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Booking

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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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Booking

Reference Number: CTAS-1350

The comptroller of the treasury, in consultation with the Tennessee Bureau of Investigation, the Tennessee Sheriffs' Association, the Tennessee Association of Chiefs of Police, and the Tennessee Corrections Institute, have developed standardized booking procedures, which include:

1. A photograph of the arrestee;
2. Two sets of fingerprints. If fingerprints are maintained manually, two sets properly completed and mailed to the Tennessee Bureau of Investigation; If fingerprints are transmitted electronically, maintain one hard copy of fingerprints with arrest report as well as acknowledgement from TBI that fingerprints were received and accepted;
3. Delivery to the appropriate local law enforcement agency of a completed judgment order signed by a judge to be used by the local law enforcement agency for completion of an R-84 Disposition Card, except as follows: A local law enforcement agency and a clerk of court can collaborate on an automated process for the electronic submission of final dispositions for criminal cases to the Tennessee Bureau of Investigation. After a law enforcement agency and a clerk of court have implemented an automated process for the electronic submission of final dispositions for criminal cases, and have had the process certified by the Tennessee Bureau of Investigation, all final dispositions shall be reported electronically. Upon implementation of an automated process for the electronic submission of final dispositions for criminal cases, the delivery to the local law enforcement agency of a completed judgment order signed by a judge to be used by the local law enforcement agency for completion of an R-84 Disposition Card, and the submission by the local law enforcement agency of a completed R-84 Disposition Card to the Tennessee Bureau of Investigation are no longer required;
4. An arrest report; and
5. Delivery to the appropriate court clerk office of a warrant or capias for offense containing the state control number assigned by the law enforcement agency upon the arrest of an individual to be recorded in the court information system of the court clerk's office.

T.C.A. § 8-4-115(a)(1).

Upon establishment of an automated system for final disposition reporting, clerks of court must submit final disposition reports electronically to the Tennessee Bureau of Investigation. Jurisdictions that submit final disposition reports electronically will cease submitting R-84 Disposition Cards upon advisement from the Tennessee Bureau of Investigation. The submission of an electronic final disposition report shall have the same force and effect as the submission of a R-84 Disposition Card. T.C.A. § 8-4-115(g).

Any automated court information system being used or developed on or after July 1, 2005, including, but not limited to, the Tennessee Court Information System (TnCIS) being designed pursuant to T.C.A. § 16-3-803(h) must ensure that an electronic file of final disposition data will be reported to the Tennessee Bureau of Investigation. The form, general content, time, and manner of submission of the electronic file of final disposition data will comply with the rules and regulations prescribed by the Tennessee Bureau of Investigation. T.C.A. § 8-4-115(h).

Fingerprinting

Reference Number: CTAS-1351

It is the duty of the sheriff to take or cause to be taken two full sets of fingerprints of each person arrested whether by warrant or capias for an offense that results in such person's incarceration in a jail facility or the person's posting of a bond to avoid incarceration. Two full sets of fingerprints must be sent to the Tennessee Bureau of Investigation. Upon receipt of the fingerprints, the Tennessee Bureau of Investigation is required to retain one set of the fingerprints as provided in T.C.A. § 38-6-103 and send one set of the fingerprints to the Federal Bureau of Investigation. T.C.A. § 8-8-201(a)(35)(A). *See also* T.C.A. § 38-3-122(a) (duty of arresting officer to take fingerprints). Notwithstanding the provisions of T.C.A. § 8-8-201(a)(35) (duty of sheriff) or T.C.A. § 38-3-122 (duty of arresting officer) to the contrary, it is the duty of the law enforcement agency responsible for maintaining the arrested person's booking records to take the two full sets of fingerprints as required by such sections. T.C.A. § 8-4-115(a)(2).

A person who is issued a citation pursuant to T.C.A. § 40-7-118 or T.C.A. § 40-7-120 shall not, for purposes of T.C.A. § 8-8-201(a)(35), be considered to have been arrested, and the agency issuing the citation shall not be required to take the fingerprints of such person. T.C.A. § 8-8-201(a)(35)(B). *See also* T.C.A. § 38-3-122(b).

Where individuals are arrested multiple times for a violation of T.C.A. § 39-17-310, the offense of public intoxication, the arresting officer shall note on the arrest report that fingerprints are on file for this individual pursuant to T.C.A. § 38-3-122(a). T.C.A. § 8-4-115(a)(3).

Compliance with these standardized booking procedures shall be the basis for the comptroller of the treasury determining compliance with the fingerprinting requirements of T.C.A. §§ 8-8-201(a)(35) and 38-3-122. The Tennessee Corrections Institute and the Tennessee Law Enforcement Training Academy are required to train correctional personnel in municipal, county and metropolitan jurisdictions in the application of these standardized booking procedures. T.C.A. § 8-4-115(a)(4).

