



County Technical Assistance Service  
INSTITUTE *for* PUBLIC SERVICE

November 22, 2024

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# Law Enforcement

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Dear Reader:

The following document was created from the CTAS website ([ctas.tennessee.edu](http://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.

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# Law Enforcement

Reference Number: CTAS-183

The Tennessee Constitution does not prescribe the duties of the office of sheriff even though sheriffs are constitutional officers. The office of sheriff carries all the common-law powers and duties except as modified by statute. *State ex rel. Thompson v. Reichman*, 188 S.W. 225, 227, *reh'g denied*, 188 S.W. 597 (Tenn. 1916). As noted, the sheriff's duties were originally defined by the common law but are now largely prescribed by statute. *George v. Harlan*, 1998 WL 668637, \*3 (Tenn. 1998) *citing Metropolitan Gov't of Nashville & Davidson County v. Poe*, 383 S.W.2d 265, 273 (1964). Over time, the sheriff's responsibilities have expanded from being primarily ministerial to include peacekeeping functions. Today, the sheriff's statutory duties encompass his common law duties and can be grouped into four broad categories: (1) keeping the peace, (2) attending the courts, (3) serving the process and orders of the courts, and (4) operating the jail. *See George v. Harlan*, 1998 WL 668637, \*3 (Tenn. 1998). In counties with a metropolitan form of government, some of these functions may be assigned by the charter to other officials.

## Keeping the Peace

The sheriff "is the commander in chief of the law forces of the county. All judicial and ministerial officers of justice and all city officials are required to aid him, and the male population of his county is subject to his command 'in the prevention and suppression,' not only of violent breaches of the peace, but of all public offenses." *State ex rel. Thompson v. Reichman*, 188 S.W. 225, 227-228 (Tenn. 1916); T.C.A. § 38-3-102. "The duties and powers of a sheriff within the limits of an incorporated city are precisely the same that they are in the remainder of the county. The law draws no distinction." *Reichman* at 228. Op. Tenn. Att'y Gen. 08-134 (August 14, 2008).

The sheriff is the conservator of the peace, and it is the sheriff's duty to suppress all affrays, riots, routs, unlawful assemblies, insurrections, or other breaches of the peace. In addition, it is the duty of the sheriff to ferret out, detect, and prevent crime, to secure evidence of crimes; and to apprehend and arrest criminals. The sheriff is also charged with patrolling the roads of the county. The sheriff must furnish the necessary deputies to carry out these duties. T.C.A. §§ 8-8-213, 38-3-102, and 38-3-108.

## Attending the Courts

The sheriff is charged with the custody and security of the courthouse unless the county legislative body assigns this duty to someone else. It is the duty of the sheriff to prevent trespasses, exclude intruders, and keep the courthouse and the courthouse grounds in order, reporting from time to time the repairs required and the expense, to the county legislative body. Further, it is the duty of the sheriff to see that the state and national flags are properly displayed in each courtroom while the county legislative body is in session. T.C.A. § 5-7-108. *See also Ferriss v. Williamson*, 67 Tenn. 424 (1874); *Driver v. Thompson*, 358 S.W.2d 477 (Tenn. 1962).

Except in Davidson County, it is the duty of the sheriff to attend upon all the courts held in the county when in session, cause the courthouse or courtroom to be kept in order for the accommodation of the courts, and obey the lawful orders and directions of the court. T.C.A. § 8-8-201(a)(2). And, unless otherwise provided, it is the duty of the sheriff in every county to provide sufficient bailiffs to serve the general sessions courts. T.C.A. § 16-15-715. Furthermore, it is the duty of the sheriff to furnish the necessary deputies and special deputies to attend and dispense with the business of the juvenile courts. T.C.A. § 37-1-213. *See Op. Tenn. Atty. Gen. No. 00-009* (January 19, 2000) (Hamilton County).

## Serving the Process and Orders of the Courts

It is the duty of the sheriff to execute and return, according to law, the process and orders of the courts of record of this state, and of officers of competent authority, with due diligence, when delivered to the sheriff for that purpose. T.C.A. § 8-8-201(a)(1).

It is the duty of the sheriff to execute within the county all writs and other process legally issued and directed to the sheriff and make due return thereof, either personally or by a lawful deputy or, in civil lawsuits only, by a lawfully appointed civil process server. T.C.A. § 8-8-201(a)(5)(A). The provisions of T.C.A. § 8-8-201(a)(5)(A) relative to civil process servers do not apply in Hamilton, McMinn, Sullivan and Sumner counties. T.C.A. § 8-8-201(a)(5)(B).

It is the duty of the sheriff to levy every writ of execution upon a defendant's property, first on the defendant's goods and chattels if there are any and upon the defendant's lands in order to satisfy the plaintiff's judgment, and upon a surety's property in the proper case. T.C.A. § 8-8-201(a)(13), (14), and (15). For additional information, see Service of Civil Process.

### Operating the Jail

Tennessee case law makes it clear that the sheriff, by virtue of his office, is the jailor and is entitled to the custody of the jail. *Felts v. City of Memphis*, 39 Tenn. 650 (1859); *State ex rel. Bolt v. Drummond*, 128 Tenn. 271, 160 S.W. 1082 (1913). See also *State v. Cummins*, 42 S.W. 880 (Tenn. 1897). It is the duty of the sheriff to take charge and custody of the jail of the sheriff's county and of the prisoners therein. The sheriff is charged with receiving those persons lawfully committed to the jail and with keeping them personally or by deputies or jailer until they are lawfully discharged. It is the duty of the sheriff to be constantly at the jail or have someone there with the keys to liberate the prisoners in case of fire. T.C.A. § 8-8-201(a)(3). For additional information, see Jail Administration.

## Additional Statutory Duties

Reference Number: CTAS-1249

*Tennessee Code Annotated* section 8-8-201(b)(1) sets forth a list of statutes that include additional statutory duties of the office of sheriff. In addition, T.C.A. § 8-8-201(b)(2) charges the sheriff with performing such other duties as are, or may be, imposed by law or custom. The duties listed in T.C.A. § 8-8-201 are not *ex officio* duties. See *George v. Harlan*, 1998 WL 668637, \*2 (Tenn. 1998) (*ex officio* duties are defined as nonstatutory duties and *ex officio* services are defined as those services not required by statute). Some of the duties listed are applicable to the municipal chief of police as well as the sheriff.

## Courtroom Security Committee

Reference Number: CTAS-1250

Pursuant to T.C.A. § 16-2-505(d), each county must establish a court security committee. In addition to the sheriff, the committee is to be composed of the county mayor, the district attorney general, the presiding judge of the judicial district, and a court clerk from the county designated by the presiding judge. The committee is charged with examining the space and facilities to determine the security needs of the courtrooms in the county in order to provide safe and secure facilities.

Upon completing the examination of security needs, the administrative office of the courts distributes to the court security committee a copy of the minimum security standards as adopted by the Tennessee Judicial Conference. The committee must review and consider these standards in determining court security needs. No later than May 15 of each year, the court security committee must report its findings to the county legislative body and the administrative office of the courts. The county legislative body is required to review and consider the recommendations of the court security committee in preparing the budget. Any recommendation by the court security committee requiring county expenditures is subject to approval of the county legislative body. No later than December 1 of each year, the county legislative body is required to report to the administrative office of the courts any action taken to meet the security needs. No later than January 15 of each year, the administrative office of the courts is required to report to the General Assembly on the compliance by each county government with the security needs established by the court security committee.

## Disposal of Physical Evidence

Reference Number: CTAS-1251

Physical evidence other than documents and firearms used in judicial proceedings and in the custody of a court in cases where all appeals or potential appeals of a judgment have ended or when the case has been settled, dismissed or otherwise brought to a conclusion, may be disposed of following the procedure set forth in T.C.A. § 18-1-206 (except in Shelby County). Once the court has entered an order to dispose of the evidence, the clerk delivers the order and the items approved for disposition to the custody of the sheriff or of the chief of police in counties having a metropolitan form of government for disposition in accordance with the order of the court.

It is the duty of the sheriff to deliver the physical evidence to the owner(s) or to organization(s) when so ordered, personally or by return receipt mail. When ordered to sell physical evidence, the sheriff must advertise the sale(s) in a newspaper of general circulation for not fewer than three editions and not less than 30 days prior to the sale(s). The sheriff must conduct a public sale and maintain a record of each sale and the amount received. The proceeds of the sale(s) are deposited in the county general fund. When ordered to destroy physical evidence, it is the duty of the sheriff to completely destroy each item by cutting, crushing, burning or melting. The sheriff must then file an affidavit with the clerk of the court ordering the destruction showing a description of each item, the method of destruction, the date and place of destruction, and the names and addresses of all witnesses. T.C.A. § 18-1-206(a)(7).

Controlled substances and drug paraphernalia in the custody and possession of the court clerk by virtue of having been held as evidence or exhibits in any criminal prosecution where all appeals or potential appeals of a judgment have ended, or when the case has been dismissed or otherwise brought to a conclusion, are disposed of by the court clerk as set forth in T.C.A. § 53-11-451(k).

## Disposal of Unlawful Telecommunications Devices

Reference Number: CTAS-1252

It is the duty of the sheriff, upon order of the court, to destroy as contraband or to otherwise lawfully dispose of any unlawful telecommunication devices, plans, instructions, publication, or other related items used in violation of T.C.A. § 39-14-149. T.C.A. § 39-14-149(b).

## Disposal of Alcoholic Beverages

Reference Number: CTAS-1253

It is the duty of the sheriff, or other officer, upon the conviction of any person for a violation of T.C.A. § 39-17-713, to destroy or otherwise dispose of all alcoholic beverages according to law. T.C.A. § 39-17-714. See Intoxicating Liquors.

## Disposition of Confiscated Weapons

Reference Number: CTAS-1254

It is the duty of the sheriff and the sheriff's deputies to confiscate any weapon that is possessed, used or sold in violation of the law. With few exceptions, such confiscated weapon shall be declared to be contraband by a court of record exercising criminal jurisdiction. T.C.A. § 39-17-1317(a)(1). The sheriff may petition the court for permission to dispose of the weapon in accordance with T.C.A. § 39-17-1317(a)(2).

Any weapon declared contraband, secured by a law enforcement officer or agency after being abandoned, voluntarily surrendered to a law enforcement officer or agency, or obtained by a law enforcement agency, including through a buyback program, shall be, pursuant to a written order of the court:

- (1) Sold in a public sale;
- (2) Used for legitimate law enforcement purposes, at the discretion of the court; or
- (3) Relinquished in accordance with T.C.A. § 39-17-1317(I).

T.C.A. § 39-17-1317(b).

If the weapon was confiscated, or obtained after being abandoned and secured, after being voluntarily surrendered, or through a buyback program, and if the court orders the weapon to be sold, then:

- (1) It shall be sold at a public auction not later than six months from the date of the court order. The sale shall be conducted by the sheriff of the county in which it was seized or obtained;
- (2) The proceeds from the sale shall be deposited in the county general fund and allocated solely for law enforcement purposes;
- (3) The sale shall be advertised:
  - (A) In a daily or weekly newspaper circulated within the county. The advertisement shall run for not less than three editions and not less than thirty days prior to the sale; or
  - (B) By posting the sale on a website maintained by the state or a political subdivision of the state not less than thirty days prior to the sale; and
- (4) If required by federal or state law, then the sale can be conducted under contract with a licensed firearm dealer, whose commission shall not exceed twenty percent of the gross sales price. Such dealer cannot not hold any elective or appointed position within the federal, state, or local government in this state during any stage of the sales contract.

T.C.A. § 39-17-1317(c).

If the weapon is sold, then the sheriff shall file an affidavit with the court issuing the sale order. The affidavit shall:

- (1) Be filed within thirty days after the sale;
- (2) Identify the weapon, including any serial number, and shall state the time, date, and circumstances of the sale; and
- (3) List the name and address of the purchaser and the price paid for the weapon.

