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Service of High-Risk Process

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

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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Service of High-Risk Process

Reference Number: CTAS-1309

It is easy to be lulled into complacency when one spends months or years serving civil process without serious incident, so it is important to remember and honor the fact that several Tennessee sheriff's deputies have lost their lives or been seriously injured fulfilling that duty. Civil actions are not necessarily conducive to civilized conduct on the part of those involved, and an officer cannot afford to maintain a casual attitude when there is no way to know what waits on the other side of a closed door.

Although service of any kind of process can lead to confrontation, some kinds of legal disputes engender such fierce emotion that they are more likely to instigate irrational or violent reactions, especially from the respondent and the respondent's loved ones.

Child Custody Transfer Orders

Reference Number: CTAS-1310

These orders are surely the most disturbing judicial orders deputies execute. They are often distressing for everyone present, including the officers charged with the duty to effect the transfer. Custody transfer orders require the sheriff to take physical custody of a child and place that child in the hands of the party directed by the court.

The transfer may be ordered pursuant to a judicial determination that the child has been abandoned or is subjected to or threatened with abuse. T.C.A. § 36-6-219(a). It may be initiated by an order for immediate physical custody, issued because the petitioner has properly registered a foreign decree, and the petition has been verified pursuant to T.C.A. §§ 36-6-229 through 234. Or, where a petition seeking enforcement of a custody determination is filed and the petitioner files a verified application, the court may issue a warrant for immediate physical custody if the child is in imminent danger of serious physical harm or is about to be removed from Tennessee. T.C.A. § 36-6-235(a).

A warrant to take physical custody of a child is enforceable throughout the state and may authorize officers to enter private property to take custody. If required by exigent circumstances, officers may make a forcible entry at any hour. T.C.A. § 36-6-235(e). The officer must serve the respondent with the petition, warrant, and order immediately after the child is taken into physical custody. T.C.A. § 36-6-235(d).

Below are a few guidelines for facilitating child custody transfers that may help protect the child's physical and emotional safety while minimizing the problems likely to be encountered during the transfer process.

1. Coordinate the transfer closely with the party taking physical custody in order to confirm the child's identity and make the transfer as quickly as reasonably possible. The person taking custody should wait nearby but out of the respondent's sight so as to avoid confrontation.
2. Never send a lone officer to execute a warrant for physical custody. Ideally, the transfer should be facilitated by a team of no fewer than three officers. It may take two or more to restrain the respondent and at least one more to transport the child to the petitioner.
3. Act quickly and efficiently. Officers should not allow the respondent to engage them in discussion or argument. While the respondent may consent to a peaceful surrender for the sake of the child, and negotiations to that end are desirable, they should be not be prolonged.
4. If the child is to be transported in a sheriff's vehicle, he or she must be properly restrained by a seatbelt or in an age and size appropriate child safety seat.
5. Young children may be consoled by a small stuffed animal, doll, or book. Officers should calmly reassure and comfort the child, who may appear calm while suffering severe emotional shock. Some agencies have found it helpful to use at least one female officer where available, as many children feel less threatened if there is a female presence.

Writs of Restitution

Reference Number: CTAS-1311

Writs of restitution are commonly known as evictions; they are another kind of process that brings with it significant and inherent risks to officer and public safety during execution. They are also among the very few civil orders that mandate use of force, where necessary, to achieve service. T.C.A. § 29-18-127.

The sheriff has not obeyed or executed a writ of restitution until he or she delivers actual possession of the premises to the plaintiff and leaves the plaintiff in quiet possession. If the tenant does not yield

possession peacefully, it is the officer's duty to remove him from the premises, and the writ is not executed until he does so. *Farnsworth v. Fowler*, 31 Tenn. 1, 55 Am. Dec. 718 (1851).

The officer executing the writ is responsible only for overseeing the procedure and keeping the peace until it is finished and the plaintiff is restored to peaceful possession. Officers should not act as the plaintiff's movers. Plaintiffs are responsible for the removal and storage of the tenant's belongings.

However, it is not uncommon for a plaintiff to direct that movers simply take the tenant's property to the edge of the roadway. In either case, there may be items removed from the premises that pose a hazard to public safety, e.g., weapons, incendiary devices, firearms, prescription medications or toxic chemicals. Such items should be inventoried, secured, and held for further disposition in accordance with law. Some items of obvious value, such as cash, should also be inventoried and secured.

Some articles or substances discovered during removal of the tenant's belongings, such as child pornography or controlled substances, may have criminal implications and must be dealt with accordingly.

The proliferation of methamphetamine labs is a relatively new danger confronted by those whose duty it is to oversee or carry out evictions. Officers should be acquainted with signs that such a lab is present so the appropriate authorities can be summoned to perform decontamination procedures.

Tenants faced with the execution of a writ of restitution sometimes become agitated, hostile or belligerent, and may call for reinforcements amongst their relatives and friends, whereupon the situation usually deteriorates rapidly. In such cases, it may be prudent for officers to withdraw to a safe distance until their own reinforcements arrive. Often the mere show of force effectively deters further disruption.

If tenants or other persons on the scene become threatening, assaultive, or otherwise engage in violent conduct, and efforts to encourage reasonableness are unsuccessful or clearly futile, the officer should not hesitate to use restraints or other force as required to stabilize the situation and restore safety and order.

Occasionally an officer arriving to execute a writ of restitution discovers an unattended child or adult occupants who are intoxicated, disabled, infirm, or mentally ill. A person who cannot leave the premises safely, attend to his or her own needs, or avoid risk of serious harm if left unattended should never be abandoned. If no responsible person is available to take charge of such an individual, the appropriate social services or other agency must be contacted for assistance. An officer who abandons an obviously incompetent individual who subsequently comes to serious harm may be found culpable for negligence.

While unrelated to public or officer safety, it is worth mention that a surprising number of actions filed related to writs of restitution arise because the deputies and plaintiff's movers enter the wrong residence and remove the property while the owner or occupant is away. Even if the property is put back in place undamaged and no locks, doors, or fixtures are broken in the process, this is an error with considerable tort liability and constitutional implications. A claim for damages by the indignant, embarrassed owner, whose constitutional rights to privacy and due process have been violated, is almost certain to follow.

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