



County Technical Assistance Service  
INSTITUTE *for* PUBLIC SERVICE

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# Removal to the State Penitentiary

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Dear Reader:

The following document was created from the CTAS website ([ctas.tennessee.edu](http://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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## Removal to the State Penitentiary

Reference Number: CTAS-1342

In counties where, because of the insufficiency of the county jail or for any other cause, the court may be of opinion that the safekeeping of the convicts may require it, the court may order the immediate removal of convicts to the penitentiary or to the nearest branch prison, at the cost of the state, before the expiration of the time allowed to remove such convicts. Every such convict shall, as soon as possible after conviction, be safely removed and conveyed to the penitentiary or to one of the branch prisons by the person appointed by the commissioner of correction for that purpose. T.C.A. § 40-23-107. *Dover v. Rose*, 709 F.2d 436, 437 n.1 (6th Cir. 1983) (State trial judges in Tennessee have the authority to transfer prisoners in county jails to the state penitentiary or the nearest branch prison "where, because of the insufficiency of the county jail, or for any other cause, the court may be of opinion that the safekeeping of the convicts may require it, ....") *citing Chisom v. State*, 539 S.W.2d 831, 833 (Tenn. Crim. App.1976) (Clearly, the trial judge was within his authority to commit the defendant, a convicted rapist, to the penitentiary pending the outcome of any attendant appellate proceedings in his case.). *See Burt v. State*, 454 S.W.2d 182 (Tenn. Crim. App. 1970) (holding that transfer of convict to state penitentiary prior to final determination of appeal does not raise a constitutional question). *But see State v. Grey*, 602 S.W.2d 259 (Tenn. Crim. App. 1980) (holding that the trial court was without authority to transfer a pretrial detainee to the state penitentiary).

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