Audit by Comptroller

The comptroller of the treasury is required to audit or cause to be audited on an annual basis the sheriff's office to determine whether or not the sheriff's office is in compliance with the requirements of T.C.A. § 8-4-115, including but not limited to two full sets of classifiable fingerprints taken at arrest and maintenance by the arresting agency of at least an 85 percent retention rate by the Tennessee Bureau of Investigation of such fingerprints. If the comptroller of the treasury determines that a particular sheriff's office is not in compliance with T.C.A. §§ 8-8-201(a)(35), 38-3-122 and 8-4-115, the comptroller is required to notify the sheriff and the POST Commission of such noncompliance within 30 days of the determination. T.C.A. § 8-4-115(c)(1).

Show Cause Hearing

The sheriff shall show cause to the POST Commission within 30 days of notification why the sheriff should not be found to be in noncompliance with the requirements of T.C.A. §§ 8-8-201(a)(35) and 38-3-122. If the sheriff does not respond or show good cause within 30 days, the POST Commission is required to decertify the sheriff and impound the salary supplement provided for the sheriff in T.C.A. § 38-8-111. The POST Commission is then required to notify the comptroller of the treasury and both the sheriff and county commission of such action. T.C.A. § 8-4-115(c)(2).

The burden shall be on the sheriff to demonstrate compliance to the POST Commission, and if the sheriff is found to be in compliance with the provisions of T.C.A. § 8-4-115 within 60 days after decertification, the POST Commission is required to rescind the decertification order and cause any salary supplement impounded to be returned to the sheriff except for one-twelfth of the annual supplement. T.C.A. § 8-4-115(c)(3).

Removal from Office

In addition to any ouster proceeding under the provisions of Title 8, Chapter 47, the sheriff may be removed from office in accordance with the provisions of T.C.A. § 8-4-115. The comptroller of the treasury is required to forward a copy of reports of noncompliance with the provisions of T.C.A. § 8-4-115 by the sheriff to the district attorney general having jurisdiction and to the attorney general and reporter. The district attorney general and the attorney general and reporter must each review the report and determine if there is sufficient cause for further investigation. If further investigation indicates willful misfeasance, malfeasance or nonfeasance by the sheriff, the district attorney general shall proceed pursuant to Title 8, Chapter 47, to remove the sheriff from office. T.C.A. § 8-4-115(d). At least annually the comptroller of the treasury's office is required to send to each county mayor and sheriff a notice advising them of the provisions of T.C.A. § 8-4-115, including the penalty for noncompliance with T.C.A. §§ 8-8-201(a)(35), 38-3-122 and 38-8-111(g). T.C.A. § 8-4-115(d).

Purchase of Fingerprint System

Prior to purchasing an electronic fingerprint imaging system, the sheriff must obtain certification from the Tennessee Bureau of Investigation that the equipment is compatible with the Tennessee Bureau of Investigation's system and the Federal Bureau of Investigation's integrated automated fingerprint identification system. T.C.A. § 8-4-115(e).

Funding

The county legislative body is required by law to appropriate funds for the sheriff's office, including funds for personnel and supplies that are sufficient to comply with the provisions of T.C.A. § 8-4-115. T.C.A. § 8-4-115(b).

In order to comply with state and federal fingerprinting requirements, except in Davidson County, 20 percent of the funds received by a sheriff's office pursuant to T.C.A. § 39-17-420 must be set aside and earmarked for the purchase, installation, and maintenance of and line charges for an electronic fingerprint imaging system that is compatible with the Federal Bureau of Investigation's integrated automated fingerprint identification system. Prior to the purchase of the equipment, the sheriff must obtain certification from the Tennessee Bureau of Investigation that the equipment is compatible with the Tennessee Bureau of Investigation's and Federal Bureau of Investigation's integrated automated

fingerprint identification system. Once the electronic fingerprint imaging system has been purchased, the sheriff's office may continue to set aside up to 20 percent of the funds received pursuant to T.C.A. § 39-17-420 to pay for the maintenance of and line charges for the electronic fingerprint imaging system. T.C.A. § 39-17-420(g)(1).

Instead of purchasing the fingerprinting equipment, a local law enforcement agency may enter into an agreement with another law enforcement agency that possesses the equipment for the use of the equipment. The agreement may provide that the local law enforcement agency may use the fingerprinting equipment to identify people arrested by that agency in exchange for paying an agreed upon portion of the cost and maintenance of the fingerprinting equipment. If no agreement exists, it shall be the responsibility of the arresting officer to obtain fingerprints and answer for the failure to do so. T.C.A. § 39-17-420(g)(1). *See also* Op. Tenn. Atty. Gen. 01-088 (May 24, 2001).

