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Statutory Powers

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.

Sincerely,

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Statutory Powers

Reference Number: CTAS-1277

Assignment of Officers to Judicial District Drug Task Force

Reference Number: CTAS-1278

The sheriff has the authority to assign deputies to a judicial district or multijudicial district task force relating to the investigation and prosecution of drug and violent crime cases. Such assignment must be made in writing by the sheriff but does not become effective until approved by the board of directors or governing or advisory board of the task force or the district attorneys general of the judicial district. T.C.A. § 8-7-110(a).

Authority to Authorize Deputies to Carry Handguns

Reference Number: CTAS-1279

Pursuant to T.C.A. § 39-17-1315(a)(1), the sheriff has the authority to authorize the carry of handguns by bonded and sworn deputy sheriffs who have successfully completed and continue to successfully complete on an annual basis a firearm training program of at least eight hours duration. The sheriff's authorization must be made by a written directive, a copy of which must be retained by the sheriff's office. Pursuant to the sheriff's written directive, POST-certified deputy sheriffs may carry their handgun at all times, regardless of the deputy's regular duty hours or assignments. Nothing in T.C.A. § 39-17-1315(a)(1) prohibits the sheriff from placing restrictions on when or where a deputy may carry his or her service handgun.

POST-certified deputy sheriffs and commissioned reserve deputy sheriffs may carry firearms at all times and in all places within Tennessee, on-duty or off-duty, regardless of the deputy's regular duty hours or assignments, except as provided by T.C.A. § 39-17-1350(c) (see below), federal law, lawful orders of court or the written directive of the sheriff. T.C.A. § 39-17-1350(a) and (d).

The authority conferred by T.C.A. § 39-17-1350 does not extend to a deputy sheriff or commissioned reserve deputy sheriff:

1. Who is not engaged in the actual discharge of official duties as a law enforcement officer and carries a firearm onto school grounds or inside a school building during regular school hours unless the officer immediately informs the principal that the officer will be present on school grounds or inside the school building and in possession of a firearm. If the principal is unavailable, the notice may be given to an appropriate administrative staff person in the principal's office;
2. Who is consuming beer or an alcoholic beverage or who is under the influence of beer, an alcoholic beverage, or a controlled substance or controlled substance analogue; or
3. Who is not engaged in the actual discharge of official duties as a law enforcement officer while attending a judicial proceeding.

T.C.A. § 39-17-1350(c). See Op. Tenn. Atty. Gen. No. 10-111 (November 3, 2010). See also T.C.A. §§ 39-17-1305; 39-17-1306; 39-17-1309; and 39-17-1311; 39-17-1321. Op. Tenn. Atty. Gen. No. 99-024 (February 16, 1999).

Disposal of Property

Reference Number: CTAS-1280

The sheriff is authorized by statute to dispose of all abandoned, stolen, and recovered or worthless property that remains unclaimed in the sheriff's custody and possession by virtue of confiscation, abandonment, or having been stolen and recovered. Such property may not be disposed of until a period of six months has elapsed from date of acquisition of the property by the sheriff. Prior to disposing of such property, the sheriff must make a reasonable effort to locate the true owner of the property and notify the owner of the sheriff's possession of the property. When located, the true owner must claim the property within a reasonable time. However, the sheriff is prohibited from returning any property to the owner, even if known, if the return of the property would be contrary to the public welfare. In the event that the owner of such property cannot be located, the sheriff must present to a judge of one of the criminal courts of the county a list of all such property to be disposed of, together with an affidavit that the sheriff has made a reasonable search for the true owner thereof and that the true owner cannot be located. The sheriff must then procure an order from the court directing the manner in which such property is to be disposed of. Proceeds from the disposition of such property must be paid over to the general fund of the

county. T.C.A. § 8-8-501. *See also* T.C.A. § 66-29-101 *et seq.*

Disposition of Stolen Property in Possession of Pawnbroker

Reference Number: CTAS-1281

For Disposition of Stolen Property in Possession of Pawnbroker, please see Recovery of Stolen Property.

