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# DUI Offenders

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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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# DUI Offenders

Reference Number: CTAS-1454

Notwithstanding the provisions of T.C.A. § 41-2-128, T.C.A. § 55-10-403(a)(1) or T.C.A. § 55-50-504(a)(2) to the contrary, the judge may sentence persons convicted of a second violation of T.C.A. § 55-10-401 (driving under the influence of an intoxicant or drug) or T.C.A. § 55-50-504(a)(2) (driving while license cancelled, suspended or revoked), to the work release program established pursuant to T.C.A. § 41-2-128 if, prior to doing so, the following conditions have been met:

1. An investigative report is completed and considered by the judge, with such report confirming the defendant's employment and the employer's willingness to participate in the work release program, including, but not limited to, reports to monitor the defendant's attendance, performance, and response to treatment;
2. A plan acceptable to the judge is established to provide for monitoring the defendant's whereabouts while at or on the defendant's job; and
3. The defendant agrees to defray, to the best of the defendant's ability, the cost of incarceration and treatment.

T.C.A. § 41-2-128(c)(1).

No person convicted of a second violation of T.C.A. § 55-10-401 (driving under the influence of an intoxicant or drug) that results in personal injury to, or the death of, another may be sentenced to a work release program. T.C.A. § 41-2-128(c)(2).

As a condition of participation in a work release program, the defendant must agree to be screened, at least daily, for the purpose of determining whether the person has consumed alcohol or illegal drugs. T.C.A. § 41-2-128(c)(3).

A defendant permitted to participate in a work release program pursuant to T.C.A. § 41-2-128 shall not be permitted to operate a motor vehicle while participating in the program and shall at all times remain in actual incarceration as provided by law when not actually at his or her place of employment or while being transported to or from his or her place of employment. T.C.A. § 41-2-128(c)(4).

At the time of sentencing, the judge shall cause the sentencing order to reflect the defendant's cost of incarceration and treatment and shall affix to the order, taking into consideration the defendant's ability to pay, the time and manner in which the costs are to be paid. The court shall enter the necessary orders requiring that the costs of incarceration and treatment be paid or secured including, but not limited to, orders of probation, which include as a condition thereof the payment of costs covered by T.C.A. § 41-2-128(c)(5). T.C.A. § 41-2-128(c)(5)(A).

When a defendant alleges that he or she is unable to pay pursuant to the terms set out by the order, the defendant may petition the court for modification as to the terms of payment. When it is determined that the defendant is unable to pay the entirety of the costs covered by T.C.A. § 41-2-128(c)(5) in the time and manner imposed by the court, any costs imposed against the defendant shall be pursuant to a schedule promulgated by the chief administrative officer of the county, or such officer's designee, with the schedule to be based upon the defendant's ability to pay the same. T.C.A. § 41-2-128(c)(5)(B). In promulgating the schedule governing costs and the amount to be paid by the defendant, the chief administrative officer of the county, or such officer's designee, shall consider the defendant's ability to pay and the disbursement schedule set forth in T.C.A. § 41-2-129, and shall incorporate payments ordered herein into the schedule. T.C.A. § 41-2-128(c)(5)(C). In no event shall a person be denied access to this program or be denied discharge from incarceration as a result of that person's inability to pay. T.C.A. § 41-2-128(c)(5)(D).

A county that permits a person convicted of a second offense violation of T.C.A. § 55-10-401 to be sentenced to a work release program must maintain records sufficient to allow an annual determination of whether such participation in any way diminishes the effectiveness of T.C.A. § 55-10-402. T.C.A. § 41-2-128(c)(6).

On an annual basis, the county legislative body must conduct a public hearing to examine, monitor and evaluate the work release program operating under the authority of T.C.A. § 41-2-128(c) to ensure that all requirements of the law are being complied with and that the program is being operated in accordance with the law. As part of the public hearing, the county legislative body must discuss the program's effectiveness and compliance and hear the opinions of the public concerning the program. The county legislative body must give notice of the public hearing at least 30 days prior to the meeting. T.C.A. § 41-2-128(c)(7)(A). If the county legislative body finds through its public hearing or any other information the body may obtain that the work release program is being operated in compliance with the law, it shall

so certify the program. Such certification shall be transmitted to all judges having jurisdiction over the offense of driving under the influence of an intoxicant in the county. T.C.A. § 41-2-128(c)(7)(B). If the county legislative body finds that a work release program is not being operated in compliance with the law, it shall not certify the program. Such failure of certification shall be transmitted to all judges having jurisdiction over the offense of driving under the influence of an intoxicant in the county. T.C.A. § 41-2-128(c)(7)(C).

## DUI Convicts Performing Litter Removal

Reference Number: CTAS-1467

After service of at least the minimum sentence day for day, the judge has the discretion to require an individual convicted of a violation of 55-10-401 to remove litter from the state highway system, public playgrounds, public parks or other appropriate locations for any prescribed period or to work in a recycling center or other appropriate location for any prescribed period of time in lieu of or in addition to any of the penalties otherwise provided in 55-10-402; provided, that any person sentenced to remove litter from the state highway system, public playgrounds, public parks or other appropriate locations or to work in a recycling center shall be allowed to do so at a time other than the person's regular hours of employment. T.C.A. 55-10-402(d)(1).

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