Subject to the approval of the General Assembly, a portion of the funds derived from the additional privilege tax levied on all criminal cases instituted in this state as provided for in T.C.A. § 67-4-602(g) may be appropriated to the Tennessee Bureau of Investigation for the purchase, installation, maintenance, and line charges of electronic fingerprint imaging systems. T.C.A. § 8-4-115(f).

Telephone Call

Reference Number: CTAS-1352

Pursuant to state law, no person under arrest by any officer or private citizen shall be named in any book, ledger or any other record until such time that the person has successfully completed a telephone call to an attorney, relative, minister or any other person that the person shall choose, without undue delay. One hour shall constitute a reasonable time without undue delay. However, if the arrested person does not choose to make a telephone call, then the person shall be booked or docketed immediately. T.C.A. § 40-7-106(b).

Pursuant to state regulations, a telephone must be available within the receiving or security area at the time of booking. The detainee must be allowed to complete at least one telephone call to the person of his or her choice. Rules of the Tennessee Corrections Institute, Rule 1400-1-.14(4).

In *State v. Claybrook*, 736 S.W.2d 95 (Tenn. 1987), the Tennessee Supreme Court held that the failure to allow the defendant to make a telephone call as prescribed by T.C.A. § 40-7-106(b) did not render his statement to a law enforcement officer involuntary. The court stated that the failure to comply with the statute did not require that the defendant's statement be suppressed. "The failure to afford to a defendant the phone call required by this statute is but one factor to be considered in determining the voluntariness of the defendant's statement and whether the conduct of the officers has overcome the will of the accused. Automatic suppression of the statement is not called for." *Id.* at 103.

There is no constitutional right to make a telephone call upon arrest or completion of booking. *Cannon v. Montgomery County*, 1998 WL 354999 (E.D. Pa. 1998). *See also Dietzen v. Mork*, 101 F.3d 110 (Table) (7th Cir. 1996) (declining to hold that an arrestee has an absolute constitutional right to a telephone call); *State Bank of St. Charles v. Camic*, 712 F.2d 1140, 1145 n. 2 (7th Cir.) ("[T]here is no constitutional requirement that a phone call be permitted upon completion of booking formalities."), *cert. denied*, 464 U.S. 995 (1983); *Hodge v. Ruperto*, 739 F.Supp. 873, 876 (S.D. N.Y. 1990) (There is no constitutional requirement that a detainee be permitted a telephone call upon completion of booking formalities.). The right to make a telephone call occurs only when certain constitutional rights are implicated, for example the right to consult with counsel. *Dietzen*, 101 F.3d 110, *citing Tucker v. Randall*, 948 F.2d 388, 390-391 (7th Cir. 1991).

In *Harrill v. Blount County*, 55 F.3d 1123 (6th Cir. 1995), the plaintiff, an arrestee, brought a § 1983 action against the county and sheriff's deputies. The plaintiff argued that T.C.A. § 40-7-106(b) created a federal constitutional right under the 14th Amendment Due Process Clause and that the booking officer's refusal to allow her to call her father immediately after her arrest violated her federal rights. The Sixth Circuit Court of Appeals stated that this argument was in error. The court noted that a state statute cannot "create" a federal constitutional right. While some state statutes may establish liberty or property interests protected by the Due Process Clause, the court found that this statute creates neither a federally protected liberty or property interest. The court stated that the right to make a phone call immediately upon arrest is not a recognized property right, nor is it a traditional liberty interest recognized by federal law. The violation of a right created and recognized only under state law is not actionable under § 1983. *Id.* at 1125. The court further found that because T.C.A. § 40-7-106(b) does not set forth a federal right actionable under § 1983, it cannot be used to destroy the defendants' claim of qualified immunity. Thus, the court stated, the defendants did not violate the plaintiff's clearly established federal rights, and therefore they have qualified immunity from plaintiff's § 1983 claims. *Id.* at 1126. *But see Carlo v. City of Chino*, 105 F.3d 493, 495-500 (9th Cir. 1997) (holding that the California statute mandating a

post-booking telephone call created a liberty interest protected by the 14th Amendment of the United States Constitution).

Courts have ruled that persons making telephone calls from telephones in the booking area of a county jail do not have a reasonable expectation of privacy in making the telephone call. Accordingly, telephone calls made from the booking area may be monitored. *State v. Erwin*, 2001 WL 314340, *6 (Tenn. Crim. App. 2001)); *People v. Ross*, 2000 WL 33388690, *2-3 (Mich. App. 2000) (same).

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