T.C.A. § 39-17-1317(f).

If the court orders the weapon to be retained and used for legitimate law enforcement purposes, then:

- (1) Title to the weapon shall be placed in the law enforcement agency retaining the weapon; and
- (2) When the weapon is no longer needed for legitimate law enforcement purposes, it shall be sold in accordance with T.C.A. § 39-17-1317.

T.C.A. § 39-17-1317(e).

A weapon that may be evidence in an official proceeding shall be retained or otherwise preserved in accordance with the rules or practices regulating the preservation of evidence. The weapon shall be sold or retained for legitimate law enforcement purposes not less than sixty days nor more than one hundred eighty days after the last legal proceeding involving the weapon; provided, that the requirements of T.C.A. § 39-17-1317(g)(2) have been met. T.C.A. § 39-17-1317(g)(1).

A law enforcement agency possessing a weapon declared contraband, retained as evidence in an official proceeding, secured after being abandoned, or surrendered by someone other than the owner shall use best efforts to determine whether the weapon has been lost by or stolen or borrowed from an innocent owner, and if so, the agency shall return the weapon to the owner, if ascertainable, unless that person is ineligible to possess, receive, or purchase such weapon under state or federal law. T.C.A. § 39-17-1317(g)(2).

No weapon seized by the sheriff's office shall be used for law enforcement purposes, sold, or destroyed, except in accordance with T.C.A. § 39-17-1317. And, no weapon seized by the sheriff's office shall be used for any personal use. T.C.A. § 39-17-1317(h)(1) & (2).

If the sheriff certifies to the court that a weapon is inoperable or unsafe, then the court shall order the weapon:

- (1) Destroyed or recycled; or
- (2) Transferred to a museum or historical society that displays such items to the public and is lawfully eligible to receive the weapon.

T.C.A. § 39-17-1317(i).

The sheriff may petition the criminal court or the court in the sheriff's county having criminal jurisdiction for permission to exchange firearms that have previously been properly titled, as specified by T.C.A. § 39-17-1317, to the sheriff's office, for other firearms, ammunition, body armor, or equipment suitable for use for legitimate law enforcement purposes by sheriff's office. T.C.A. § 39-17-1317(l)(1).

The exchange of firearms for the specified items used for legitimate law enforcement purposes is permitted only between the sheriff's office and a licensed and qualified law enforcement firearms dealer. T.C.A. § 39-17-1317(l)(2).

No firearm obtained by a law enforcement agency through a buyback program shall be eligible to be exchanged. T.C.A. § 39-17-1317(l)(3).

## Disposition of Conveyance Used in Robbery or Felony Theft

Reference Number: CTAS-1255

Once a conveyance, including a vehicle, aircraft or vessel that was used to transport, conceal or store money or goods that were the subject of a robbery offense under Title 39, Chapter 13, Part 4, or felony theft under Title 39, Chapter 14, Part 1, has been forfeited under Title 40, Chapter 33, Part 1, it is the duty of the sheriff to remove it for disposition in accordance with the law. T.C.A. § 40-33-105.

At the direction of the court having jurisdiction over the property, all seized conveyances are required to be sold at a public sale by the sheriff in the manner provided for by law for judicial sales in civil cases. However, any vehicle seized by the sheriff and forfeited under the provisions of Title 40, Chapter 33, Part 1, may, at the direction of the court having jurisdiction over the property, be retained by the sheriff's office and used for purposes of law enforcement provided that any liens filed against the vehicle are satisfied by the sheriff's office. Proceeds that inure to the county under the provisions of Title 40, Chapter 33, Part 1, shall be earmarked and used exclusively by the sheriff's office for law enforcement purposes. T.C.A. § 40-33-107(2). *See also* T.C.A. § 40-33-110.

## Disposition of Controlled Substances and Related Property

Reference Number: CTAS-1256

Once property has been forfeited under Title 39, Chapter 17, Part 4, or Title 53, Chapter 11, Parts 3 and 4, it is the duty of the sheriff to remove it for disposition in accordance with the law. T.C.A. § 53-11-451(e).

Regardless of any other method of disposition of the property, the sheriff may, with the permission of the court and under such terms and conditions as are approved by the court, use the property taken or detained in the drug enforcement program of the county. In addition, with the approval of the court having jurisdiction over the property, the sheriff may sell the property and use the proceeds for the drug enforcement program of the county. T.C.A. § 53-11-451(d)(4). If goods are seized by a combination of the Tennessee Bureau of Investigation and the sheriff's office, the court ordering their disposal shall determine the allocation of proceeds upon disposition of the goods. In all other cases, fines, forfeitures, and goods and their proceeds shall be disposed of as otherwise provided by law. T.C.A. § 39-17-420(a)(1).

Pursuant to T.C.A. §§ 39-17-420(a)(1) and 40-33-211(a), all fines and forfeitures of appearance bonds received because of a violation of any provision of Title 39, Chapter 17, Part 4, that are specifically set forth therein, that resulted from an arrest made by the sheriff's office and the proceeds of all goods seized by the sheriff and forfeited under the provisions of T.C.A. § 53-11-451 and disposed of by the sheriff shall be paid to the county trustee and shall be accounted for in a special revenue fund. Note that pursuant to T.C.A. § 39-17-428(c)(1), only 50 percent of the fine collected pursuant to T.C.A. § 39-17-428(b) is allocated to the special revenue fund. The remaining 50 percent is paid to the county general fund. All financial activities related to funds received under Title 39, Chapter 17, Part 4, must be accounted for in the special revenue fund. T.C.A. §§ 39-17-420(a)(1) and 53-11-415(a).

Moneys in the special revenue fund may be used only for the local drug enforcement program, local drug education program, local drug treatment program, and nonrecurring general law enforcement expenditures. T.C.A. §§ 39-17-420(a)(1) and 39-17-428(c)(2). The attorney general has opined that these funds may be used for private drug education and treatment programs in addition to county drug education and treatment programs. *Op. Tenn. Atty. Gen. 97-125 (September 2, 1997)*. Funds derived from drug seizures, confiscations and sales may not be used to supplement the salaries of any public employee or law enforcement officer. T.C.A. § 40-33-211(b). However, the attorney general has opined that T.C.A. §§ 39-17-420 and 53-11-451 authorize the sheriff to use funds obtained from fines and appearance bond forfeitures and proceeds derived from the sale of property seized and forfeited in connection with illegal drug activities to pay the salaries of staff personnel who are employed in drug enforcement, education and treatment programs and only for work performed for such programs. *Op. Tenn. Atty. Gen. 99-202 (October 6, 1999)*.

Note: All fines and forfeitures of appearance bonds received from the violation of the provisions of Title 39, Chapter 17, Part 4, and which are specifically set forth therein, the proceeds of goods seized and forfeited under the provisions of T.C.A. § 53-11-451 and disposed of according to law that arise from the activities of a judicial district drug task force are paid to an expendable trust fund maintained by the county mayor in a county designated by the district attorney general and can be used only in a drug enforcement or drug education program of the district as directed by the board of directors of the judicial district drug task force. All requests for disbursement from the expendable trust fund maintained by the county mayor for confidential purposes must be by written request signed by the drug task force director



and the district attorney general. T.C.A. §§ 39-17-420(c) and 40-33-211(a).

Cash transactions related to undercover investigative operations of the county drug enforcement program must be administered in compliance with procedures established by the comptroller of the treasury. T.C.A. § 39-17-420(a)(1). The comptroller of the treasury and the Department of Finance and Administration, in consultation with the Tennessee Bureau of Investigation, the Tennessee Sheriffs' Association and the Tennessee Association of Chiefs of Police, were required to develop procedures and guidelines for handling cash transactions related to undercover investigative operations of county or municipal drug enforcement programs. These procedures and guidelines are applicable to the disbursement of proceeds from the drug enforcement program. T.C.A. § 39-17-420(e).

The sheriff is required to recommend a budget for the special revenue fund, to be approved by the county legislative body. T.C.A. § 39-17-420(a)(2). Upon the demand of the sheriff, the county trustee must pay to the sheriff's office the funds demanded for use in cash transactions related to undercover investigative drug enforcement operations. T.C.A. § 53-11-415(a). Expenditures from the special revenue fund are subject to the availability of funds and budgetary appropriations for the expenditure. T.C.A. §§ 39-17-420(a)(2) and 53-11-415(a). Any purchase made with moneys from the fund must be made in accordance with all existing purchasing laws applicable to the particular county, including private acts, that establish purchasing provisions or requirements for the county. T.C.A. §§ 39-17-420(a)(2) and 40-33-211(b). Special rules apply to Davidson County. See T.C.A. §§ 39-17-420(a)(3) and (b) and 53-11-415(b).

The sheriff is accountable to the county legislative body for the proper disposition of the proceeds of goods seized and forfeited under the provisions of T.C.A. § 53-11-451, and for the fines imposed by T.C.A. § 39-17-428. An annual audited report of these funds must be submitted by the sheriff to the county legislative body. In years when the Office of the Comptroller of the Treasury conducts an audit, it shall satisfy this requirement. If no audit is conducted by the comptroller, then an audit must be performed by a certified public accountant in order to satisfy this requirement. T.C.A. § 39-17-429.

Pursuant to T.C.A. § 39-17-420(f), if the sheriff's office receives proceeds from fines, forfeitures, seizures or confiscations under Title 39, Chapter 17, Part 4, or Title 53, Chapter 11, the sheriff may set aside a sum from such proceeds to purchase supplies and other items to operate and promote the DARE program, created by Title 49, Chapter 1, Part 4, or any other drug abuse prevention program conducted in the school system or systems within the county served by the sheriff's office. The local school board must approve the program before the program may become eligible to receive funds under T.C.A. § 39-17-420(f). Supplies and items that may be purchased with such proceeds include, but are not limited to, workbooks, T-shirts, caps and medallions.

In order to comply with state and federal fingerprinting requirements, except in Davidson County, 20 percent of the funds received by a sheriff's office pursuant to T.C.A. § 39-17-420 must be set aside and earmarked for the purchase, installation, maintenance of and line charges for an electronic fingerprint imaging system that is compatible with the Federal Bureau of Investigation's integrated automated fingerprint identification system. Prior to purchasing the equipment, the sheriff must obtain certification from the Tennessee Bureau of Investigation that the equipment is compatible with the Tennessee Bureau of Investigation's and Federal Bureau of Investigation's integrated automated fingerprint identification system. Once the electronic fingerprint imaging system has been purchased, the sheriff's office may continue to set aside up to 20 percent of the funds received pursuant to T.C.A. § 39-17-420 to pay for line charges and maintaining the electronic fingerprint imaging system. T.C.A. § 39-17-420(g)(1).

Instead of purchasing the fingerprinting equipment, a local law enforcement agency may enter into an agreement for use of the equipment with another law enforcement agency that possesses the equipment. The agreement may provide that the local law enforcement agency may use the fingerprinting equipment for identifying people arrested by that agency in exchange for paying an agreed upon portion of the cost and maintenance of the fingerprinting equipment. If no agreement exists, it shall be the responsibility of the arresting officer to obtain fingerprints and answer for the failure to do so. T.C.A. § 39-17-420(g)(1). See *also* Op. Tenn. Atty. Gen. 01-088 (May 24, 2001).

## Disposition of Vehicles

Reference Number: CTAS-1257

### Disposition of Vehicle Used in the Commission of DUI Offense

Pursuant to T.C.A. § 55-10-414, it is the duty of the sheriff to properly dispose of a vehicle used in the commission of a person's second or subsequent violation of T.C.A. § 55-10-401 (driving under the influence of intoxicant, drug or drug producing stimulant), that was seized by the sheriff's office, once it has been forfeited pursuant to Title 40, Chapter 33, Part 2. T.C.A. § 40-33-201 et seq.

