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Employment of Guard

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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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In all cases where a defendant charged with the commission of a felony is committed to jail, either before or after trial, and the safety of the defendant or the defendant's safekeeping requires a guard, it is the duty of the sheriff to employ a sufficient guard to protect the defendant from violence and to prevent the defendant's escape or rescue. T.C.A. § 41-4-118.

While the United States Constitution "does not mandate comfortable prisons," neither does it permit inhumane ones. *Farmer v. Brennan*, 511 U.S. 825, 832, 114 S.Ct. 1970, 1976, 128 L.Ed.2d 811 (1994) quoting *Rhodes v. Chapman*, 452 U.S. 337, 349, 101 S.Ct. 2392, 2400, 69 L.Ed.2d 59 (1981). Under the Eighth Amendment's prohibition of "cruel and unusual punishments," prison officials must "take reasonable measures to guarantee the safety of the inmates." *Id.*, quoting *Hudson v. Palmer*, 468 U.S. 517, 526-527, 104 S.Ct. 3194, 3200, 82 L.Ed.2d 393 (1984). They "have a duty ... to protect prisoners from violence at the hands of other prisoners." *Id.* at 833, quoting *Cortes-Quinones v. Jimenez-Nettleship*, 842 F.2d 556, 558 (1st Cir.), cert. denied, 488 U.S. 823, 109 S.Ct. 68, 102 L.Ed.2d 45 (1988). "It is not, however, every injury suffered by one prisoner at the hands of another that translates into constitutional liability for prison officials responsible for the victim's safety." *Farmer* at 834. See *Clark v. Corrections Corp. of America*, 98 Fed.Appx. 413 (6th Cir 2004) (In the prison context, the Eighth Amendment imposes a duty on prison officials to take reasonable measures to guarantee the safety of inmates. "[D]eliberate indifference of a constitutional magnitude may occur when prison guards fail to protect one inmate from an attack by another.") (citations omitted); *Dellis v. Corrections Corp. of America*, 257 F.3d 508 (6th Cir. 2001) (Prison officials have a duty to protect prisoners from violence suffered at the hands of other prisoners.) (citations omitted).

In *Buckner v. Hollins*, 983 F.2d 119, 122-123 (8th Cir.1993), the Eighth Circuit Court of Appeals held that a prison official was not entitled to qualified immunity when he allowed fellow corrections officers to attack a prisoner and he possessed the only set of keys to the prisoner's holding cell. The court concluded the official could be found liable because he deliberately ignored a prisoner's serious injury and failed to protect the prisoner from a foreseeable attack or otherwise guarantee the prisoner's safety. The court concluded the officer had a duty to intervene. And in *McHenry v. Chadwick*, 896 F.2d 184, 188 (6th Cir. 1990), the Sixth Circuit Court of Appeals held that a prison official has "a duty to try and stop another officer who summarily punishes a person in the first officer's presence." Accordingly, a correctional officer who observes an unlawful beating may be held liable without actively participating in the unlawful beating. See also *Walker v. Norris*, 917 F.2d 1449 (6th Cir. 1990) (prison guard's failure to prevent inmate's stabbing by another inmate violated inmate's Eighth Amendment rights where the guards had the opportunity to prevent the stabbing but failed to do so and instead looked on while the inmate was attacked); *Roland v. Johnson*, 856 F.2d 764, 769-70 (6th Cir. 1988); *McGhee v. Foltz*, 852 F.2d 876, 880-81 (6th Cir. 1988).

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