Exchange of Officers With Other Law Enforcement Agencies

Reference Number: CTAS-1282

Pursuant to T.C.A. § 8-8-212(c)(1), the sheriff is authorized to enter into agreements with other law enforcement agencies, including, but not limited to, other county sheriff's offices, for the exchange of law enforcement officers when required for a particular purpose. Exchanged officers must be covered by liability insurance by the agency of their regular employment or by the agency to which the officers are being assigned. Responding officers under these agreements may be deputized by the requesting sheriff without making application to the court provided that the exchanged officers may serve in such capacity only for the time necessary to complete the particular purpose for which the exchange was made. Law enforcement officers exchanged under T.C.A. § 8-8-212(c) shall not be deemed to be special deputies. T.C.A. § 8-8-212(c)(2).

Inspection of Gun Dealer's Records

Reference Number: CTAS-1283

The sheriff is authorized to inspect the records of a gun dealer relating to transfers of firearms in the course of a reasonable inquiry during a criminal investigation or under the authority of a properly authorized subpoena or search warrant. T.C.A. § 39-17-1316(k).

Inspection of Pawnbroker's Records

Reference Number: CTAS-1284

All pawnbrokers are required to record certain information at the time of making a pawn transaction or a buy-sell transaction. T.C.A. § 45-6-209(b). These records must be delivered to the appropriate law enforcement agency by mail or in person, or electronically if requested by the law enforcement agency, within 48 hours following the day the transactions were made. In addition, these records must be made available for inspection each business day, except Sunday, by the sheriff of the county and the chief of police of the municipality in which the pawnshop is located. T.C.A. §§ 45-6-209(d) and (e); 45-6-213(a); and 45-6-221.

Pursuant to T.C.A. § 45-6-209(b)(7), a pilot project has been established in Knox and Shelby counties that requires the pawnbroker to take the right thumbprint of the pledgor at the time of making the pawn or buy-sell transaction. If taking the right thumbprint is not possible the pawnbroker must take a fingerprint from the left thumb or another finger and must identify on the pawn ticket which finger has been used. A thumb or fingerprint taken pursuant to T.C.A. § 45-6-209(b)(7) must be maintained by the pawnbroker for a period of five years from the date of the pawn transaction.

In Knox and Shelby counties, if the pawn transaction involves a firearm, the pawnbroker must exclude from the information sent to the sheriff's office or police department the name, address and identification numbers of the pledgor pawning the firearm. The name, address and identification numbers of the pledgor must remain with the pawnbroker along with the pledgor's thumbprint. A law enforcement officer inspecting a record involving a firearm may not take or record the name, address and identification numbers of the pledgor except pursuant to a subpoena. T.C.A. § 45-6-209(g)(1). If a court grants the request of a law enforcement officer for a subpoena to require production of the thumbprint of a pledgor taken and maintained by the pawnbroker, the pawnbroker must supply the law enforcement officer with the name, address and identification numbers of the pledgor whose thumbprint was subpoenaed. T.C.A. § 45-6-209(g)(2).

The attorney general has opined that a city does not have the authority to adopt an ordinance requiring the pledgor in a pawn transaction to place a thumbprint on the pawnbroker's copy of the pawn transaction. Op. Tenn. Atty. Gen. 00-071 (April 11, 2000). Nor does a city have the authority to adopt an ordinance requiring the pledgor in a pawn transaction to place a thumbprint on a form separate from the pawn ticket to be maintained by the pawnbroker and made available to law enforcement authorities. Op. Tenn. Atty. Gen. 00-167 (Oct. 26, 2000).

Investigations of Adult-Oriented Establishments

Reference Number: CTAS-1285

Pursuant to T.C.A. § 7-51-1107, the sheriff is empowered to conduct investigations of people engaged in the operation of any adult-oriented establishment and inspect the license of the operators and establishment for compliance with Title 7, Chapter 51, Part 11.

Motor Vehicles

Reference Number: CTAS-1286

Motor Vehicles - Impounding

Pursuant to T.C.A. § 55-5-129, the sheriff has the authority to impound any vehicle after determining the existence of any one or more of the following factors:

1. The registration plate displayed on the vehicle is stolen or is otherwise not registered to such vehicle; or
2. The renewal decal displayed on the vehicle is stolen or is otherwise not registered to such vehicle.

However, law enforcement personnel must secure the permission of the owner of any private property before entering onto private property for the purpose of impounding a vehicle.

As used in T.C.A. § 55-5-129, "impound" means removing a vehicle from a private parking lot adjacent to a street, alley, highway, or thoroughfare by a uniformed deputy to the nearest garage or other place of safety or to a garage designated or maintained by the sheriff's office. The provisions of T.C.A. §§ 55-16-105 and 55-16-106 govern the disposition of any vehicle impounded pursuant to T.C.A. § 55-5-129.