Forfeited vehicles may be used by the sheriff's office in the drug enforcement program for a period not to exceed five years. T.C.A. §§ 40-33-211(e) and 53-11-201(b)(2)(C). See *also* Op. Tenn. Atty. Gen. 99-190 (September 28, 1999). Vehicles not used in the local drug enforcement program must be sold. Revenue derived from the sale of vehicles seized by the sheriff's office and forfeited under T.C.A. § 55-10-414 is retained by the sheriff's office and used during each fiscal year to compensate the sheriff's office for the reasonable and direct expenses involved in confiscating, towing, storing, and selling the forfeited vehicles. All expenses claimed by the sheriff's office are subject to audit and review by the comptroller of the treasury to determine that the expenses claimed are direct and reasonable. Any remaining revenue must be transmitted to the Department of Health no later than June 30 of each fiscal year. T.C.A. § 40-33-211(f).

#### Disposition of Vehicle Used by Person Driving On Revoked License

It is the duty of the sheriff to properly dispose of a vehicle, that was seized by the sheriff's office pursuant to T.C.A. § 55-50-504(h), once it has been forfeited pursuant to Title 40, Chapter 33, Part 2. T.C.A. § 40-33-210(d).

Forfeited vehicles may be used by the sheriff's office in the drug enforcement program for a period not to exceed five years. T.C.A. §§ 40-33-211(e) and 53-11-201(b)(2)(C). Vehicles not used in the local drug enforcement program must be sold. Revenue derived from the sale of vehicles seized by the sheriff's office and forfeited under T.C.A. § 55-50-504(h) is retained by the sheriff's office and used during each fiscal year to compensate the sheriff's office for the reasonable and direct expenses involved in the confiscating, towing, storing, and selling the forfeited vehicles. All expenses claimed by the sheriff's office are subject to audit and review by the comptroller of the treasury to determine that the expenses claimed are direct and reasonable. Any remaining revenue must be transmitted to the Department of Health no later than June 30 of each fiscal year. T.C.A. § 40-33-211(c).

#### Disposition of Abandoned, Immobile or Unattended Motor Vehicles

Pursuant to T.C.A. § 55-16-106(a), it is the duty of the sheriff to sell at a public auction the abandoned, immobile, or unattended motor vehicles that the sheriff's office has taken into custody and that have not been reclaimed as provided for in T.C.A. § 55-16-105. The sheriff's office must issue the purchaser of the motor vehicle a sales receipt. The purchaser takes title to the motor vehicle free and clear of all liens and claims of ownership. Upon presentation of the sales receipt, the Department of Safety must issue a certificate of title to the purchaser. T.C.A. § 55-16-106(b).

The proceeds of the sale of an abandoned, immobile, or unattended motor vehicle are to be used to pay the expenses of the auction; the costs of towing, preserving and storing the vehicle; and all notice and publication costs incurred pursuant to T.C.A. § 55-16-105. Any remainder from the proceeds of a sale must be held for the owner of the vehicle or entitled lienholder for 45 days, and then may be deposited in a special fund that is to remain available to pay auction, towing, preserving, storage and all notice and publication costs that result from placing other abandoned, immobile, or unattended vehicles in custody, whenever the proceeds from a sale of other abandoned, immobile, or unattended motor vehicles are insufficient to meet these expenses and costs. Whenever the chief fiscal officer of the county finds that moneys in the special fund are in excess of reserves likely to be needed for the purposes thereof, the officer may transfer the excess to the county general fund, but in such event, claims against the special fund, if the special fund is temporarily exhausted, shall be met from the general fund to the limit of any transfers previously made thereto. T.C.A. § 55-16-106(d) and (e).

## Enforcement of Ammunition Tax Laws

Reference Number: CTAS-1258

It is the duty of all sheriffs to enforce the provisions of Title 70, Chapter 3, dealing with the taxation of shotgun shells and metallic cartridges. T.C.A. § 70-3-113.

## Enforcement of Hunting Laws

Reference Number: CTAS-1259

It is the duty of all sheriffs to enforce the provisions of Title 70, Chapter 4, dealing with hunting on posted property. T.C.A. § 70-4-106.

## Enforcement of Wildlife Laws

Reference Number: CTAS-1260

It is the duty of all sheriffs and their deputies to seize and take possession of any and all furs, fish, wild animals, wild birds, guns, rods, reels, nets, creels, boats or other instruments, tackle or devices that have

been used, transported or possessed contrary to any laws or regulations promulgated by the Wildlife Resources Commission, and impound and take them before the court trying the person arrested. T.C.A. § 70-6-201

## Execution of Class 3 Weapons Purchase Documents

Reference Number: CTAS-1261

Pursuant to T.C.A. § 39-17-1361, it is the duty of the sheriff of the county of residence of a person purchasing any firearm, defined by the National Firearms Act, 26 U.S.C. § 5845 *et seq.*, to execute, within 15 business days of any request, all documents required to be submitted by the purchaser if the purchaser is not prohibited from possessing firearms pursuant to T.C.A. § 39-17-1316.

## Handgun Carry Permit Application Checks

Reference Number: CTAS-1262

In October of 1996, the Department of Safety began issuing handgun carry permits pursuant to 1996 Public Chapter 905. Previous to this change, handgun carry permits were issued by local sheriffs' offices. Handgun carry permits are no longer issued by sheriffs' offices. The Department of Safety has the sole responsibility to issue handgun carry permits. T.C.A. § 39-17-1351.

When the Department of Safety receives a handgun carry permit application, the department is required to send a copy of the application to the sheriff of the county in which the applicant resides. Within 30 days of receiving an application, the sheriff is required to provide the department with any information concerning the truthfulness of the applicant's answers to the eligibility requirements set forth in T.C.A. § 39-17-1351(c) that is within the knowledge of the sheriff. T.C.A. § 39-17-1351(g)(2). This does not require the sheriff to conduct a full criminal background investigation, only a check of local records within the sheriff's office.

As part of the process of applying for a handgun carry permit, an applicant is required to provide two full sets of classifiable fingerprints at the time the application is filed with the department. The applicant may have his or her fingerprints taken by the department at the time the application is submitted, or the applicant may have his or her fingerprints taken at any sheriff's office and submit the fingerprints to the department along with the application and other supporting documents. The sheriff may charge a fee not to exceed \$5 for taking the applicant's fingerprints. At the time an applicant's fingerprints are taken either by the department or a sheriff's office, the applicant is required to present a photo identification. If the person requesting fingerprinting is not the same person as the person whose picture appears on the photo identification, the department or sheriff must refuse to take the applicant's fingerprints. T.C.A. § 39-17-1351(d)(1).

## Intoxicating Liquors

Reference Number: CTAS-1263

### Intoxicating Liquors - Traffic in Intoxicating Liquors

It is the duty of all sheriffs and other peace officers charged with enforcing the laws of the state to enforce the provisions of Title 57, Chapter 3, dealing with the trafficking of intoxicating liquors. T.C.A. § 57-3-410.

### Intoxicating Liquors - Beer and Alcoholic Beverages

The police and penal provisions of Title 57, Chapter 5, dealing with beer and alcoholic beverages containing less than 8 percent alcohol are to be enforced by all sheriffs, deputy sheriffs, police officers and members of the state highway patrol. In addition, such officers, along with inspectors, agents, representatives or officers appointed by the commissioner of revenue, are charged with enforcing the revenue provisions of this Chapter 5. T.C.A. § 57-5-202(c).

### Intoxicating Liquors - Destruction of Stills and Paraphernalia

It is the duty of all sheriffs and deputy sheriffs to search for, seize and capture all:

1. Illicit distilleries, stills and worms, distilling and fermenting equipment and apparatus, and other paraphernalia connected therewith or used or to be used in the illicit manufacture of intoxicating liquors;
2. Raw materials and substances connected with or to be used in the illicit manufacture of intoxicating liquors; and
3. Containers connected with or used in the packaging of illicitly manufactured intoxicating liquors.

T.C.A. § 57-9-101(a).

It is the duty of all sheriffs and deputy sheriffs to destroy any and all whiskey, beer, or other intoxicants found at or near illicit distilleries or stills except with respect to intoxicating liquors upon which federal tax has been paid as provided in T.C.A. § 57-9-115. Further, it is the duty of all sheriffs and deputy sheriffs capturing such illicit distilleries, stills, distilling and fermenting equipment and apparatus, and other paraphernalia, to summarily destroy and render the property useless. T.C.A. § 57-9-101(b) and (c). Any intoxicants or other articles of personal property destroyed under the authority of T.C.A. § 57-9-101 must be destroyed in the presence of at least two credible witnesses. Within five days after the destruction, the officer destroying the intoxicants or other articles of personal property must file a written statement listing all the items destroyed, signed by the officer and the witness or witnesses thereto, with the circuit or criminal court clerk of the county where seized and, in addition, must file a copy of the written statement with the Alcoholic Beverage Commission. T.C.A. § 57-9-101(c).

It is the duty of all sheriffs and deputy sheriffs to arrest any and all people implicated, aiding or abetting in the manufacture of intoxicating liquors and take them before the proper officials and have them tried upon such charge. T.C.A. § 57-9-102. *See Hagan v. Black*, 17 S.W.2d 908, 909 (Tenn. 1929) (County court had no power to adopt resolution offering to pay reward to officers for conviction of liquor law violators.).

#### Intoxicating Liquors - Seizure of Illegal Liquor

Pursuant to T.C.A. § 57-9-103, it is the duty of all sheriffs and deputy sheriffs to take into their possession any intoxicating liquors, including wine, ale, and beer, that have been received by or are in possession of or are being transported by any person in violation of any law of this state. Furthermore it is the duty of the sheriff to hold such liquors pending further orders of the court. *Casone v. State*, 140 S.W.2d 1081, 1082 (Tenn. 1940). When the sheriff seizes liquors under his general authority as a law enforcement officer and not as an agent or representative of the commissioner of revenue, the liquor remains in the sheriff's custody until it is determined by the court whether or not the liquor was legally in the possession of the person from whom it was seized. If the court determines that the liquor is contraband goods under the statute, then the court may entertain an application from the commissioner of revenue asserting his jurisdiction to possess the liquors and sell them for the benefit of the treasury. *Casone v. State*, 140 S.W.2d 1081, 1082 (Tenn. 1940). Note: The enactment of Title 57, Chapter 3 did not repeal in toto the provisions of T.C.A. § 57-9-103 *et seq.* Primarily, T.C.A. § 57-3-411 is a revenue measure to enforce payment of the liquor tax. *Casone* at 1082.

Every officer, other than the sheriff, who seizes intoxicating liquors, must within five days of the seizure deliver the intoxicating liquors to the sheriff of the county wherein the liquor was seized. Upon delivery, the sheriff must give the officer a written receipt for the liquor showing the kind and quantity of intoxicating liquors delivered, and the name or names of the person(s) from whom the intoxicating liquors were taken if the name(s) are known to the officer. T.C.A. § 57-9-106. *See Nichols v. State*, 181 S.W.2d 368 (Tenn. 1944). In addition, the seizing officer must, within five days after taking possession of any intoxicating liquors, file a written statement with the circuit or criminal court clerk of the county wherein the liquor was seized showing the kind and quantity of intoxicating liquors taken and, if known, the name or names of the person from whom the liquor was taken. T.C.A. § 57-9-104. Failure to file the required statement negates the seizure. *State v. Bellamy*, 1986 WL 10567 (Tenn. Crim. App. 1986). The filing of this statement is the only notice that is required to be given to the person from whom the liquors were taken, where the person resides within the jurisdiction of the court or where the person was arrested at the time of the seizure. T.C.A. § 57-9-109. Any person claiming an interest in the seized liquors must file a petition in the circuit or criminal court of the county in which the liquors were seized within 10 days after the filing of the statement showing the seizure. T.C.A. § 57-9-111. *See Nichols v. State*, 181 S.W.2d 368 (Tenn. 1944). If the sheriff or other officer seizing the liquor does not know the name of the person transporting, receiving or possessing the intoxicating liquors, the sheriff or other officer seizing the liquor must certify such fact in the statement required by T.C.A. § 57-9-104 and the clerk of the circuit or criminal court must give notice to whom it may concern by posting a notice at the courthouse door setting forth in substance that such liquors have been seized in accordance with the law and notifying all persons claiming the liquor to do so within 30 days from the date of the posting of the notice. If a claim is not filed within the prescribed time, the seized property will be forfeited and disposed of as provided by law. T.C.A. §§ 57-9-110 and 57-9-111.

