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Convicted Prisoners

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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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Convicted Prisoners

Reference Number: CTAS-1392

Officials having responsibility for the custody and safekeeping of defendants may promulgate and enforce reasonable disciplinary rules and procedures requiring all able-bodied inmates to participate in work programs. Such rules and procedures may provide appropriate punishments for inmates who refuse to work, including, but not limited to, increasing the amount of time the defendant must serve in confinement or changing the conditions of the defendant's confinement, or both. Any such increase in the amount of time a defendant must serve for refusing to participate in a work program shall not exceed the sentence originally imposed by the court. T.C.A. § 40-35-317(b).

The legislature has clearly stated its intent to require able-bodied inmates to participate in work programs. Under T.C.A. § 40-35-317(b), officials in charge of county jails or workhouses may promulgate and enforce disciplinary rules requiring such work and punishing inmates refusing to work. Op. Tenn. Atty. Gen. No. 83-363 (August 15, 1983).

All those convicted of a felony whose imprisonment has been by the jury commuted to imprisonment in the county jail shall be compelled to work out the term of imprisonment at hard labor in the county workhouse in the county where convicted. T.C.A. § 40-23-105.

"The Thirteenth Amendment permits involuntary servitude without pay as punishment after conviction of an offense, even when the prisoner is not explicitly sentenced to hard labor." *Smith v. Dretke*, 2005 WL 3420079 (5th Cir. 2005) (holding the plaintiff failed to show that the defendants violated his rights by making him hold a prison job). See also *Walton v. Texas Dept. of Criminal Justice, Institutional Div.*, 146 Fed.Appx. 717, 718 (5th Cir. 2005) ("Compelling an inmate to work without pay does not violate the Constitution even if the inmate is not specifically sentenced to hard labor. The State maintains discretion to determine whether and under what circumstances inmates will be paid for their labor."); *Ali v. Johnson*, 259 F.3d 317, 317-318 (5th Cir. 2001) (This appeal leads us to reiterate that inmates sentenced to incarceration cannot state a viable 13th Amendment claim if the prison system requires them to work.); *Vanskike v. Peters*, 974 F.2d 806, 809 (7th Cir. 1992) ("The Thirteenth Amendment excludes convicted criminals from the prohibition of involuntary servitude, so prisoners may be required to work."), *cert. denied*, 507 U.S. 928, 113 S.Ct. 1303, 122 L.Ed.2d 692 (1993); *Mikeska v. Collins*, 900 F.2d 833, 837 (5th Cir. 1990) (Forcing inmates to work without pay, and compelling them to work on private property without pay, does not violate the 13th Amendment.); *Murray v. Mississippi Department of Corrections*, 911 F.2d 1167 (5th Cir. 1990) (same); *Moss v. Arbogast*, 888 F.2d 1392, *1 (6th Cir. 1989) (Table) (There is no 13th Amendment violation of the prohibition against involuntary servitude when a prisoner is forced to work without pay.) (citation omitted); *Jones v. Brown*, 793 F.2d 1292, *2 (6th Cir. 1986) (Table) ("However, compelling prisoners to work does not violate the thirteenth amendment.") (citation omitted); *Newell v. Davis*, 563 F.2d 123, 124 (4th Cir. 1977) (There is no 13th Amendment violation of prohibition against involuntary servitude when a prisoner is forced to work without pay), *cert. denied*, 435 U.S. 907, 98 S.Ct. 1455, 55 L.Ed.2d 498 (1978); *Draper v. Rhay*, 315 F.2d 193, 197 (9th Cir.) ("When a person is duly tried, convicted and sentenced in accordance with the law, no issue of peonage or involuntary servitude arises."), *cert. denied*, 375 U.S. 915, 84 S.Ct. 214, 11 L.Ed.2d 153 (1963); *Borror v. White*, 377 F.Supp. 181, 183 (W.D. Va. 1974) (There exists no constitutional right on the part of a state prisoner to be paid for his labor.); *McLaughlin v. Royster*, 346 F.Supp. 297, 311 (E.D. Va. 1972) ("Prisoners validly convicted may be forced to perform work, whether or not compensated and whether or not related to purposes of rehabilitation, so long as it does not amount to cruel and unusual punishment."). *But see Anderson v. Morgan*, 898 F.2d 144 (Table) (4th Cir. 1990) (Forcing an inmate to perform work that inures solely to an individual's private benefit, as opposed to the public benefit, is not as plainly allowed under the 13th Amendment's exception for work imposed as punishment for crime.), *citing Matthews v. Reynolds*, 405 F.Supp. 50 (W.D. Va. 1975).