Motor Vehicles - Taking Possession of Abandoned Vehicles .

The sheriff is authorized by statute to take into custody any motor vehicle found abandoned, immobile, or unattended on public or private property. In doing so, the sheriff may employ his or her own personnel, equipment and facilities or hire personnel, equipment, and facilities for the purpose of removing, preserving and storing abandoned, immobile, or unattended motor vehicles. T.C.A. § 55-16-104. A vehicle may not be towed without the authorization of the owner of the vehicle until 12 hours have elapsed since it was first observed to be immobile or unattended unless the vehicle is creating a hazard, is blocking access to public or private property, or is parked illegally. T.C.A. § 55-16-111.

Within three (3) business days of taking an abandoned, immobile, or unattended motor vehicle into custody, the sheriff's office must verify ownership of the vehicle. After receiving verification of ownership, the sheriff's department must within three (3) business days notify, by registered mail, return receipt requested, the last known registered owner of the motor vehicle and all lienholders of record that the vehicle has been taken into custody. The notice must describe the year, make, model and serial number of the motor vehicle; set forth the location of the facility where the motor vehicle is being held; inform the owner and any lienholders of their right to reclaim the motor vehicle within 10 days after the date of the notice upon payment of all towing, preservation and storage charges resulting from placing the vehicle in custody; and state that the failure of the owner or lienholders to exercise their right to reclaim the vehicle within the time provided shall be deemed a waiver by the owner and all lienholders of all right, title and interest in the vehicle and consent to the sale of the motor vehicle at a public auction. T.C.A. § 55-16-105(a).

In the event that there is no response to the notice by registered mail provided for in T.C.A. § 55-16-105(a), then there must be notice by one publication in one newspaper of general circulation in the area where the motor vehicle was abandoned, immobile, or unattended. Such notice must be in a small display ad format, but one advertisement may contain multiple listings of abandoned, immobile, or unattended vehicles. T.C.A. § 55-16-105(c).

The sheriff's office is not required to comply with the requirements of T.C.A. § 55-16-105(a) if it provides pre-seizure notice to the owner of the motor vehicle and all lienholders of record that the vehicle has been found to be abandoned, immobile, or unattended. Any pre-seizure notice must be sent by registered or certified mail, return receipt requested, to the last known address of the owner of record and to all lienholders of record. The notice must be written in plain language and must contain the year, make, model and vehicle identification number of the motor vehicle, if ascertainable; the location of the motor vehicle; and a statement advising the owner that the owner has 10 days to appeal the determination by the sheriff's office that the vehicle is abandoned, immobile, or unattended or to remove the vehicle from the property, or the sheriff's office will take the vehicle into custody. The notice must further inform the owner and any lienholders of their right to reclaim the motor vehicle after it is taken into custody but before it is sold or demolished, upon payment of all towing, preservation, storage or any other charges resulting from placing the vehicle in custody, and state that the failure of the owner or lienholders to

exercise their right to reclaim the vehicle shall be deemed a waiver by the owner and all lienholders of all right, title and interest in the vehicle and consent to demolition of the vehicle or its sale at a public auction. If the owner or lienholder cannot be located through the exercise of due diligence, notice by publication must be given as set out in T.C.A. § 55-16-105(c). If the owner or lienholder of an abandoned, immobile, or unattended motor vehicle fails to appeal the determination that the vehicle is abandoned, immobile, or unattended or fails to remove the motor vehicle within the time allowed for an appeal, the sheriff's office may take the vehicle into custody. If an appeal is made, the motor vehicle may not be taken into custody while the appeal is pending. Failure to appeal within the specific time period shall, without exception, constitute waiver of the right of appeal. T.C.A. § 55-16-105(b).

When the sheriff, deputy sheriff, or towing company contracting with the sheriff's office takes possession of a vehicle found abandoned, immobile, or unattended, an employee of the sheriff's office must verify ownership of the vehicle through the Tennessee Information Enforcement System (TIES) and must place the ownership information on the towing sheet or form. The sheriff's office must also provide the ownership information to any towing company or garagekeeper with whom the sheriff's office has a contract. If the sheriff's office attempts to verify ownership information through the Tennessee Information Enforcement System and the response is "Not on File," the sheriff's office must contact the Department of Safety Title and Registration Division which will search records not contained in Tennessee Information Enforcement System for the ownership information. If the Title and Registration Division locates ownership information through this search, it will notify the sheriff's office, and the sheriff's office must distribute the information as discussed above. T.C.A. § 55-16-105(f).