It is the duty of the sheriff to safely keep in his or her possession all intoxicating liquors, either taken by the sheriff or delivered to the sheriff, until ordered by the court to dispose of the liquor. T.C.A. § 57-9-107. Pursuant to T.C.A. § 57-9-108, at each term of the circuit or criminal court, the sheriff must deliver to the circuit or criminal court judge a written statement showing all the intoxicating liquors in the sheriff's possession, setting forth the kind and quantity of the liquor and the name of the person from whom the liquor was taken if the name of the person is known to the sheriff. If the sheriff does not know the name of the person, the statement must indicate the date of the posting of the notice required by T.C.A. §

57-9-110. The court may not order the sale or destruction of any of the liquors seized until the time for filing petitions alleging ownership thereof or an interest therein has elapsed. T.C.A. § 57-9-119. When any person claims an interest in any seized liquor the court shall hear the claim without a jury and determine whether the person is entitled to the return of the liquor. However, no person is deemed to have any property right in any intoxicating liquors transported, received, or possessed in violation of the laws of this state. If the court, upon hearing any petition alleging ownership of or an interest in intoxicating liquors, ascertains that the liquor has been received, transported or possessed in violation of any law of this state, the court shall direct the sale or destruction of the liquor by the sheriff as provided by law. T.C.A. § 57-9-114. *See Caneperi v. State*, 89 S.W.2d 164 (Tenn. 1936); *Ambrester v. State*, 110 S.W.2d 332 (Tenn. 1937); *Casone v. State*, 140 S.W.2d 1081 (Tenn. 1940); and *Alcoholic Beverage Comm'n v. Simmons*, 512 S.W.2d 585 (Tenn. 1973).

The court must order the destruction of seized liquor that does not have a federal stamp on the bottle or package, or the court may order it turned over to federal authorities for evidence. If the seized liquor has a federal tax stamp but is not fit for consumption, the court shall order it to be destroyed. T.C.A. § 57-9-117. Seized liquor upon which the federal tax has been paid must be turned over to the Alcoholic Beverage Commission (ABC) for public sale by the commissioner of general services as contraband in accordance with the provisions of Title 57, Chapter 9, Part 2. T.C.A. § 57-9-115(a).

It is the duty of the sheriff to notify the ABC in writing within 10 days after the seizure of intoxicating liquors, describing the brands and quantity, and to turn over the liquor to the ABC at the time and place designated by the ABC. It is the responsibility of the ABC to provide transportation and storage for the liquor. In the event the ABC requests the sheriff to transport the liquor, all expenses incurred by the sheriff in the transportation of the liquor is borne by the ABC, and the sheriff is allowed the same mileage fee as for transporting prisoners, in addition to the other actual cost of transportation. Each sheriff, deputy sheriff or constable of any county or any police officer of any municipality who has seized and confiscated any intoxicating liquors must make an itemized list of such beverages, showing the quantity, brand, name and size of bottle, and must deliver a signed copy of the itemized list to the ABC at the time the beverages are delivered or turned over to the ABC for disposal. The agent or representative of the ABC receiving the beverages must likewise issue a receipt to the officer for the beverages. A copy of the list of beverages prepared by the officer making the seizure and confiscation must be delivered by the officer to the county mayor of the county if the seizure is made by a county officer, and a copy must be furnished to the mayor of the municipality if the seizure is made by a municipal officer. The ABC likewise must furnish the county mayor or city mayor with a copy of the list of beverages which it has received from the particular law enforcement officer. T.C.A. § 57-9-115.

All money received from the sale of the intoxicating liquors is deposited in the general fund of the state treasury provided that, in the case of all liquor captured or confiscated by a police officer of any incorporated municipality, the funds derived from the sale of the liquor, less 10 percent to be retained by the state for costs of administration, must be turned over to the municipality served by the police officer and provided further, that in the case of all liquor captured or confiscated by the sheriff, deputy sheriff or constable of any county, the funds derived from the sale of the liquor, less 10 percent to be retained by the state for costs of administration, must be turned over to the county served by the sheriff, deputy sheriff or constable. T.C.A. § 57-9-115(f). It is the duty of the sheriff to keep separate inventories of liquor captured by police officers and liquor captured by other officers so that the funds derived from the sale of the liquor may be properly divided between the county and incorporated city, town or municipality. T.C.A. § 57-9-118.

Any sheriff or deputy violating any of these provisions is guilty of a Class C misdemeanor and shall forfeit their office and be ineligible to reappointment or reelection to the same office for a period of five years. T.C.A. § 57-9-121. *See Mathis v. State*, 46 S.W.2d 44 (Tenn. 1932) and *Broyles v. State*, 341 S.W.2d 722 (Tenn. 1960).

## Investigation of Child Abuse

Reference Number: CTAS-1264

### Investigation of Child Abuse Cases

Any person who has knowledge that a child has been the victim of child abuse has a duty to report the abuse to the appropriate agency or official, which includes the sheriff of the county where the child resides. T.C.A. § 37-1-403(a). If the sheriff becomes aware of known or suspected child abuse through personal knowledge, receipt of a report, or otherwise, the sheriff has a duty to immediately report such information to the Department of Children's Services. In appropriate cases, the child protective team must be notified to investigate the report. Further criminal investigation by the sheriff shall be conducted in coordination with the child protective team or the Department of Children's Services to the maximum

extent possible. T.C.A. § 37-1-403(c)). If the sheriff has reasonable cause to suspect that a child has died as a result of child abuse, the sheriff has a duty to report such suspicion to the appropriate medical examiner. The medical examiner must accept the report for investigation and must report the medical examiner's findings, in writing, to the local law enforcement agency, the appropriate district attorney general, and the Department of Children's Services. T.C.A. § 37-1-403(d)).

All child abuse cases reported to the sheriff's office must be referred immediately to the local director of the county office of the Department of Children's Services for investigation. The sheriff must also give notice of the report to the judge having juvenile jurisdiction where the child resides. If the court or the sheriff finds that there are reasonable grounds to believe that the child is suffering from an illness or injury or is in immediate danger from the child's surroundings and that the child's removal is necessary, appropriate protective action must be taken under Title 37, Chapter 1, Part 1 (regarding the juvenile court). Whenever there are multiple investigations, the Department of Children's Services, the district attorney general, the sheriff's office, and, where applicable, the child protection team, must coordinate their investigations to the maximum extent possible so that interviews with the victimized child will be kept to an absolute minimum. Reference to the audio or videotape or tapes made by the child protection team or department should be used whenever possible to avoid additional questioning of the child. T.C.A. § 37-1-405.

#### Investigation of Child Sexual Abuse Cases

Any person who knows or has reasonable cause to suspect that a child has been sexually abused has a duty to report such knowledge or suspicion to the Department of Children's Services. T.C.A. § 37-1-605(a). Pursuant to T.C.A. § 37-1-605(b)(1), reports of known or suspected child sexual abuse must be made immediately to the local office of the Department of Children's Services, which is responsible for the investigation of such reports, or to the judge having juvenile jurisdiction or to the office of the sheriff or the chief law enforcement official of the municipality where the child resides. Each report of known or suspected child sexual abuse occurring in a facility licensed by the Department of Mental Health and Developmental Disabilities or any hospital must also be made to the local law enforcement agency in the jurisdiction where the alleged offense occurred.

If the sheriff becomes aware of known or suspected child sexual abuse through personal knowledge, receipt of a report or otherwise, the sheriff must immediately report such information to the Department of Children's Services. In addition, for the protection of the child, the child protective team must be notified to investigate the report. Further criminal investigation by the sheriff's office must be conducted appropriately. T.C.A. § 37-1-605(b)(2). If the sheriff has reasonable cause to suspect that a child died as a result of child sexual abuse, the sheriff must report such suspicion to the appropriate medical examiner. The medical examiner must accept the report for investigation and must report the medical examiner's findings, in writing, to the local law enforcement agency, the appropriate district attorney general, and the Department of Children's Services. T.C.A. § 37-1-605(c).

Through legislation, the General Assembly has encouraged each sheriff to establish a child sex crime investigation unit within the sheriff's office for the purpose of investigating crimes involving the sexual abuse of children. T.C.A. § 37-1-603(b)(4)(A)(v). To further this end, as part of the annual in-service training requirement, the sheriff and every deputy must receive training in the investigation of cases involving child sexual abuse, including police response to and treatment of victims of such crimes. T.C.A. § 37-1-603(b)(4)(A)(ii).

The legislature has mandated that at least one child protective team shall be organized in each county. The Department of Children's Services is responsible for coordinating the services of these teams. T.C.A. § 37-1-607(a)(1). Each team must be composed of one person from the Department of Children's Services, one representative from the office of the district attorney general, one juvenile court officer or investigator from a court of competent jurisdiction, and one properly trained law enforcement officer with countywide jurisdiction (i.e., a sheriff's deputy) from the county where the child resides or where the alleged offense occurred. It is in the best interest of the child that, whenever possible, an initial investigation shall not be commenced unless all four disciplines are represented. An initial investigation may, however, be commenced if at least two of the team members are present at the initial investigation. The team may also include a representative from one of the mental health disciplines. Furthermore, in those geographical areas in which a child advocacy center meets the requirements of T.C.A. § 9-4-213(a) or (b), child advocacy center directors or their designees shall be members of the team for the purposes of providing services and functions established by T.C.A. § 9-4-213 or delegated pursuant to that section. T.C.A. § 37-1-607(a)(2).

It is the intent of the General Assembly that child protective team investigations be conducted by team members in a manner that not only protects the child but that also preserves any evidence for future criminal prosecutions. It is essential, therefore, that all phases of the child protective investigation be

conducted appropriately and that further investigations, as appropriate, be conducted and coordinated properly. T.C.A. § 37-1-607(a)(3). All state, county and local agencies must give the team access to records in their custody pertaining to the child and shall otherwise cooperate fully with the investigation. T.C.A. § 37-1-406(c).

Immediately upon receipt of a report alleging, or immediately upon learning during the course of an investigation, that child sexual abuse has occurred, or an observable injury or medically diagnosed internal injury occurred as a result of the sexual abuse, the Department of Children's Services must orally notify the child protective team, the appropriate district attorney general and the appropriate law enforcement agency. Criminal investigations conducted by a law enforcement agency must be coordinated, whenever possible, with the child protective team investigation. If independent criminal investigations are made, interviews with the victimized child must be kept to an absolute minimum and, whenever possible, the videotape or tapes made by the child protective teams should be used. T.C.A. § 37-1-607(b)(3).

The sheriff may take a child into custody if there are reasonable grounds to believe that the child is a neglected, dependent or abused child, and there is an immediate threat to the child's health or safety to the extent that delay for a hearing would be likely to result in severe or irreparable harm. The sheriff may also take a child into custody if there are reasonable grounds to believe that the child may abscond or be removed from the jurisdiction of the court, and in either case, there is no less drastic alternative to removing the child from the custody of the child's parent, guardian or legal custodian available that would reasonably and adequately protect the child's health or safety or prevent the child's removal from the jurisdiction of the court pending a hearing. T.C.A. §§ 37-1-608(a), 37-1-113(a)(3), and 37-1-114(a)(2).

