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# Place of Confinement - Felony Offenders

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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.

Sincerely,

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# Place of Confinement - Felony Offenders

Reference Number: CTAS-1347

A defendant convicted of a felony in this state is sentenced in accordance with Title 40, Chapter 35. T.C.A. § 40-35-104(a).

A defendant who is convicted of a felony and who is sentenced to a total sentence of at least one year but not more than three years shall not be sentenced to serve such sentence in the Department of Correction, if the legislative body for the county from which the defendant is being sentenced has either contracted with the department or has passed a resolution that expresses an intent to contract for the purpose of housing convicted felons with such sentences. If the sentencing court concludes that incarceration is the appropriate sentencing alternative, such defendant must be sentenced to the local jail or workhouse and not to the department. T.C.A. § 40-35-104(b)(1).

A defendant who is convicted of a felony and who is sentenced to at least one year but not more than six years shall not be sentenced to serve such sentence in the department if the defendant is being sentenced from a county with a population of not less than 477,811 according to the 1980 federal census or any subsequent federal census, and the legislative body for any such county has contracted with the department or has passed a resolution that expresses an intent to contract for the purpose of housing convicted felons with such sentences. If the sentencing court concludes that incarceration is the appropriate sentencing alternative, such defendant must be sentenced to the local jail or workhouse and not to the department. T.C.A. § 40-35-104(b)(2).

"Although one serving a sentence of three years or less (and six years or less in a county having a population not less than 477,811 in the 1980 census) may not be sentenced to the Department of Correction if the county has a contract with the Department, there is not authority for a sentence over six years to be served in a local jail or workhouse." *State v. Beard*, 2005 WL 2546964, n. 3 (Tenn. Crim. App. 2005).

In *State v. McDaniel*, 2002 WL 1732334 (Tenn. Crim. App. 2002), the defendant was convicted of two counts of manufacturing a Schedule II controlled substance. He was sentenced to concurrent three-year sentences. The trial court ordered that the defendant have split confinement with supervised probation after serving one year in the Tennessee Department of Correction. The defendant appealed this sentence, arguing, among other things, that his sentence should be served at the county workhouse pursuant to T.C.A. § 40-35-104(b)(1). The Tennessee Court of Criminal Appeals affirmed the judgment of the trial court. Finding no evidence in the record of a contract between the county and the Department of Correction to house convicted felons, or a resolution of the county legislative body that convicted felons be housed in the county jail, the court held that there was no basis to conclude that the defendant's sentence should not be served in the Department of Correction. *Id.*

In imposing a sentence, the court determines under what conditions a sentence will be served as provided by law. A defendant may be sentenced to the Department of Correction unless prohibited by T.C.A. § 40-35-104(b). T.C.A. § 40-35-212(a). The court retains full jurisdiction over the manner of the defendant's sentence service unless the defendant receives a sentence in the Department of Correction. T.C.A. § 40-35-212(c). Notwithstanding the provisions of T.C.A. § 40-35-212(c), the court retains full jurisdiction over a defendant sentenced to the Department of Correction during the time the defendant is being housed in a local jail or workhouse awaiting transfer to the department. Such jurisdiction continues until the time the defendant is actually transferred to the physical custody of the Department of Correction. T.C.A. § 40-35-212(d).

If the minimum statutory punishment for any offense is imprisonment in the penitentiary for one year, but in the opinion of the court the offense merits a lesser punishment, the defendant may be sentenced to the local jail or workhouse for any period less than one year, except as otherwise provided. T.C.A. § 40-35-211(2). *See also* T.C.A. § 40-20-103.

If a defendant is convicted of an offense designated as a felony but the court imposes a sentence of less than one year in the local jail or workhouse, the defendant is considered a felon but is sentenced as in the case of a misdemeanor and, therefore, is entitled to sentence credits under T.C.A. § 41-2-111. Upon such defendant becoming eligible for work release, furlough, trusty status or related rehabilitative programs as specified in T.C.A. § 40-35-302(d), the defendant may be placed in such programs by the sheriff or administrative authority having jurisdiction over the local jail or workhouse. T.C.A. § 40-35-211(3).

If confinement is directed, the court shall designate the place of confinement as a local jail or workhouse if required pursuant to T.C.A. § 40-35-104(b), or, if the sentence is eight years or less and combined with

periodic or split confinement not to exceed one year, the court shall designate the place of confinement as a local jail or workhouse. If confinement in a local jail or workhouse is not mandated by T.C.A. §§ 40-35-104(b), 40-35-306 or 40-35-307, all convicted felons sentenced after November 1, 1989, to continuous confinement for a period of one year or more shall be sentenced to the Department of Correction. After November 1, 1989, if a court sentences or has sentenced a defendant to a local jail or workhouse when such court was not authorized to do so by this chapter, it shall be deemed that such sentence was a sentence to the department, and the commissioner of correction shall have the authority to take such a defendant into the custody of the department. T.C.A. § 40-35-314(a). "This code section clearly requires that any sentence of confinement over eight years is to be served in the Tennessee Department of Correction." *Carver v. State*, 2003 WL 21663688, \*4 (Tenn. Crim. App. 2003)

## Report by Sheriff to Department of Correction

Reference Number: CTAS-1348

Pursuant to T.C.A. § 40-23-113, whenever any person sentenced to the custody of the Department of Correction has been detained in the jail or workhouse pending arraignment, trial, sentencing or appeal, the sheriff must prepare and transmit with the defendant, at the time of commitment to the Department of Correction, a short report furnishing such information pertaining to the defendant's behavior while in local custody as may be requested by the department. Notwithstanding any other provision of the law to the contrary, no person sentenced to the custody of the Department of Correction shall be committed or conveyed to the department unaccompanied by the completed report required by T.C.A. § 40-23-113.

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