"Compelling prison inmates to work does not contravene the Thirteenth Amendment. However there are circumstances in which prison work requirements can constitute cruel and unusual punishment. [F]or prison officials knowingly to compel convicts to perform physical labor which is beyond their strength, or which constitutes a danger to their lives or health, or which is unduly painful constitutes an infliction of cruel and unusual punishment prohibited by the Eighth Amendment to the Constitution of the United States as included in the 14th Amendment." *Ray v. Mabry*, 556 F.2d 881, 882 (8th Cir. 1977) (per curiam) (citations omitted). See also *Berry v. Bunnell*, 39 F.3d 1056 (9th Cir. 1994) (The 13th Amendment does not apply where prisoners are required to work in accordance with prison rules. And the Eighth Amendment does not apply unless prisoners are compelled to perform physical labor that is beyond their strength, endangers their lives or health, or causes undue pain.); *Madewell v. Roberts*, 909 F.2d

1203, 1207 (8th Cir.1990) ("Cruel and unusual punishment encompasses (1) deliberate indifference to serious medical needs, and (2) compelled labor beyond an inmate's physical capacity, that is, labor which is (a) beyond the inmate's strength, (b) dangerous to his or her life or health, or (c) unduly painful.").

Conversely, inmates have no constitutional right to work or to be paid for work. And, while work activity is preferable to idleness, the conferral of a job upon an inmate is a matter within the sound discretion of jail administrators. Finally, inmates have no constitutional right to be paid for idle time. *Kennibrew v. Russell*, 578 F.Supp. 164, 169 (E.D. Tenn. 1983), citing *Manning v. Lockhart*, 623 F.2d 536, 538 (8th Cir.1980) and *Inmates, Washington County Jail v. England*, 516 F.Supp. 132, 141 (E.D. Tenn. 1980). See also *Carter v. Tucker*, 69 Fed.Appx. 678, 680 (6th Cir. 2003) ("A prisoner has no constitutional right to prison employment or a particular prison job. Further, as the Constitution and federal law do not create a property right for inmates in a job, they likewise do not create a property right to wages for work performed by inmates."); *Sotherland v. Myers*, 41 Fed.Appx. 752, 753 (6th Cir. 2002) (Prisoners do not have a constitutionally protected right to a prison job.); *Clegg v. Bell*, 3 Fed.Appx. 398, 399 (6th Cir. 2001) (State prisoners possess no right to a specific prison job.); *Newsom v. Norris*, 888 F.2d 371, 374 (6th Cir. 1989).

"[T]he Constitution does not create a property or liberty interest in prison employment [and] any such interest must be created by state law by 'language of an unmistakably mandatory character.'" *Miller v. Campbell*, 108 F.Supp.2d 960, 967 (W.D. Tenn. 2000), citing *Newsom v. Norris*, 888 F.2d 371, 374 (6th Cir. 1989) (citations omitted) (quoting *Ingram v. Papalia*, 804 F.2d 595, 596-597 (10th Cir. 1986)); *Watts v. Morgan*, 572 F.Supp. 1385, 1388 (N.D. Ill. 1983). "As the Constitution and federal law do not create a property right for inmates in a job, they likewise do not create a property right to wages for work performed by inmates." *Id.*, (citing cases). "Rather, prison administrators may assign inmates jobs and wages at their discretion." *Id.*, (citations omitted).