## Investigation of Drug Trademark Counterfeiting Cases

Reference Number: CTAS-1265

It is the duty of the sheriff to assist and cooperate with the prosecuting attorney in investigating any violation of the provisions of Title 47, Chapter 25, Part 4, including procuring evidence to support the prosecution, which may be instituted by the prosecuting attorney. For such services, the sheriff is allowed and paid the same fees for meals and travel as are usually allowed in other criminal proceedings. T.C.A. § 47-25-404.

## Investigation of Osteopathic Physicians

Reference Number: CTAS-1266

It is the duty of the sheriff and the sheriff's deputies to investigate every supposed violation of Title 63, Chapter 9, dealing with the licensing of osteopathic physicians that comes to the sheriff's or deputy's notice and of apprehending and arresting all violators. T.C.A. § 63-9-110(b).

## Notification to Next of Kin - Serious Accidents

Reference Number: CTAS-1267

Sheriffs, sheriff's deputies, and employees of sheriff's offices are required to make a reasonable effort to promptly notify the next of kin of any person who has been killed or seriously injured in an accidental manner before any statement, written or spoken, is delivered or transmitted to the press by the sheriff, sheriff's deputy or employee, disclosing the decedent's or seriously injured person's name. For the purposes of the notification requirement, the investigating officer is responsible for making the determination, based upon the officer's personal opinion, as to whether a person is "seriously injured." Neither the officer nor the officer's employer shall incur any liability based upon the officer's opinion as to whether or not a person is seriously injured. T.C.A. § 38-1-106.

## Prevention of Forest Fires

Reference Number: CTAS-1268

It is the duty of all sheriffs (and state highway patrol officers) to use all effective methods in their power to prevent the spread of forest fires. Whenever the sheriff becomes aware that there is a forest fire in the vicinity, it is the duty of the sheriff to summon a sufficient number of the male citizens of the county in which the fire is burning, who are between 18 and 30 years of age, to control the fire. The sheriff is to be in complete charge and direction of the efforts to restrain the fire until duly relieved by Division of Forestry personnel. T.C.A. § 68-102-145.

## Quarantine of Property Where Meth Was Manufactured

Reference Number: CTAS-1269

In 2004 and 2005, the General Assembly passed several bills relating to the illegal manufacture of methamphetamine. Each of these new laws included new duties for Tennessee's sheriffs.

Public Chapter 855 of the Acts of 2004 gives the sheriff the authority to quarantine any property or any structure or room in any structure on any property located in the county where the manufacture of methamphetamine, its salts, isomers, and salts of its isomers is occurring or has occurred. If the sheriff quarantines such property, the sheriff becomes responsible for posting signs indicating that the property has been quarantined and, to the extent they can be reasonably identified, for notifying all parties having any right, title or interest in the quarantined property, including any lienholders. T.C.A. § 68-212-503(b). Once the property has been quarantined it must remain quarantined until a certified industrial hygienist or other qualified person or entity certifies to the sheriff that the property is safe for human use. T.C.A. § 68-212-505.

Public Chapter 18 of the Acts of 2005 enacted the Meth-Free Tennessee Act of 2005. The act amends T.C.A. § 68-212-503 to clarify that the purpose of the provision allowing for the quarantine of properties where methamphetamine manufacturing has occurred is to prevent people from being exposed to the hazards associated with methamphetamine and the chemicals associated with the manufacture of methamphetamine. The act also amends Title 68, Chapter 212, Part 5, by adding a new section that requires the sheriff, within seven days of issuing an order of quarantine, to transmit to the commissioner of environment and conservation the following minimal information regarding the site: date of the quarantine order, county, address, name of the owner of the site, and a brief description of the site (single family home, apartment, motel, wooded area, etc.). The sheriff must also notify the commissioner once the quarantine has been lifted.

Public Chapter 347 of the Acts of 2005 requires the sheriff, after quarantining real property or any structure or room in any structure on any real property due to the manufacture of meth, to file for recording a Notice of Methamphetamine Lab Quarantine in the office of county register in the county in which the real property or any portion thereof lies.

## Registration of Sexual Offenders and Violent Sexual Offenders

Reference Number: CTAS-1270

Public Chapter 921 of the Acts of 2004 enacted the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004. Public Chapter 316 of the Acts of 2005 amended the act. The act requires offenders who live, work, or attend college in the county to register in person at the sheriff's office. Homeless offenders are also subject to the registration requirements of the act. Offenders who are incarcerated in the county jail must register in person with the sheriff or the sheriff's designee within 48 hours prior to the offender's release. Offenders who are committed to mental health institutions or continuously confined to home or healthcare facilities due to mental or physical disabilities are exempt from the registration requirement of the act. T.C.A. § 40-39-203. The information that must be collected from each offender is set forth in T.C.A. § 40-39-203(i). All data received from the offender, as required by the TBI and T.C.A. § 40-39-203(i), must be entered in to the TIES (Internet) within 12 hours of receipt. T.C.A. § 40-39-204(a). Within three days of an offender's initial registration, the sheriff must send the original signed TBI registration form to the TBI headquarters in Nashville by U.S. mail. T.C.A. § 40-39-203(k). The sheriff is required to retain a duplicate copy of the TBI registration form as a part of the business records of the sheriff's office. T.C.A. § 40-39-204(d).

The act requires all violent sexual offenders under the jurisdiction of the sheriff to report in person to the sheriff's office at least once during the months of March, June, September, and December of each calendar year and all sexual offenders to report in person to the sheriff's office once a year no earlier than seven calendar days before and no later than seven calendar days after the offender's date of birth to update their fingerprints, palm prints and photograph, as deemed necessary by the sheriff, and to verify the continued accuracy of the information in the TBI registration form. During the March reporting period, violent sexual offenders are required to pay an administrative fee not to exceed \$100. Sexual offenders pay the administrative fee during their annual reporting period. This fee is to be retained by the sheriff to purchase equipment, to defray personnel and maintenance costs, or for any other expenses incurred as a result of implementing the act. Violent sexual offenders and sexual offenders who reside in nursing homes and assisted living facilities, and offenders committed to mental health institutions or continuously confined to home or healthcare facilities due to mental or physical disabilities are exempt from the



in-person reporting and administrative fee requirement. T.C.A. § 40-39-204(b) and (c).

All data received from the offender, as required by the TBI and T.C.A. § 40-39-203(i), must be entered into the TIES (Internet) within 12 hours of receipt. T.C.A. § 40-39-204(a). Within three days of a violent sexual offender's quarterly reporting date or a sexual offender's annual reporting date, the sheriff must send the original signed TBI registration form to the TBI headquarters in Nashville by U.S. mail. The sheriff is required to retain a duplicate copy of the TBI registration form as a part of the business records of the sheriff's office. T.C.A. § 40-39-204(d).

## Reports to the Tennessee Bureau of Investigation

Reference Number: CTAS-1271

Sheriffs are required by statute to submit to the director of the Tennessee Bureau of Investigation reports setting forth their activities in connection with law enforcement and criminal justice, including uniform crime reports. T.C.A. § 38-10-102. The refusal to make any report or do any act required by any provision of Title 38, Chapter 10, is deemed to be nonfeasance of office and subjects the official to removal from office. T.C.A. § 38-10-105.

## Reporting of Stolen and Recovered Motor Vehicles

Reference Number: CTAS-1272

It is the duty of the sheriff and every deputy sheriff who receives a report based on reliable information that any motor vehicle has been stolen to report the theft of the vehicle to the Department of Safety immediately after receiving the information. Any officer who recovers or upon receiving information of the recovery of any motor vehicle, chassis, engine, transmission or other parts and accessories taken from a vehicle that has previously been reported stolen must, immediately after receiving the information, report the recovery of the vehicle to the Department of Safety. Reports of the theft of any motor vehicle and the recovery of any motor vehicle are to be made to the Tennessee Highway Patrol dispatcher in the area in which the theft or recovery occurred. T.C.A. § 55-5-101(a)(1) - (3).

It is the duty of the sheriff to file and maintain reports of motor vehicle thefts and the recovery of stolen motor vehicles. These reports are to include, but are not limited to, available information as to ownership and the address of the owner; make, year and color of the vehicle; the license number and manufacturer's identification number; the date of theft or recovery; the name of person reporting the theft and location where the theft occurred; the name of the person reporting the recovery of the vehicle and the location of the recovery; the condition of the vehicle at the place of the recovery and a list of any parts or accessories found adjacent to the recovered vehicle; and the name and the location of any wrecker or garage operator pulling or storing the vehicle, its parts or accessories. T.C.A. § 55-5-101(a)(4). It is the further duty of the sheriff to transmit the aforementioned information pertaining to the theft or recovery of any motor vehicle, its chassis, engine, transmission or other parts and accessories, to the Tennessee Highway Patrol dispatcher in the area in which the theft or recovery occurred. T.C.A. § 55-5-101(a)(5). It is the duty of both the Department of Safety and the sheriff receiving information of the recovery of any motor vehicle, its chassis, engine, transmission, or other parts and accessories, to report the recovery to the owner. T.C.A. § 55-5-101(a)(6).

## Summoning Jurors

Reference Number: CTAS-1273

Another duty of the sheriff, as it relates to both attending the courts and serving process, is summoning the jury. When the venire for the grand and petit jurors for any term of criminal court or circuit court has been drawn, the clerk of the court issues the state's writ of venire facias to the sheriff containing the names of the jurors drawn, commanding the sheriff to summon the jurors for the term of court for which they were drawn. The clerk must swear the sheriff when delivering the writ to keep secret the names of the jurors to be summoned. Summons is to be made by personal service or by sending by registered or certified mail to the regular address of the persons selected as jurors notice of their selection for jury duty. Service by mail must be mailed at least five days prior to the date fixed for their appearance for such jury service. The cost will be paid as are other costs of summoning jurors. In counties where jurors are selected by mechanical or electronic means pursuant to T.C.A. §§ 22-2-302 and 22-2-304, the sheriff is required to send the summons by first-class mail to the regular address of each person selected as a juror giving notice of the person's selection for jury duty. This summons must be mailed at least 10 days prior to the date fixed for the person's appearance for jury service. T.C.A. § 22-2-305.

If at a regular or special term of the court having criminal jurisdiction the required number of jurors cannot be obtained from the venire because of the disqualification of the proposed jurors or other cause, the clerk of the court will produce in open court the jury box and draw the number of names deemed by the judge sufficient to complete the juries. This process will, if necessary, continue until the grand and petit juries are completed. However, instead of following this procedure, the judge may furnish a sufficient number of names of persons to be summoned to the sheriff, or the judge may direct the sheriff to summon a sufficient number to complete the juries. T.C.A. § 22-2-310(c).

Whenever the presiding judge of the circuit or criminal court is satisfied that a jury cannot be obtained from the regular panel for the trial of a case, the judge may, before the case is assigned for hearing, cause the jury box to be opened by the clerk in the judge's presence in the clerk's office, and have the clerk draw a sufficient number of names as the judge deems sufficient to obtain a jury. The court clerk will then give this list to the sheriff whose duty it is to summon those whose names were drawn. If the jury cannot be made up from the panel drawn and summoned and the regular panel in attendance, another panel may be drawn and so on until the jury is completed or the jury box is exhausted. If, after the regular jury venire summoned for the term becomes exhausted, it becomes necessary to have additional jurors from which to select a jury to try a particular case or cases pending, the presiding judge may in the judge's discretion select from citizens of the county or direct the sheriff to summon people of the judge's selection whose names were not selected from the jury box. Neither the judge nor the sheriff are allowed to place on this list the name of any person who seeks either directly or indirectly, personally or through another, to be summoned as a juror, and such solicitations operate to disqualify such person for jury service. T.C.A. § 22-2-310(c).

