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Delayed Commitment to the Department of Correction

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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Reference Number: CTAS-1341

Pursuant to T.C.A. § 8-8-201(a)(36), it is the duty of the sheriff to promptly turn over and transfer custody of any inmate sentenced to the Department of Correction who is being housed in the sheriff's local jail awaiting transfer when called upon to do so by a state official pursuant to T.C.A. § 40-35-212 or T.C.A. § 41-8-106. However, during times when the state prison population exceeds 95 percent of the relevant designated capacity, the governor may declare that a state of overcrowding emergency exists. T.C.A. § 41-1-503. Pursuant to T.C.A. § 41-1-504, upon declaring that an overcrowding emergency exists, the governor is required to invoke one or both of the following powers to reduce overcrowding:

1. Direct the board in writing to reduce the release eligibility dates of all male or female inmates, or both, excluding any inmate convicted by a court of escape, by a percentage sufficient to enable the board to consider immediately and to release on supervised parole enough inmates to reduce the in-house population of appropriate state correctional facilities to 90 percent of the relevant designated capacity.
2. Direct the commissioner in writing to notify all state judges and sheriffs that commitment to the department of felons who have been on bail prior to their convictions shall be stayed or otherwise delayed until up to 60 days after the in-house population of appropriate correctional facilities has been reduced to 90 percent of the relevant designated capacity either through normal release, contract sentencing, or the power granted in T.C.A. § 41-1-504(a)(1), or all such methods. Tenn. Attny. Gen 08-103 (May 6, 2008)

T.C.A. § 41-1-504(a)(1) and (a)(2). *State v. Lock*, 839 S.W.2d 436 (Tenn. Crim. App. 1992) (The governor can order the delay in prisoners being transferred from a local jail to a Department of Correction facility.).

The governor's directive invoking the power granted pursuant to T.C.A. § 41-1-504(a)(2) may include any conditions the governor may wish to impose as to which inmates or types of inmates will immediately be accepted by the Department of Correction or which inmates or types of inmates will be subject to the delayed intake directive, or both. The commissioner must transmit any conditions imposed by the governor to the judges and sheriffs in the notification that intake to the department has been delayed. T.C.A. § 41-1-506(a). The governor does not have the authority to direct that the commitment of an inmate be delayed any longer than six months from the date of sentencing or the date of the final judgment of the highest state appellate court to which an appeal is taken, whichever date is later. T.C.A. § 41-1-506(b). During times in which the power to delay the intake of inmates is invoked, a judge may order the sheriff to take the inmate into local custody to await removal to the Department of Correction. T.C.A. § 41-1-506(c). Notwithstanding any other provision of law to the contrary, during the time that the power of restricted intake has been invoked pursuant to T.C.A. § 41-1-504(a)(2), no sheriff may convey an inmate to the Department of Correction unless authorized to do so. No sheriff shall be deemed to have violated any duty of office by not conveying such inmate when notified to do so. T.C.A. § 41-1-506(e).

Notwithstanding any other provision of law to the contrary, all prisoners sentenced to the Department of Correction whose commitments are delayed pursuant to Title 41, Chapter 1, Part 5, or pursuant to the order of a federal court, and who are being held by the county pending such commitment, may, at the discretion of the sheriff or workhouse superintendent, participate in appropriate academic, vocational and work-related programs that are available to persons sentenced to local jails or workhouses, and may be awarded time reduction credits as authorized by Title 41, Chapter 2, Part 1, for participation in such programs. T.C.A. § 41-1-510.

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