County Technical Assistance Service
INSTITUTE for PUBLIC SERVICE

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Telephone Call

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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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).