In addition to the notification requirements set forth in T.C.A. § 55-16-105(a), any garagekeeper or towing firm that has in its possession an abandoned, immobile or unattended motor vehicle taken into custody by the sheriff's office, and in whose possession the vehicle was lawfully placed by the sheriff's office, must, within three (3) business days of taking such motor vehicle into its possession verify ownership of the vehicle. After receiving verification of ownership, the garagekeeper or towing firm must within three (3) business days provide notice to the last known registered owner of the motor vehicle and all lienholders of record. All the notification requirements included in T.C.A. § 55-16-105(a) apply to the notice required to be provided by a garagekeeper or towing firm. T.C.A. § 55-16-105(g).

Regulation of Private Security Guards

Reference Number: CTAS-1287

When a security guard is working in a county other than the security guard's primary county, the sheriff of the county in which the security guard is working must be notified in writing by the employer of the security guard within five days of the date of first service where the security guard will be assigned and the length of the assignment, unless other arrangements are made with the sheriff. In Davidson County the chief of police must be notified. The sheriff and his or her deputies are required to recognize the state-issued security armed card as valid in their jurisdiction while any security guard is traveling to or from a job site and while performing duties while at the job site, or while any representative of a security company, supervisor or officers are traveling to or from job sites or operating as a street patrol service. T.C.A. § 62-35-131(b).

The sheriff may require an individual to present proof of compliance with Title 62, Chapter 35. However, the sheriff is required to waive the provisions relative to training for those individuals properly and duly registered and in possession of a valid armed registration card. But, if a valid objection exists, the sheriff must inform the commissioner of commerce and insurance or the commissioner's designee within 10 days and provide a written explanation of the sheriff's objection. A security guard may not work in any jurisdiction in which the sheriff has a pending objection to the training qualifications of the security guard. T.C.A. § 62-35-131(c) and (d).

Seizure of Conveyance Used in Robbery or Felony Theft

Reference Number: CTAS-1288

Subject to the discretion of the court, where there is a final judgment of conviction, the sheriff is authorized, upon process issued by the court having jurisdiction over the property, to seize any 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. Seizure without process may be made if the seizure is incident to an arrest or a search under a search warrant. T.C.A. §§ 40-33-101 and 40-33-102.

A conveyance taken or detained by the sheriff under T.C.A. § 40-33-102 is not subject to replevin but is deemed to be in the custody of the sheriff, subject only to the orders and decrees of the court that has

jurisdiction over the property. T.C.A. §§ 40-33-104(a) and 40-33-106. See *Knobler v. Knobler*, 697 S.W.2d 583, 586 (Tenn. Ct. App. 1985) (Property is in *custodia legis* if it has been lawfully taken by virtue of legal process.). When the sheriff seizes a conveyance pursuant to T.C.A. § 40-33-102, the sheriff may (1) place the conveyance under seal, (2) remove the conveyance to a place designated by the court; or (3) take custody of the conveyance and remove it to an appropriate location for disposition in accordance with law. T.C.A. § 40-33-104(b).

When the sheriff seizes a conveyance pursuant to T.C.A. § 40-33-102, the sheriff is required to give the person in possession of the conveyance, if any, a receipt. The receipt must state a general description of the seized conveyance, the reasons for the seizure, the procedure by which recovery of the conveyance may be sought, including the time period in which a claim for recovery must be presented, and the consequences of failing to file within the time period. If the person found in possession of the conveyance is not the sole unencumbered owner of the conveyance, the court having jurisdiction over the property is required to make a reasonable effort to notify the owner or lienholder of the seizure by furnishing all parties known to have an interest in the conveyance with a copy of the receipt. A copy of the receipt must be filed with the clerk of the court having jurisdiction over the property and shall be open to the public for inspection. T.C.A. § 40-33-107(1).