It is a Class A misdemeanor for the sheriff or any of the sheriff's deputies to divulge any secrets of proceedings of the jury commissioners or to notify anyone what name, or names, constitute the panel or any part of it, or any name or names drawn from the jury box for service at any term of court or in any case pending in court, except where jury panel list publication is required under T.C.A. § 22-2-306, or fail to perform any duty imposed by Title 22, Chapter 2. Upon the conviction of a violation of this statute, such officer shall be removed from office and will be ineligible to hold any state or county office for a period of five years. T.C.A. § 22-2-102(b).

## Transportation of Persons with a Mental Illness

Reference Number: CTAS-1274

Pursuant to T.C.A. § 33-6-901, it is the duty of the sheriff to transport those who have been certified for emergency involuntary admission under Title 33, Chapter 6, Part 4, or nonemergency involuntary admission under Title 33, Chapter 6, Part 5, except for persons who are transported by:

- (A) A secondary transportation agent under this section;
- (B) A municipal law enforcement agency that meets the requirements for a secondary transportation agent under this section and is designated by the sheriff;
- (C) A person authorized under other provisions of this Title 33; or
- (D) One or more friends, neighbors, other mental health professionals familiar with the person, relatives of the person, or a member of the clergy.

T.C.A. § 33-6-901(a)(1).

The sheriff may designate a secondary transportation agent or agents for the county for persons with mental illness or serious emotional disturbance whom a physician or mandatory prescreening authority has evaluated and determined do not require physical restraint or vehicle security. A secondary transportation agent shall be available twenty-four hours per day, provide adequately for the safety and security of the person to be transported, and provide appropriate medical conditions for transporting persons for involuntary hospitalization. The sheriff shall take into account in designating a secondary transportation agent or a municipal law enforcement agency both its funding and the characteristics of the persons who will be transported. The sheriff shall consult with the county mayor before designating a secondary transportation agent. A secondary transportation agent has the same duties and authority under Title 33, Chapter 6, in the detention or transportation of those persons as the sheriff. The designation of a transportation agent other than the sheriff is a discretionary function under T.C.A. § 29-20-205. If a mandatory prescreening agent, physician, or licensed psychologist with health service provider designation, who is acting under T.C.A. § 33-6-404(3)(B), determines that the person does not require physical restraint or

vehicle security, then any person identified in subdivision (a)(1)(D) may, instead of the sheriff, transport the person at the transporter's expense. T.C.A. § 33-6-901(a)(2).

If a physician, psychologist, or designated professional, operating under T.C.A. § 33-6-404(3)(B)(iii), determines to a reasonable degree of professional certainty that the person subject to transportation does not require physical restraint or vehicle security and does not pose a reasonable risk of danger to the person's self or others, then the sheriff may permit one or more persons designated under T.C.A. § 33-6-901, other than the sheriff or secondary transportation agent, to transport the person; provided, that the person or persons provide proof of current automobile insurance. T.C.A. § 33-6-901(a)(3)(A).

Before a person is transported, the sheriff or other designated transportation agent shall give the notice required by T.C.A. § 33-6-406(b), along with the name or names of the person or persons who will actually transport the person subject to admission to a hospital or treatment resource. The person or persons designated to transport under T.C.A. § 33-6-901 must comply with the requirements of T.C.A. § 33-6-406(b)(2) and T.C.A. § 33-6-407(c), and must provide the original of the certificate completed under T.C.A. § 33-6-404(3)(B)(ii) to the hospital or treatment resource. T.C.A. § 33-6-901(a)(3)(A).

When making this determination, the physician, psychologist or designated professional operating under T.C.A. § 33-6-404(3)(B)(iii) shall be immune from any civil liability and shall have an affirmative defense to any criminal liability arising from that protected activity. T.C.A. § 33-6-901(a)(3)(B).

When making this determination, if the physician, psychologist or designated professional operating under T.C.A. § 33-6-404(3)(B)(iii) is an agent of a hospital, health care facility, or community mental health center, that hospital, health care facility, or community mental health center shall be immune from any civil liability and shall have an affirmative defense to any criminal liability arising from this agent's protected activity and from the transportation of the person to and from the facility. T.C.A. § 33-6-901(a)(3)(C).

When a sheriff or secondary transportation agent is required to transport a person to a hospital or treatment resource for screening, evaluation, diagnosis or hospitalization, the county in which the person is initially transported by the sheriff or secondary transportation agent is responsible for the remainder of such person's transportation requirements. The initial transporting county is responsible for the continuing transportation of the person even if the person is assessed, diagnosed, screened or evaluated in a second county before being admitted to a facility, hospital or treatment resource in a third county. If the person is transported to a hospital or treatment resource by the sheriff or secondary transportation agent of a county other than the initial transporting county, the sheriff or secondary transportation agent actually providing transportation may bill the initial transporting county for transportation costs. T.C.A. § 33-6-901(b).

**EMERGENCY INVOLUNTARY ADMISSION.** If the person certified for admission under T.C.A.

§ 33-6-404 is not already at the facility, hospital or treatment resource at which the person is proposed to be admitted, the physician, psychologist or designated professional who completed the certificate of need shall give the sheriff or the transportation agent the original of the certificate and turn the person over to the custody of the sheriff or transportation agent who shall transport the person to a hospital or treatment resource that has available suitable accommodations for the person for proceedings under T.C.A.

§ 33-6-407; provided, that, if admission is sought to a state-owned or operated hospital or treatment resource, the physician, psychologist or designated professional who completed the certificate of need shall also provide to the sheriff or transportation agent a written statement verifying that the state-owned or operated hospital or treatment resource has been contacted and has available suitable accommodations, and the sheriff or transportation agent shall not be required to take custody of the person for transportation unless both the original of the certificate and the written statement are provided. If the original of the certificate is unavailable, then an identical hard copy or electronic copy submitted by reliable electronic means must be accepted for purposes of this section. Failure of the sheriff or other county transportation agent to provide both a certificate of need and the written statement to the receiving state-owned or operated hospital or treatment resource for proceedings under T.C.A. § 33-6-407 shall result in all costs attendant to the person's admission and treatment being assessed to the transporting county. T.C.A. § 33-6-406(a).

Before transportation begins, the sheriff or transportation agent shall notify the hospital or treatment resource at which the person is proposed to be admitted as to where the person is and the best estimate of anticipated time of arrival at the hospital or treatment resource. The sheriff or transportation agent shall notify the hospital or treatment resource of the anticipated time of arrival. If the sheriff or transportation agent has given notice and arrives at the hospital or treatment resource within the anticipated time of arrival, then the sheriff or transportation agent is required to remain at the hospital or treatment resource

long enough for the person to be evaluated for admission under T.C.A. § 33-6-407, but not longer than one hour and forty-five minutes. After one hour and forty-five minutes, the person is the responsibility of the evaluating hospital or treatment resource, and the sheriff or transportation agent may leave. T.C.A. § 33-6-406(b)(1)-(2). In Shelby County the sheriff or transportation agent is relieved of further transportation duties after the person has been delivered to the hospital or treatment facility, and the transportation duties are assumed by appropriate personnel of the hospital or treatment facility. T.C.A. § 33-6-406(b)(3).

If, after evaluation, the person is not subject to admission and the sheriff or transportation agent is still under a duty to remain at the hospital or facility, the sheriff or transportation agent must return the patient to the county from which the person was transported. If, after evaluation, the person is not subject to admission and the sheriff or transportation agent is no longer under a duty to wait at the hospital or facility, the hospital or facility has the responsibility to return the person to the county from which the person was transported. T.C.A. § 33-6-407(c) and (d).

**GRANT PROGRAM.** Subject to annual appropriations, there is established a grant program to assist sheriffs required to transport persons to a hospital or treatment resource for emergency mental health transport under this section. The Department of Finance and Administration, in consultation with the Department of Mental Health and Substance Abuse Services and the Division of TennCare, shall develop and administer the grant program. Assistance from this grant program must not be provided for emergency mental health transports where a physician, psychologist, or designated professional determines that the person can be transported by one or more friends, neighbors, or other mental health professionals familiar with the person, relatives of the person, or a member of the clergy pursuant to T.C.A. § 33-6-901.

A sheriff may contract with one or more third parties or other law enforcement agencies to transport persons to a hospital or treatment resource in accordance with this section. The sheriff shall deem a third party or law enforcement agency contracted to perform this function to be the designated secondary transportation agent pursuant to T.C.A. § 33-6-901. Any contract entered into under this subsection (c) is subject to audit by the comptroller of the treasury or the comptroller's designee.

A sheriff may receive grant funds provided under this subsection (c) and pay the grant funds to third parties or other law enforcement agencies with which the sheriff contracts to transport persons to a hospital or treatment resource in accordance with this section. The receipt or expenditure of grant funds received by a sheriff under this subsection (c) is subject to audit by the comptroller of the treasury or the comptroller's designee.

T.C.A. § 33-6-406(c)(1)-(3).

**NONEMERGENCY INVOLUNTARY ADMISSION.** When a person is about to be admitted to a hospital or treatment facility under the provisions of Title 33, Chapter 6, Part 5, the court will arrange the transportation of the person to the hospital. Whenever practicable, the person to be hospitalized will be permitted to be accompanied by one or more friends or relatives, who must travel at their own expense. Any reputable and trustworthy relative or friend of the person who will assume responsibility for the person's safe delivery may be allowed to transport the person to the hospital if such relative or friend will do so at their own expense. T.C.A. § 33-6-902(a).

Pending removal to a hospital, a person with mental illness or serious emotional disturbance taken into custody or ordered to be hospitalized under Title 33, Chapter 6, Part 5, may be detained in the person's home or in some suitable facility under such reasonable conditions as the court may order, but the person shall not be detained in a nonmedical facility used for the detention of those charged with or convicted of criminal offenses. Reasonable measures necessary to assure proper care of a person temporarily detained, including provision for medical care, must be taken. T.C.A. § 33-6-902(b).

## Transportation of Juveniles

Reference Number: CTAS-1275

[Transportation of Juveniles to Youth Development Centers](#)

Counties are responsible for the expense of transporting delinquent children not found to have committed offenses punishable in the penitentiary. The fee the sheriff is allowed for transporting children found to have committed offenses punishable in the penitentiary to youth development centers is the same fee allowed by law for carrying prisoners to the penitentiary. When any female child is to be transported to a youth development center, the sheriff must deputize a suitable woman of good moral character to convey the child. In the event the sheriff cannot find such a woman in the county, the Department of Children's Services must provide a proper and suitable escort for the child, and this escort is paid from the allowance

provided for the sheriff. The expense of the woman so deputized is paid from the allowance for the sheriff. T.C.A. § 37-5-205.

#### Transportation of Juveniles for Post-Commitment Hearings

A juvenile in the custody of the Department of Children's Services pursuant to a commitment by a juvenile court of this state may petition for post-commitment relief under Title 37, Part 3. T.C.A. § 37-1-302. It is the duty of the sheriff of the county where such proceedings are pending to receive and transport the juvenile to and from the institution that has custody of the juvenile and the courthouse if the court so orders or if for any reason the superintendent of the institution is unable to transport the petitioner. The sheriff is entitled to the same costs allowed for the transportation of prisoners as provided in criminal cases upon presentation of the account certified by the judge and district attorney general. T.C.A. § 37-1-310(b). *See also* T.C.A. § 8-26-108.

## Ex Officio Duties

Reference Number: CTAS-1276

*Ex officio* services are defined as "those duties performed by an officer for the compensation of which no express provision is made by law; services for which the law provides no remuneration." *Hagan v. Black*, 17 S.W.2d 908, 909 (Tenn. 1929). In the case of *George v. Harlan*, 1998 WL 668637, \*2 (Tenn. 1998), the Tennessee Supreme Court defined *ex officio* services as those services not required by statute and defined *ex officio* duties as nonstatutory duties. The Court noted that the "duties which the common law annexes to the office of sheriff for which no fee or charge is specified in payment are generally referred to as 'ex officio' duties or services." *George* at \*3, citing *State ex rel. Windham v. LaFever*, 486 S.W.2d 740, 742 (Tenn. 1972); and *Hagan v. Black*, 17 S.W.2d 908, 909 (1929). The compensation of a sheriff for *ex officio* services is to be determined by the county legislative body. *Shanks v. Hawkins*, 22 S.W.2d 355 (Tenn. 1929).