In *Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999), the Third Circuit Court of Appeals found that the 13th Amendment does not preclude prison authorities from compelling a prisoner to work during the pendency of his or her appeal from a conviction. Likewise, other circuits have held that a person sentenced to serve a term of imprisonment can be required to work during the time his or her appeal is pending before a reviewing court. See *Stiltner v. Rhay*, 322 F.2d 314, 315 (9th Cir. 1963) ("There is no federally protected right of a state prisoner not to work while imprisoned after conviction, even though that conviction is being appealed."). See also *Plaisance v. Phelps*, 845 F.2d 107, 108 (5th Cir. 1988) ("The fact that appellant is appealing does not require the district court to assume that his conviction was other than duly obtained."); *Omasta v. Wainwright*, 696 F.2d 1304, 1305 (11th Cir. 1983) (holding that "where a prisoner is incarcerated pursuant to a presumptively valid judgment ... the Thirteenth Amendment's prohibition against involuntary servitude is not implicated even though the conviction may be subsequently reversed").

Pursuant to T.C.A. § 41-2-147(a), any sheriff having responsibility for the custody of any person sentenced to a local jail pursuant to the provisions of T.C.A. § 40-35-302 (misdemeanor sentence), T.C.A. § 40-35-306 (split confinement), T.C.A. § 40-35-307 (probation coupled with periodic confinement) or T.C.A. § 40-35-314 (felon confined in local jail) shall, when such person has become eligible for work-related programs pursuant to such sections, be authorized to permit that person to perform any of the duties set out in T.C.A. § 41-2-123 or T.C.A. § 41-2-146.

Trustee status for sexual offenders. In accordance with TCA 41-51-104(a and b), no person who has been convicted of an offense that will require the person to register as a sexual offender pursuant to the provisions of title 40, chapter 39, part 2, and who is being housed in a county or municipal jail or workhouse, shall be eligible for, nor shall such person be placed on, trusty status. The provisions of subsection (a) are applicable regardless of whether the person is: (1) Sentenced to the department of correction but is serving the sentence in a county or municipal jail or workhouse pursuant to contract or is sentenced to confinement in a county or municipal jail or workhouse; or (2) Sentenced to the department of correction but is being housed in a county or municipal jail or workhouse while awaiting transfer to the department.

Road Work

Reference Number: CTAS-1393

When any prisoner has been sentenced to imprisonment in a county jail for a period not to exceed 11 months and 29 days, the sheriff is authorized to permit the prisoner to work on the county roads or within municipalities within the county on roads, parks, public property, public easements or alongside public waterways up to a maximum of 50 feet from the shoreline .T.C.A. § 41-2-123(b)(1).

It is the duty of such prisoners to pick up and collect litter, trash and other miscellaneous items that are unsightly to the public and that have accumulated on the county roads. All such prisoners participating in this work program shall be under the supervision of the county sheriff or the sheriff's representative. Prisoners used by a municipality shall be supervised by representatives of the municipality. The prisoners may be used by municipalities for such duties or manual labor as the municipality deems appropriate. T.C.A. § 41-2-123(b)(2).

Neither the state nor any municipality, county or political subdivision thereof, nor any employee or officer thereof, shall be liable to any person for the acts of any prisoner while on a work detail, while being transported to or from a work detail, while attempting an escape from a work detail, or after escape from a work detail. T.C.A. § 41-2-123(d)(1).

Neither the state nor any municipality, county, or political subdivision thereof, nor any employee or officer thereof, shall be liable to any prisoner or prisoner's family for death or injuries received while on a work detail, other than for medical treatment for the injury during the period of the prisoner's confinement. T.C.A. § 41-2-123(d)(2).

Jail Maintenance Work

Reference Number: CTAS-1394

When any prisoner has been sentenced to imprisonment in a county jail or is serving time in the county jail pursuant to an agreement with the Department of Correction, the sheriff is authorized to permit the prisoner to participate in work programs. T.C.A. § 41-2-146(a).

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