Any person claiming a seized conveyance may, within 15 days after receiving notification of seizure, file with the court a claim in writing requesting a hearing and stating the person's interest in the seized conveyance. The claimant must also file a cost bond with one or more good and solvent sureties in the sum of \$250 made payable to the state. An indigent person may file a claim *in forma pauperis* by filing an affidavit stating that they are unable to bear the cost of the proceeding. T.C.A. § 40-33-107(3). The court must set a date for a hearing within 45 days from the day a claim requesting a hearing is filed. T.C.A. § 40-33-107(4). See *also* T.C.A. § 40-33-108. In the event the decision of the court is favorable to the claimant, the clerk of the court is required to deliver the seized conveyance to the claimant. If the ruling of the court is adverse to the claimant, the clerk of the court directs the sheriff to sell or dispose of the conveyance. The expenses of storage, transportation, etc., are adjudged as part of the cost of the proceeding. T.C.A. § 40-33-107(5). If no claim is filed, the conveyance is forfeited without further proceedings and is sold or disposed of as provided in Title 40, Chapter 33, Part 1. T.C.A. § 40-33-109.

Seizure of Controlled Substances and Related Property

Reference Number: CTAS-1289

The sheriff is authorized, upon process issued by the court having jurisdiction over the property, to seize:

1. All controlled substances that have been manufactured, distributed, dispensed or acquired in violation of Title 39, Chapter 17, Part 4 or Title 53, Chapter 11, Parts 3 and 4;
2. All raw materials, products and equipment of any kind that are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of Title 39, Chapter 17, Part 4 or Title 53, Chapter 11, Parts 3 and 4;
3. All property that is used, or intended for use, as a container for the property described above;
4. All conveyances, including aircraft, vehicles or vessels, that are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale or receipt of the property described above;
5. All books, records, and research products and materials, including formulas, microfilm, tapes and data that are used, or intended for use, in violation of Title 39, Chapter 17, Part 4 or Title 53, Chapter 11, Parts 3 and 4;
6. Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of the Tennessee Drug Control Act of 1989, compiled in Title 39, Chapter 17, Part 4, and Title 53, Chapter 11, Parts 3 and 4, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act, compiled in Title 39, Chapter 17, Part 4, and Title 53, Chapter 11, Parts 3 and 4; and
7. All drug paraphernalia as defined by T.C.A. § 39-17-402.

T.C.A. § 53-11-451(a). See *Payne v. Breuer*, 891 S.W.2d 200, 203 (Tenn., 1994) (The above statute clearly requires that a warrant be obtained prior to any seizure made under it unless one of the stated exceptions applies.).

Seizure without process may be made if:

1. The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

2. The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon Title 39, Chapter 17, Part 4, or Title 53, Chapter 11, Parts 3 and 4;
3. The sheriff has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
4. The sheriff has probable cause to believe that the property was used or is intended to be used in violation of Title 39, Chapter 17, Part 4, or Title 53, Chapter 11, Parts 3 and 4.

T.C.A. § 53-11-451(b). In *Fuqua v. Armour*, 543 S.W.2d 64, 68 (Tenn. 1976), the Tennessee Supreme Court held that T.C.A. § 52-1443(b)(4) [the earlier version of T.C.A. § 53-11-451(b)(4)] is constitutional only if the statute is construed to include an "exigent circumstances" requirement. The court stated:

T.C.A. § 52-1443(b)(4) should not be construed as authorizing the seizure of an automobile without a warrant under circumstances such as those disclosed in the facts of this case. The fact that probable cause exists for seizure is not enough; there must also exist "exigent circumstances"; therefore, T.C.A. § 52-1443(b)(4) should be construed as authorizing a seizure without a warrant, upon probable cause, only when "exigent circumstances" exist justifying summary seizure. "No amount of probable cause can justify a warrantless search or seizure, absent 'exigent circumstances.'" *Coolidge v. New Hampshire*, [403 U.S. 443, 468 (1971)]. Thus construed and restricted, T.C.A. § 52-1443(b)(4) may constitutionally be applied.

Fuqua, 543 S.W.2d at 68.

Property taken or detained by the sheriff under T.C.A. § 53-11-451 is not subject to replevin but is deemed to be in the custody of the sheriff subject only to the orders and decrees of the court that has jurisdiction over the property. T.C.A. § 53-11-451(d). See *State v. Vukelich*, 2002 WL 31249910 (Tenn. Crim. App. 2002) (property held in *custodia legis*, or in the custody of the law). When the sheriff seizes property under Title 39, Chapter 17, Part 4, or Title 53, Chapter 11, Parts 3 and 4, the sheriff may (1) place the property under seal, (2) remove the property to a place designated by the sheriff; or (3) take custody of the property and remove it to an appropriate location for disposition in accordance with law. T.C.A. § 53-11-451(d). 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). See *State v. Blackmon*, 78 S.W.3d 322, 332 (Tenn. Crim. App. 2001) (judicial authorization to use seized property).