#### Workhouse Superintendent

When the jail in any county has been declared a workhouse, as provided in T.C.A. § 41-2-102, the sheriff becomes the *ex officio* superintendent of the workhouse. T.C.A. § 41-2-108. It is the duty of the workhouse superintendent to: (1) discharge each prisoner as soon as the prisoner's time is out, or upon order of the board of workhouse commissioners; (2) see that the prisoners are properly guarded to prevent escape; (3) see that they are kindly and humanely treated and properly provided with clothing, wholesome food properly cooked and prepared for eating three times a day when at work; (4) see that they are warmly and comfortably housed at night and in bad weather; (5) see that when sick they have proper medicine and medical treatment and, in case of death, are decently buried; and (6) keep the males separate from the females. T.C.A. § 41-2-109.

## Statutory Powers

Reference Number: CTAS-1277

### Assignment of Officers to Judicial District Drug Task Force

Reference Number: CTAS-1278

The sheriff has the authority to assign deputies to a judicial district or multijudicial district task force relating to the investigation and prosecution of drug and violent crime cases. Such assignment must be made in writing by the sheriff but does not become effective until approved by the board of directors or governing or advisory board of the task force or the district attorneys general of the judicial district. T.C.A. § 8-7-110(a).

### Authority to Authorize Deputies to Carry Handguns

Reference Number: CTAS-1279

Pursuant to T.C.A. § 39-17-1315(a)(1), the sheriff has the authority to authorize the carry of handguns by bonded and sworn deputy sheriffs who have successfully completed and continue to successfully complete on an annual basis a firearm training program of at least eight hours duration. The sheriff's authorization must be made by a written directive, a copy of which must be retained by the sheriff's office. Pursuant to the sheriff's written directive, POST-certified deputy sheriffs may carry their handgun at all times, regardless of the deputy's regular duty hours or assignments. Nothing in T.C.A. § 39-17-1315(a)(1) prohibits the sheriff from placing restrictions on when or where a deputy may carry his or her service handgun.

POST-certified deputy sheriffs and commissioned reserve deputy sheriffs may carry firearms at all times and in all places within Tennessee, on-duty or off-duty, regardless of the deputy's regular duty hours or assignments, except as provided by T.C.A. § 39-17-1350(c) (see below), federal law, lawful orders of court or the written directive of the sheriff. T.C.A. § 39-17-1350(a) and (d).

The authority conferred by T.C.A. § 39-17-1350 does not extend to a deputy sheriff or commissioned reserve deputy sheriff:

1. Who is not engaged in the actual discharge of official duties as a law enforcement officer and carries a firearm onto school grounds or inside a school building during regular school hours unless the officer immediately informs the principal that the officer will be present on school grounds or inside the school building and in possession of a firearm. If the principal is unavailable, the notice may be given to an appropriate administrative staff person in the principal's office;
2. Who is consuming beer or an alcoholic beverage or who is under the influence of beer, an alcoholic beverage, or a controlled substance or controlled substance analogue; or
3. Who is not engaged in the actual discharge of official duties as a law enforcement officer while attending a judicial proceeding.

T.C.A. § 39-17-1350(c). See Op. Tenn. Atty. Gen. No. 10-111 (November 3, 2010). See also T.C.A. §§ 39-17-1305; 39-17-1306; 39-17-1309; and 39-17-1311; 39-17-1321. Op. Tenn. Atty. Gen. No. 99-024 (February 16, 1999).

## Disposal of Property

Reference Number: CTAS-1280

The sheriff is authorized by statute to dispose of all abandoned, stolen, and recovered or worthless property that remains unclaimed in the sheriff's custody and possession by virtue of confiscation, abandonment, or having been stolen and recovered. Such property may not be disposed of until a period of six months has elapsed from date of acquisition of the property by the sheriff. Prior to disposing of such property, the sheriff must make a reasonable effort to locate the true owner of the property and notify the owner of the sheriff's possession of the property. When located, the true owner must claim the property within a reasonable time. However, the sheriff is prohibited from returning any property to the owner, even if known, if the return of the property would be contrary to the public welfare. In the event that the owner of such property cannot be located, the sheriff must present to a judge of one of the criminal courts of the county a list of all such property to be disposed of, together with an affidavit that the sheriff has made a reasonable search for the true owner thereof and that the true owner cannot be located. The sheriff must then procure an order from the court directing the manner in which such property is to be disposed of. Proceeds from the disposition of such property must be paid over to the general fund of the county. T.C.A. § 8-8-501. See also T.C.A. § 66-29-101 *et seq.*

## Disposition of Stolen Property in Possession of Pawnbroker

Reference Number: CTAS-1281

For Disposition of Stolen Property in Possession of Pawnbroker, please see Recovery of Stolen Property.

## Exchange of Officers With Other Law Enforcement Agencies

Reference Number: CTAS-1282

Pursuant to T.C.A. § 8-8-212(c)(1), the sheriff is authorized to enter into agreements with other law enforcement agencies, including, but not limited to, other county sheriff's offices, for the exchange of law enforcement officers when required for a particular purpose. Exchanged officers must be covered by liability insurance by the agency of their regular employment or by the agency to which the officers are being assigned. Responding officers under these agreements may be deputized by the requesting sheriff without making application to the court provided that the exchanged officers may serve in such capacity only for the time necessary to complete the particular purpose for which the exchange was made. Law enforcement officers exchanged under T.C.A. § 8-8-212(c) shall not be deemed to be special deputies. T.C.A. § 8-8-212(c)(2).

## Inspection of Gun Dealer's Records

Reference Number: CTAS-1283

The sheriff is authorized to inspect the records of a gun dealer relating to transfers of firearms in the course of a reasonable inquiry during a criminal investigation or under the authority of a properly

authorized subpoena or search warrant. T.C.A. § 39-17-1316(k).

## Inspection of Pawnbroker's Records

Reference Number: CTAS-1284

All pawnbrokers are required to record certain information at the time of making a pawn transaction or a buy-sell transaction. T.C.A. § 45-6-209(b). These records must be delivered to the appropriate law enforcement agency by mail or in person, or electronically if requested by the law enforcement agency, within 48 hours following the day the transactions were made. In addition, these records must be made available for inspection each business day, except Sunday, by the sheriff of the county and the chief of police of the municipality in which the pawnshop is located. T.C.A. §§ 45-6-209(d) and (e); 45-6-213(a); and 45-6-221.

Pursuant to T.C.A. § 45-6-209(b)(7), a pilot project has been established in Knox and Shelby counties that requires the pawnbroker to take the right thumbprint of the pledgor at the time of making the pawn or buy-sell transaction. If taking the right thumbprint is not possible the pawnbroker must take a fingerprint from the left thumb or another finger and must identify on the pawn ticket which finger has been used. A thumb or fingerprint taken pursuant to T.C.A. § 45-6-209(b)(7) must be maintained by the pawnbroker for a period of five years from the date of the pawn transaction.

In Knox and Shelby counties, if the pawn transaction involves a firearm, the pawnbroker must exclude from the information sent to the sheriff's office or police department the name, address and identification numbers of the pledgor pawning the firearm. The name, address and identification numbers of the pledgor must remain with the pawnbroker along with the pledgor's thumbprint. A law enforcement officer inspecting a record involving a firearm may not take or record the name, address and identification numbers of the pledgor except pursuant to a subpoena. T.C.A. § 45-6-209(g)(1). If a court grants the request of a law enforcement officer for a subpoena to require production of the thumbprint of a pledgor taken and maintained by the pawnbroker, the pawnbroker must supply the law enforcement officer with the name, address and identification numbers of the pledgor whose thumbprint was subpoenaed. T.C.A. § 45-6-209(g)(2).

The attorney general has opined that a city does not have the authority to adopt an ordinance requiring the pledgor in a pawn transaction to place a thumbprint on the pawnbroker's copy of the pawn transaction. Op. Tenn. Atty. Gen. 00-071 (April 11, 2000). Nor does a city have the authority to adopt an ordinance requiring the pledgor in a pawn transaction to place a thumbprint on a form separate from the pawn ticket to be maintained by the pawnbroker and made available to law enforcement authorities. Op. Tenn. Atty. Gen. 00-167 (Oct. 26, 2000).

## Investigations of Adult-Oriented Establishments

Reference Number: CTAS-1285

Pursuant to T.C.A. § 7-51-1107, the sheriff is empowered to conduct investigations of people engaged in the operation of any adult-oriented establishment and inspect the license of the operators and establishment for compliance with Title 7, Chapter 51, Part 11.

## Motor Vehicles

Reference Number: CTAS-1286

### Motor Vehicles - Impounding

Pursuant to T.C.A. § 55-5-129, the sheriff has the authority to impound any vehicle after determining the existence of any one or more of the following factors:

1. The registration plate displayed on the vehicle is stolen or is otherwise not registered to such vehicle; or
2. The renewal decal displayed on the vehicle is stolen or is otherwise not registered to such vehicle.

However, law enforcement personnel must secure the permission of the owner of any private property before entering onto private property for the purpose of impounding a vehicle.

As used in T.C.A. § 55-5-129, "impound" means removing a vehicle from a private parking lot adjacent to a street, alley, highway, or thoroughfare by a uniformed deputy to the nearest garage or other place of safety or to a garage designated or maintained by the sheriff's office. The provisions of T.C.A. §§ 55-16-105 and 55-16-106 govern the disposition of any vehicle impounded pursuant to T.C.A. § 55-5-129.

Motor Vehicles - Taking Possession of Abandoned Vehicles .

The sheriff is authorized by statute to take into custody any motor vehicle found abandoned, immobile, or unattended on public or private property. In doing so, the sheriff may employ his or her own personnel, equipment and facilities or hire personnel, equipment, and facilities for the purpose of removing, preserving and storing abandoned, immobile, or unattended motor vehicles. T.C.A. § 55-16-104. A vehicle may not be towed without the authorization of the owner of the vehicle until 12 hours have elapsed since it was first observed to be immobile or unattended unless the vehicle is creating a hazard, is blocking access to public or private property, or is parked illegally. T.C.A. § 55-16-111.

Within three (3) business days of taking an abandoned, immobile, or unattended motor vehicle into custody, the sheriff's office must verify ownership of the vehicle. After receiving verification of ownership, the sheriff's department must within three (3) business days notify, by registered mail, return receipt requested, the last known registered owner of the motor vehicle and all lienholders of record that the vehicle has been taken into custody. The notice must describe the year, make, model and serial number of the motor vehicle; set forth the location of the facility where the motor vehicle is being held; inform the owner and any lienholders of their right to reclaim the motor vehicle within 10 days after the date of the notice upon payment of all towing, preservation and storage charges resulting from placing the vehicle in custody; and state that the failure of the owner or lienholders to exercise their right to reclaim the vehicle within the time provided shall be deemed a waiver by the owner and all lienholders of all right, title and interest in the vehicle and consent to the sale of the motor vehicle at a public auction. T.C.A. § 55-16-105(a).

In the event that there is no response to the notice by registered mail provided for in T.C.A. § 55-16-105(a), then there must be notice by one publication in one newspaper of general circulation in the area where the motor vehicle was abandoned, immobile, or unattended. Such notice must be in a small display ad format, but one advertisement may contain multiple listings of abandoned, immobile, or unattended vehicles. T.C.A. § 55-16-105(c).

