving notice of the person's selection for jury duty. This summons must be mailed at least 10 days prior to the date fixed for the person's appearance for jury service. T.C.A. § 22-2-305.

If at a regular or special term of the court having criminal jurisdiction the required number of jurors cannot be obtained from the venire because of the disqualification of the proposed jurors or other cause, the clerk of the court will produce in open court the jury box and draw the number of names deemed by the judge sufficient to complete the juries. This process will, if necessary, continue until the grand and petit juries are completed. However, instead of following this procedure, the judge may furnish a sufficient number of names of persons to be summoned to the sheriff, or the judge may direct the sheriff to summon a sufficient number to complete the juries. T.C.A. § 22-2-310(c).

Whenever the presiding judge of the circuit or criminal court is satisfied that a jury cannot be obtained from the regular panel for the trial of a case, the judge may, before the case is assigned for hearing, cause the jury box to be opened by the clerk in the judge's presence in the clerk's office, and have the

clerk draw a sufficient number of names as the judge deems sufficient to obtain a jury. The court clerk will then give this list to the sheriff whose duty it is to summon those whose names were drawn. If the jury cannot be made up from the panel drawn and summoned and the regular panel in attendance, another panel may be drawn and so on until the jury is completed or the jury box is exhausted. If, after the regular jury venire summoned for the term becomes exhausted, it becomes necessary to have additional jurors from which to select a jury to try a particular case or cases pending, the presiding judge may in the judge's discretion select from citizens of the county or direct the sheriff to summon people of the judge's selection whose names were not selected from the jury box. Neither the judge nor the sheriff are allowed to place on this list the name of any person who seeks either directly or indirectly, personally or through another, to be summoned as a juror, and such solicitations operate to disqualify such person for jury service. T.C.A. § 22-2-310(c).

It is a Class A misdemeanor for the sheriff or any of the sheriff's deputies to divulge any secrets of proceedings of the jury commissioners or to notify anyone what name, or names, constitute the panel or any part of it, or any name or names drawn from the jury box for service at any term of court or in any case pending in court, except where jury panel list publication is required under T.C.A. § 22-2-306, or fail to perform any duty imposed by Title 22, Chapter 2. Upon the conviction of a violation of this statute, such officer shall be removed from office and will be ineligible to hold any state or county office for a period of five years. T.C.A. § 22-2-102(b).

## Transportation of Persons with a Mental Illness

Reference Number: CTAS-1274

Pursuant to T.C.A. § 33-6-901, it is the duty of the sheriff to transport those who have been certified for emergency involuntary admission under Title 33, Chapter 6, Part 4, or nonemergency involuntary admission under Title 33, Chapter 6, Part 5, except for persons who are transported by:

- (A) A secondary transportation agent under this section;
- (B) A municipal law enforcement agency that meets the requirements for a secondary transportation agent under this section and is designated by the sheriff;
- (C) A person authorized under other provisions of this Title 33; or
- (D) One or more friends, neighbors, other mental health professionals familiar with the person, relatives of the person, or a member of the clergy.

T.C.A. § 33-6-901(a)(1).

The sheriff may designate a secondary transportation agent or agents for the county for persons with mental illness or serious emotional disturbance whom a physician or mandatory prescreening authority has evaluated and determined do not require physical restraint or vehicle security. A secondary transportation agent shall be available twenty-four hours per day, provide adequately for the safety and security of the person to be transported, and provide appropriate medical conditions for transporting persons for involuntary hospitalization. The sheriff shall take into account in designating a secondary transportation agent or a municipal law enforcement agency both its funding and the characteristics of the persons who will be transported. The sheriff shall consult with the county mayor before designating a secondary transportation agent. A secondary transportation agent has the same duties and authority under Title 33, Chapter 6, in the detention or transportation of those persons as the sheriff. The designation of a transportation agent other than the sheriff is a discretionary function under T.C.A. § 29-20-205. If a mandatory prescreening agent, physician, or licensed psychologist with health service provider designation, who is acting under T.C.A. § 33-6-404(3)(B), determines that the person does not require physical restraint or vehicle security, then any person identified in subdivision (a)(1)(D) may, instead of the sheriff, transport the person at the transporter's expense. T.C.A. § 33-6-901(a)(2).