Pursuant to T.C.A. § 40-33-201, all personal property, including conveyances, subject to forfeiture under the provisions of T.C.A. § 53-11-451 shall be seized and forfeited in accordance with the procedure set out in Title 40, Chapter 33, Part 2. See also Rules of Tennessee Department of Safety Administrative Division, CHAPTER 1340-2-2, The Rules of Procedure for Asset Forfeiture Hearings.

Notice of Seizure

Reference Number: CTAS-1292

Upon the seizure of any personal property subject to forfeiture pursuant to T.C.A. § 40-33-201, the seizing officer must prepare a receipt entitled "Notice of Seizure" and provide the person found in possession of the property, if known, a copy of the receipt. The notice of seizure is a standard form promulgated by the agency charged by law or permitted by agreement with conducting the forfeiture proceeding for the particular property seized. T.C.A. § 40-33-203(a) and (c). The notice of seizure must contain the following:

1. A general description of the property seized and, if the property is money, the amount seized;
2. The date the property was seized and the date the notice of seizure was given to the person in possession of the seized property;
3. The vehicle identification number (VIN) if the property seized is a motor vehicle;
4. The reason the seizing officer believes the property is subject to seizure and forfeiture;
5. The procedure by which recovery of the property may be sought, including any time periods during which a claim for recovery must be submitted; and
6. The consequences that will attach if no claim for recovery is filed within the applicable time period.

T.C.A. § 40-33-203(c). See *Holt v. Young*, 2001 WL 1285880, *5 (Tenn. Ct. App. 2001).

Upon the seizure of a conveyance, the seizing officer must make reasonable efforts to determine the owner or owners of the property seized as reflected by public records of titles, registrations and other

recorded documents. T.C.A. § 40-33-203(b)(1). If the conveyance seized is a commercial vehicle or common or contract carrier and the person in possession of the vehicle at the time of seizure does not have an ownership interest in the vehicle, the seizing officer must make reasonable efforts to determine the owner of the conveyance and notify the owner of the seizure. If the cargo is not contraband and is not subject to forfeiture under some other provision of state or federal law, the seizing agency must release the cargo to the owner or transporting agent upon request. If the interest of the owner of the commercial vehicle or common or contract carrier is not subject to forfeiture under T.C.A. § 40-33-210(a)(2), then the vehicle or carrier is not subject to forfeiture, and the seizing officer may not seek a forfeiture warrant. The seizing agency must release the vehicle or carrier to the owner or transporting agent upon request. T.C.A. § 40-33-203(b)(2) and (b)(4). For purposes of T.C.A. § 40-33-203(b), "commercial vehicle" includes a private passenger motor vehicle that is used for retail rental for periods of 31 days or less.

If the conveyance seized is a commercial vehicle or common or contract carrier and the person in possession of the vehicle at the time of seizure has an ownership interest in the vehicle, the seizing officer must make reasonable efforts to determine the common or contract carrier responsible for conveying the cargo and notify the carrier of the seizure. If the cargo is not contraband and is not subject to forfeiture under some other provision of state or federal law, the seizing agency must release the cargo to the owner or transporting agent upon request. T.C.A. § 40-33-203(b)(3).

Forfeiture Warrant

Reference Number: CTAS-1290

Once personal property is seized pursuant to the applicable provision of law, no forfeiture action can proceed unless a forfeiture warrant is issued in accordance with T.C.A. § 40-33-204 by a judge who is authorized to issue a search warrant. The forfeiture warrant authorizes institution of the forfeiture proceeding. T.C.A. § 40-33-204(a). General sessions judges may authorize magistrates or judicial commissioners to issue forfeiture warrants. However, prior to such authorization, the general sessions judge must train and certify that the magistrates or judicial commissioners understand the procedure and requirements relative to issuing a forfeiture warrant. T.C.A. § 40-33-204(c)(3).

