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Segregation of Sexes

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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Segregation of Sexes	3
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Pursuant to T.C.A. § 41-4-110, male and female prisoners, except husband and wife, cannot be kept in the same cell or room in the jail. There are no reported cases in Tennessee that address this section of the code. However, it is beyond controversy that male and female prisoners may lawfully be segregated within a prison system. "Gender-based prisoner segregation and segregation based upon prisoners' security levels are common and necessary practices." *Klinger v. Dept. of Corrections*, 107 F.3d 609, 615 (8th Cir. 1997). "Indeed, the physical differences between male and female inmates may require different regulation in order to promote safety and hygiene." *Ahkeen v. Parker*, 2000 WL 52771 (Tenn. Ct. App. 2000). Nevertheless, the Eighth Amendment does not require the separate placement of inmates based on sex. *Galvan v. Carothers*, 855 F.Supp. 285 (D. Alaska 1994) (The placement of a female inmate in an all-male prison wing did not constitute cruel and unusual punishment.); *Dimarco v. Wyoming Department of Corrections*, 300 F.Supp.2d 1183, 1192-1194 (D. Wyo. 2004) (The placement of an intersexual inmate, who was of alleged female gender but was anatomically situated as a male due to the presence of a penis, in segregated confinement for a period of 438 days, with concomitant severely limited privileges, solely because of the condition and status of ambiguous gender was not a violation of the Eighth Amendment prohibition against cruel and unusual punishment where the safety of the inmate and other inmates was secured by placing the inmate in administrative segregation, and the inmate was provided the basic necessities of food, shelter, clothing and medical treatment.); *Lucrecia v. Samples*, 1995 WL 630016 (N.D. Cal. 1995) (The transfer of a transsexual inmate to an all-male facility and her housing in an all-male cell did not violate the due process clause where the inmate failed to demonstrate the infringement of a liberty interest.).

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