If a physician, psychologist, or designated professional, operating under T.C.A. § 33-6-404(3)(B)(iii), determines to a reasonable degree of professional certainty that the person subject to transportation does not require physical restraint or vehicle security and does not pose a reasonable risk of danger to the person's self or others, then the sheriff may permit one or more persons designated under T.C.A. § 33-6-901, other than the sheriff or secondary transportation agent, to transport the person; provided, that the person or persons provide proof of current automobile insurance. T.C.A. § 33-6-901(a)(3)(A).

Before a person is transported, the sheriff or other designated transportation agent shall give the notice



required by T.C.A. § 33-6-406(b), along with the name or names of the person or persons who will actually transport the person subject to admission to a hospital or treatment resource. The person or persons designated to transport under T.C.A. § 33-6-901 must comply with the requirements of T.C.A. § 33-6-406(b)(2) and T.C.A. § 33-6-407(c), and must provide the original of the certificate completed under T.C.A. § 33-6-404(3)(B)(ii) to the hospital or treatment resource. T.C.A. § 33-6-901(a)(3)(A).

When making this determination, the physician, psychologist or designated professional operating under T.C.A. § 33-6-404(3)(B)(iii) shall be immune from any civil liability and shall have an affirmative defense to any criminal liability arising from that protected activity. T.C.A. § 33-6-901(a)(3)(B).

When making this determination, if the physician, psychologist or designated professional operating under T.C.A. § 33-6-404(3)(B)(iii) is an agent of a hospital, health care facility, or community mental health center, that hospital, health care facility, or community mental health center shall be immune from any civil liability and shall have an affirmative defense to any criminal liability arising from this agent's protected activity and from the transportation of the person to and from the facility. T.C.A. § 33-6-901(a)(3)(C).

When a sheriff or secondary transportation agent is required to transport a person to a hospital or treatment resource for screening, evaluation, diagnosis or hospitalization, the county in which the person is initially transported by the sheriff or secondary transportation agent is responsible for the remainder of such person's transportation requirements. The initial transporting county is responsible for the continuing transportation of the person even if the person is assessed, diagnosed, screened or evaluated in a second county before being admitted to a facility, hospital or treatment resource in a third county. If the person is transported to a hospital or treatment resource by the sheriff or secondary transportation agent of a county other than the initial transporting county, the sheriff or secondary transportation agent actually providing transportation may bill the initial transporting county for transportation costs. T.C.A. § 33-6-901(b).

**EMERGENCY INVOLUNTARY ADMISSION.** If the person certified for admission under T.C.A.

§ 33-6-404 is not already at the facility, hospital or treatment resource at which the person is proposed to be admitted, the physician, psychologist or designated professional who completed the certificate of need shall give the sheriff or the transportation agent the original of the certificate and turn the person over to the custody of the sheriff or transportation agent who shall transport the person to a hospital or treatment resource that has available suitable accommodations for the person for proceedings under T.C.A.

§ 33-6-407; provided, that, if admission is sought to a state-owned or operated hospital or treatment resource, the physician, psychologist or designated professional who completed the certificate of need shall also provide to the sheriff or transportation agent a written statement verifying that the state-owned or operated hospital or treatment resource has been contacted and has available suitable accommodations, and the sheriff or transportation agent shall not be required to take custody of the person for transportation unless both the original of the certificate and the written statement are provided. If the original of the certificate is unavailable, then an identical hard copy or electronic copy submitted by reliable electronic means must be accepted for purposes of this section. Failure of the sheriff or other county transportation agent to provide both a certificate of need and the written statement to the receiving state-owned or operated hospital or treatment resource for proceedings under T.C.A. § 33-6-407 shall result in all costs attendant to the person's admission and treatment being assessed to the transporting county. T.C.A. § 33-6-406(a).

Before transportation begins, the sheriff or transportation agent shall notify the hospital or treatment resource at which the person is proposed to be admitted as to where the person is and the best estimate of anticipated time of arrival at the hospital or treatment resource. The sheriff or transportation agent shall notify the hospital or treatment resource of the anticipated time of arrival. If the sheriff or transportation agent has given notice and arrives at the hospital or treatment resource within the anticipated time of arrival, then the sheriff or transportation agent is required to remain at the hospital or treatment resource long enough for the person to be evaluated for admission under T.C.A. § 33-6-407, but not longer than one hour and forty-five minutes. After one hour and forty-five minutes, the person is the responsibility of the evaluating hospital or treatment resource, and the sheriff or transportation agent may leave. T.C.A. § 33-6-406(b)(1)-(2). In Shelby County the sheriff or transportation agent is relieved of further transportation duties after the person has been delivered to the hospital or treatment facility, and the transportation duties are assumed by appropriate personnel of the hospital or treatment facility. T.C.A. § 33-6-406(b)(3).