The officer making the seizure must apply for a forfeiture warrant by filing an affidavit within five working days following the property seizure. The forfeiture warrant is based upon proof by affidavit and must have attached to it a copy of the Notice of Seizure. The affidavit in support of the forfeiture warrant must state the legal and factual basis making the property subject to forfeiture. If the owner or co-owner of the property was not the person in possession of the property at the time of seizure and can be determined from public records of title, registrations or other recorded documents, the affidavit must state with particular specificity the officer's probable cause for believing that the owner or co-owner of the property knew that such property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture as well as the legal and factual basis for the forfeiture of such interest. If the interest of a secured party with a duly perfected security interest as reflected in the public records of title, registration or other recorded documents is sought to be forfeited, the affidavit must state with particular specificity the officer's probable cause that the secured party's interest in the property is nevertheless subject to forfeiture as well as the legal and factual basis for the forfeiture of such interest. T.C.A. § 40-33-204(b).

If the seizing officer asserts to the judge that he or she was unable to determine the owner of the seized property or whether the owner's interest is subject to forfeiture within the required five-day period, the judge may grant up to 10 additional days to seek a forfeiture warrant. In order to grant additional time, the judge must find that the seizing officer has exercised due diligence and good faith in attempting to determine the owner of the property or whether the owner's interest is subject to forfeiture and made a factual showing that because of the existence of extraordinary and unusual circumstances an exception to the five-day forfeiture warrant requirement is justified. T.C.A. § 40-33-204(c)(2).

If the person in possession of the property is not the registered owner as determined from public records of titles, registration or other recorded documents, the judge may consider other indicia of ownership that proves that the possessor is nonetheless an owner of the property. Such other indicia of ownership shall include, but is not limited to, the following:

1. How the parties involved regarded ownership of the property in question;
2. The intentions of the parties relative to ownership of the property;
3. Who was responsible for originally purchasing the property;
4. Who pays any insurance, license or fees required to possess or operate the property;
5. Who maintains and repairs the property;

6. Who uses or operates the property;
7. Who has access to use the property; and
8. Who acts as if they have a proprietary interest in the property.

T.C.A. § 40-33-204(d).

The judge will issue the forfeiture warrant if the judge finds that the offered proof establishes probable cause to believe that the property is subject to forfeiture and if the property is owned by one whose interest is described in public records of titles, registrations or other recorded documents, that the owner's interest is subject to forfeiture. T.C.A. § 40-33-204(c)(1). Once the forfeiture warrant has been issued, the officer must, within seven working days, send the warrant, a copy of the affidavit and the notice of seizure to the Department of Safety Legal Division. The sheriff's office must maintain a copy of the notice of seizure for all property seized at its main office. The notices and receipts are public records. T.C.A. § 40-33-204(g). If no forfeiture warrant is issued and the property is not needed for evidence in a criminal proceeding, the sheriff's office must return the property to the owner, as determined from public records of titles, registration or other recorded documents, or if the owner cannot be determined, to the person in possession of the property at the time of seizure. T.C.A. § 40-33-204(f).

Upon receipt of the documents, the legal division will notify any other owner, as may be determined from public records of titles, registration or other recorded documents, or secured party that a forfeiture warrant has been issued. T.C.A. § 40-33-204(g). Any person asserting a claim to the seized property may, within 30 days of being notified by the legal division that a forfeiture warrant has issued, file a written claim requesting a hearing and stating the person's interest in the seized property for which a claim is made. T.C.A. § 40-33-206(a). See T.C.A. § 40-33-205 regarding interests of a secured party. Only the sheriff or the sheriff's designee may be permitted to negotiate or enter into any type of settlement agreement or agreements prior to the forfeiture hearing. In no event may any officer involved in seizing the property be allowed to negotiate or enter into any type of settlement agreement or agreements prior to the forfeiture hearing. All negotiated settlements by the sheriff's office are subject to the approval of the commissioner of safety. T.C.A. § 40-33-212. If a claim or proof of a security interest is not filed with the legal division within the specified time, the seized property will be forfeited and disposed of as provided by law. T.C.A. § 40-33-206(c).

Within 30 days from the day a claim is filed, the legal division will establish a hearing date and set the case on the docket. T.C.A. § 40-33-207(a). At the hearing, if it is determined that the state has carried the burden of proof with regard to all parties claiming an interest in the property and the ruling of the commissioner of safety is adverse to the claimant or claimants, the property will be sold or disposed of as provided by law. T.C.A. § 40-33-210(d). Once property has been forfeited, it is the duty of the sheriff to remove it for disposition in accordance with the law. T.C.A. § 53-11-451(e).