If, after evaluation, the person is not subject to admission and the sheriff or transportation agent is still under a duty to remain at the hospital or facility, the sheriff or transportation agent must return the patient to the county from which the person was transported. If, after evaluation, the person is not

subject to admission and the sheriff or transportation agent is no longer under a duty to wait at the hospital or facility, the hospital or facility has the responsibility to return the person to the county from which the person was transported. T.C.A. § 33-6-407(c) and (d).

**GRANT PROGRAM.** Subject to annual appropriations, there is established a grant program to assist sheriffs required to transport persons to a hospital or treatment resource for emergency mental health transport under this section. The Department of Finance and Administration, in consultation with the Department of Mental Health and Substance Abuse Services and the Division of TennCare, shall develop and administer the grant program. Assistance from this grant program must not be provided for emergency mental health transports where a physician, psychologist, or designated professional determines that the person can be transported by one or more friends, neighbors, or other mental health professionals familiar with the person, relatives of the person, or a member of the clergy pursuant to T.C.A. § 33-6-901.

A sheriff may contract with one or more third parties or other law enforcement agencies to transport persons to a hospital or treatment resource in accordance with this section. The sheriff shall deem a third party or law enforcement agency contracted to perform this function to be the designated secondary transportation agent pursuant to T.C.A. § 33-6-901. Any contract entered into under this subsection (c) is subject to audit by the comptroller of the treasury or the comptroller's designee.

A sheriff may receive grant funds provided under this subsection (c) and pay the grant funds to third parties or other law enforcement agencies with which the sheriff contracts to transport persons to a hospital or treatment resource in accordance with this section. The receipt or expenditure of grant funds received by a sheriff under this subsection (c) is subject to audit by the comptroller of the treasury or the comptroller's designee.

T.C.A. § 33-6-406(c)(1)-(3).

**NONEMERGENCY INVOLUNTARY ADMISSION.** When a person is about to be admitted to a hospital or treatment facility under the provisions of Title 33, Chapter 6, Part 5, the court will arrange the transportation of the person to the hospital. Whenever practicable, the person to be hospitalized will be permitted to be accompanied by one or more friends or relatives, who must travel at their own expense. Any reputable and trustworthy relative or friend of the person who will assume responsibility for the person's safe delivery may be allowed to transport the person to the hospital if such relative or friend will do so at their own expense. T.C.A. § 33-6-902(a).

Pending removal to a hospital, a person with mental illness or serious emotional disturbance taken into custody or ordered to be hospitalized under Title 33, Chapter 6, Part 5, may be detained in the person's home or in some suitable facility under such reasonable conditions as the court may order, but the person shall not be detained in a nonmedical facility used for the detention of those charged with or convicted of criminal offenses. Reasonable measures necessary to assure proper care of a person temporarily detained, including provision for medical care, must be taken. T.C.A. § 33-6-902(b).

## Transportation of Juveniles

Reference Number: CTAS-1275

### Transportation of Juveniles to Youth Development Centers

Counties are responsible for the expense of transporting delinquent children not found to have committed offenses punishable in the penitentiary. The fee the sheriff is allowed for transporting children found to have committed offenses punishable in the penitentiary to youth development centers is the same fee allowed by law for carrying prisoners to the penitentiary. When any female child is to be transported to a youth development center, the sheriff must deputize a suitable woman of good moral character to convey the child. In the event the sheriff cannot find such a woman in the county, the Department of Children's Services must provide a proper and suitable escort for the child, and this escort is paid from the allowance provided for the sheriff. The expense of the woman so deputized is paid from the allowance for the sheriff. T.C.A. § 37-5-205.

### Transportation of Juveniles for Post-Commitment Hearings

A juvenile in the custody of the Department of Children's Services pursuant to a commitment by a juvenile court of this state may petition for post-commitment relief under Title 37, Part 3. T.C.A. § 37-1-302. It is the duty of the sheriff of the county where such proceedings are pending to receive and transport the juvenile to and from the institution that has custody of the juvenile and the courthouse if the court so orders or if for any reason the superintendent of the institution is unable to transport the petitioner. The sheriff is entitled to the same costs allowed for the transportation of prisoners as provided in criminal cases upon presentation of the account certified by the judge and district attorney general. T.C.A. §

37-1-310(b). See also T.C.A. § 8-26-108.

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