Seizure of Vehicle

Reference Number: CTAS-1291

Seizure of Vehicle Used in the Commission of DUI Offense

The sheriff is authorized to seize the vehicle used in the commission of a person's second or subsequent violation of T.C.A. § 55-10-401, or the second or subsequent violation of any combination of T.C.A. § 55-10-401 and a statute in any other state prohibiting driving under the influence of an intoxicant. Only POST-certified or state-commissioned law enforcement officers are authorized to seize such vehicles. T.C.A. § 55-10-414(a) and (d). In order for the provisions of T.C.A. § 55-10-414(a) to be applicable to a vehicle, the violation making the vehicle subject to seizure and forfeiture must occur in Tennessee within five years of the first offense, which must have occurred on or after January 1, 1997. T.C.A. § 55-10-414(b).

All vehicles subject to forfeiture under the provisions of T.C.A. § 55-10-414 shall be seized and forfeited in accordance with the procedure set out in Title 40, Chapter 33, Part 2. T.C.A. § 40-33-201. The Department of Safety is designated as the applicable agency, as defined by T.C.A. § 40-33-202, for all forfeitures authorized by T.C.A. § 55-10-414. See *also* Rules of Tennessee Department of Safety Administrative Division, CHAPTER 1340-2-2, The Rules of Procedure for Asset Forfeiture Hearings.

See Notice of Seizure and Forfeiture Warrant under Seizure of Controlled Substances and Related Property for a discussion of the applicable procedure to be used.

Seizure of Vehicle Used by Person Driving on Revoked License .

The sheriff is authorized to seize the vehicle used in the commission of a person's violation of T.C.A. § 55-50-504 when the original suspension or revocation was made for a violation of T.C.A. § 55-10-401 or a statute in another state prohibiting driving under the influence of an intoxicant. A vehicle is subject to

seizure and forfeiture upon the arrest or citation of a person for driving while such person's driving privileges are cancelled, suspended or revoked. A conviction for the criminal offense of driving while such person's driving privileges are cancelled, suspended or revoked is not required. T.C.A. § 55-50-504(g).

All vehicles subject to forfeiture under the provisions of T.C.A. § 55-50-504(g) shall be seized and forfeited in accordance with the procedure set out in Title 40, Chapter 33, Part 2. T.C.A. § 40-33-201. The Department of Safety is designated as the applicable agency, as defined by T.C.A. § 40-33-202, for all forfeitures authorized by T.C.A. § 55-50-504(g). *See also* Rules of Tennessee Department of Safety Administrative Division, CHAPTER 1340-2-2, The Rules of Procedure for Asset Forfeiture Hearings.

See Notice of Seizure and Forfeiture Warrant under Seizure of Controlled Substances and Related Property for a discussion of the applicable procedure to be used.

Shooting Ranges

Reference Number: CTAS-1293

Sheriffs are authorized by statute to open their shooting ranges for public use when the range is not being used by the sheriff's personnel. The sheriff may establish reasonable regulations for use of the range in order to promote the full use of the range without interfering with the needs of the sheriff's personnel. The sheriff may also charge a reasonable fee for people or organizations using the range and may require users to make improvements to the range. T.C.A. § 38-8-116.

Special Deputies

Reference Number: CTAS-1294

Special Deputies - Appointment Under T.C.A. § 8-8-212

On urgent occasions, or when required for particular purposes, the sheriff may appoint as many special deputies as the sheriff deems proper. T.C.A. § 8-8-212(a). No person may serve as a special deputy under this statute unless that person proves to the appointing sheriff financial responsibility as evidenced by a corporate surety bond in no less amount than \$50,000 or by a liability insurance policy of the employer in no less amount than \$50,000. T.C.A. § 8-8-303(c).

Special Deputies - Emergency Appointment Under T.C.A. § 8-22-110

In case of great emergencies, such as in the case of a strike, riot, putting down a mob, or other like emergencies, when there is an immediate need for the sheriff to appoint an additional number of deputies to deal efficiently with the situation and to preserve order, the sheriff is authorized to make emergency appointments of special deputies without making application to the court. These special deputies may serve during the term of the emergency only. Once the emergency is over, the sheriff is required to make an itemized statement showing the services of the deputies and the time during which the special deputies served. The itemized statement must be presented to the county mayor for auditing and allowance. The mayor is required to authorize payment of the claims once the mayor is satisfied with the justness of the claims provided that no special deputy appointed by the sheriff may receive more than \$4 per day for services actually performed. T.C.A. § 8-22-110(b).

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