The sheriff's office is not required to comply with the requirements of T.C.A. § 55-16-105(a) if it provides pre-seizure notice to the owner of the motor vehicle and all lienholders of record that the vehicle has been found to be abandoned, immobile, or unattended. Any pre-seizure notice must be sent by registered or certified mail, return receipt requested, to the last known address of the owner of record and to all lienholders of record. The notice must be written in plain language and must contain the year, make, model and vehicle identification number of the motor vehicle, if ascertainable; the location of the motor vehicle; and a statement advising the owner that the owner has 10 days to appeal the determination by the sheriff's office that the vehicle is abandoned, immobile, or unattended or to remove the vehicle from the property, or the sheriff's office will take the vehicle into custody. The notice must further inform the owner and any lienholders of their right to reclaim the motor vehicle after it is taken into custody but before it is sold or demolished, upon payment of all towing, preservation, storage or any other charges resulting from placing the vehicle in custody, and state that the failure of the owner or lienholders to exercise their right to reclaim the vehicle shall be deemed a waiver by the owner and all lienholders of all right, title and interest in the vehicle and consent to demolition of the vehicle or its sale at a public auction. If the owner or lienholder cannot be located through the exercise of due diligence, notice by publication must be given as set out in T.C.A. § 55-16-105(c). If the owner or lienholder of an abandoned, immobile, or unattended motor vehicle fails to appeal the determination that the vehicle is abandoned, immobile, or unattended or fails to remove the motor vehicle within the time allowed for an appeal, the sheriff's office may take the vehicle into custody. If an appeal is made, the motor vehicle may not be taken into custody while the appeal is pending. Failure to appeal within the specific time period shall, without exception, constitute waiver of the right of appeal. T.C.A. § 55-16-105(b).

When the sheriff, deputy sheriff, or towing company contracting with the sheriff's office takes possession of a vehicle found abandoned, immobile, or unattended, an employee of the sheriff's office must verify ownership of the vehicle through the Tennessee Information Enforcement System (TIES) and must place the ownership information on the towing sheet or form. The sheriff's office must also provide the ownership information to any towing company or garagekeeper with whom the sheriff's office has a contract. If the sheriff's office attempts to verify ownership information through the Tennessee Information Enforcement System and the response is "Not on File," the sheriff's office must contact the Department of Safety Title and Registration Division which will search records not contained in Tennessee Information Enforcement System for the ownership information. If the Title and Registration Division locates ownership information through this search, it will notify the sheriff's office, and the sheriff's office must distribute the information as discussed above. T.C.A. § 55-16-105(f).

In addition to the notification requirements set forth in T.C.A. § 55-16-105(a), any garagekeeper or towing firm that has in its possession an abandoned, immobile or unattended motor vehicle taken into custody by the sheriff's office, and in whose possession the vehicle was lawfully placed by the sheriff's office, must, within three (3) business days of taking such motor vehicle into its possession verify



ownership of the vehicle. After receiving verification of ownership, the garagekeeper or towing firm must within three (3) business days provide notice to the last known registered owner of the motor vehicle and all lienholders of record. All the notification requirements included in T.C.A. § 55-16-105(a) apply to the notice required to be provided by a garagekeeper or towing firm. T.C.A. § 55-16-105(g).

## Regulation of Private Security Guards

Reference Number: CTAS-1287

When a security guard is working in a county other than the security guard's primary county, the sheriff of the county in which the security guard is working must be notified in writing by the employer of the security guard within five days of the date of first service where the security guard will be assigned and the length of the assignment, unless other arrangements are made with the sheriff. In Davidson County the chief of police must be notified. The sheriff and his or her deputies are required to recognize the state-issued security armed card as valid in their jurisdiction while any security guard is traveling to or from a job site and while performing duties while at the job site, or while any representative of a security company, supervisor or officers are traveling to or from job sites or operating as a street patrol service. T.C.A. § 62-35-131(b).

The sheriff may require an individual to present proof of compliance with Title 62, Chapter 35. However, the sheriff is required to waive the provisions relative to training for those individuals properly and duly registered and in possession of a valid armed registration card. But, if a valid objection exists, the sheriff must inform the commissioner of commerce and insurance or the commissioner's designee within 10 days and provide a written explanation of the sheriff's objection. A security guard may not work in any jurisdiction in which the sheriff has a pending objection to the training qualifications of the security guard. T.C.A. § 62-35-131(c) and (d).

## Seizure of Conveyance Used in Robbery or Felony Theft

Reference Number: CTAS-1288

Subject to the discretion of the court, where there is a final judgment of conviction, the sheriff is authorized, upon process issued by the court having jurisdiction over the property, to seize any conveyance, including a vehicle, aircraft or vessel that was used to transport, conceal or store money or goods that were the subject of a robbery offense under Title 39, Chapter 13, Part 4, or felony theft under Title 39, Chapter 14, Part 1. Seizure without process may be made if the seizure is incident to an arrest or a search under a search warrant. T.C.A. §§ 40-33-101 and 40-33-102.

A conveyance taken or detained by the sheriff under T.C.A. § 40-33-102 is not subject to replevin but is deemed to be in the custody of the sheriff, subject only to the orders and decrees of the court that has jurisdiction over the property. T.C.A. §§ 40-33-104(a) and 40-33-106. *See Knobler v. Knobler*, 697 S.W.2d 583, 586 (Tenn. Ct. App. 1985) (Property is in *custodia legis* if it has been lawfully taken by virtue of legal process.). When the sheriff seizes a conveyance pursuant to T.C.A. § 40-33-102, the sheriff may (1) place the conveyance under seal, (2) remove the conveyance to a place designated by the court; or (3) take custody of the conveyance and remove it to an appropriate location for disposition in accordance with law. T.C.A. § 40-33-104(b).

When the sheriff seizes a conveyance pursuant to T.C.A. § 40-33-102, the sheriff is required to give the person in possession of the conveyance, if any, a receipt. The receipt must state a general description of the seized conveyance, the reasons for the seizure, the procedure by which recovery of the conveyance may be sought, including the time period in which a claim for recovery must be presented, and the consequences of failing to file within the time period. If the person found in possession of the conveyance is not the sole unencumbered owner of the conveyance, the court having jurisdiction over the property is required to make a reasonable effort to notify the owner or lienholder of the seizure by furnishing all parties known to have an interest in the conveyance with a copy of the receipt. A copy of the receipt must be filed with the clerk of the court having jurisdiction over the property and shall be open to the public for inspection. T.C.A. § 40-33-107(1).

Any person claiming a seized conveyance may, within 15 days after receiving notification of seizure, file with the court a claim in writing requesting a hearing and stating the person's interest in the seized conveyance. The claimant must also file a cost bond with one or more good and solvent sureties in the sum of \$250 made payable to the state. An indigent person may file a claim *in forma pauperis* by filing an affidavit stating that they are unable to bear the cost of the proceeding. T.C.A. § 40-33-107(3). The court must set a date for a hearing within 45 days from the day a claim requesting a hearing is filed. T.C.A. § 40-33-107(4). *See also* T.C.A. § 40-33-108. In the event the decision of the court is favorable to the claimant, the clerk of the court is required to deliver the seized conveyance to the claimant. If the ruling

of the court is adverse to the claimant, the clerk of the court directs the sheriff to sell or dispose of the conveyance. The expenses of storage, transportation, etc., are adjudged as part of the cost of the proceeding. T.C.A. § 40-33-107(5). If no claim is filed, the conveyance is forfeited without further proceedings and is sold or disposed of as provided in Title 40, Chapter 33, Part 1. T.C.A. § 40-33-109.

## Seizure of Controlled Substances and Related Property

Reference Number: CTAS-1289

The sheriff is authorized, upon process issued by the court having jurisdiction over the property, to seize:

1. All controlled substances that have been manufactured, distributed, dispensed or acquired in violation of Title 39, Chapter 17, Part 4 or Title 53, Chapter 11, Parts 3 and 4;
2. All raw materials, products and equipment of any kind that are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of Title 39, Chapter 17, Part 4 or Title 53, Chapter 11, Parts 3 and 4;
3. All property that is used, or intended for use, as a container for the property described above;
4. All conveyances, including aircraft, vehicles or vessels, that are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale or receipt of the property described above;
5. All books, records, and research products and materials, including formulas, microfilm, tapes and data that are used, or intended for use, in violation of Title 39, Chapter 17, Part 4 or Title 53, Chapter 11, Parts 3 and 4;
6. Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of the Tennessee Drug Control Act of 1989, compiled in Title 39, Chapter 17, Part 4, and Title 53, Chapter 11, Parts 3 and 4, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act, compiled in Title 39, Chapter 17, Part 4, and Title 53, Chapter 11, Parts 3 and 4; and
7. All drug paraphernalia as defined by T.C.A. § 39-17-402.

T.C.A. § 53-11-451(a). *See Payne v. Breuer*, 891 S.W.2d 200, 203 (Tenn., 1994) (The above statute clearly requires that a warrant be obtained prior to any seizure made under it unless one of the stated exceptions applies.).

Seizure without process may be made if:

1. The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;
2. The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon Title 39, Chapter 17, Part 4, or Title 53, Chapter 11, Parts 3 and 4;
3. The sheriff has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
4. The sheriff has probable cause to believe that the property was used or is intended to be used in violation of Title 39, Chapter 17, Part 4, or Title 53, Chapter 11, Parts 3 and 4.

T.C.A. § 53-11-451(b). In *Fuqua v. Armour*, 543 S.W.2d 64, 68 (Tenn. 1976), the Tennessee Supreme Court held that T.C.A. § 52-1443(b)(4) [the earlier version of T.C.A. § 53-11-451(b)(4)] is constitutional only if the statute is construed to include an "exigent circumstances" requirement. The court stated:

T.C.A. § 52-1443(b)(4) should not be construed as authorizing the seizure of an automobile without a warrant under circumstances such as those disclosed in the facts of this case. The fact that probable cause exists for seizure is not enough; there must also exist "exigent circumstances"; therefore, T.C.A. § 52-1443(b)(4) should be construed as authorizing a seizure without a warrant, upon probable cause, only when "exigent circumstances" exist justifying summary seizure. "No amount of probable cause can justify a warrantless search or seizure, absent 'exigent circumstances.'" *Coolidge v. New Hampshire*, [403 U.S. 443, 468 (1971)]. Thus construed and restricted, T.C.A. § 52-1443(b)(4) may constitutionally be applied.

*Fuqua*, 543 S.W.2d at 68.

Property taken or detained by the sheriff under T.C.A. § 53-11-451 is not subject to replevin but is deemed to be in the custody of the sheriff subject only to the orders and decrees of the court that has jurisdiction over the property. T.C.A. § 53-11-451(d). *See State v. Vukelich*, 2002 WL 31249910 (Tenn.

Crim. App. 2002) (property held in *custodia legis*, or in the custody of the law). When the sheriff seizes property under Title 39, Chapter 17, Part 4, or Title 53, Chapter 11, Parts 3 and 4, the sheriff may (1) place the property under seal, (2) remove the property to a place designated by the sheriff; or (3) take custody of the property and remove it to an appropriate location for disposition in accordance with law. T.C.A. § 53-11-451(d). Regardless of any other method of disposition of the property, the sheriff may, with the permission of the court and under such terms and conditions as are approved by the court, use the property taken or detained in the drug enforcement program of the county. In addition, with the approval of the court having jurisdiction over the property, the sheriff may sell the property and use the proceeds for the drug enforcement program of the county. T.C.A. § 53-11-451(d)(4). See *State v. Blackmon*, 78 S.W.3d 322, 332 (Tenn. Crim. App. 2001) (judicial authorization to use seized property).

Pursuant to T.C.A. § 40-33-201, all personal property, including conveyances, subject to forfeiture under the provisions of T.C.A. § 53-11-451 shall be seized and forfeited in accordance with the procedure set out in Title 40, Chapter 33, Part 2. See also Rules of Tennessee Department of Safety Administrative Division, CHAPTER 1340-2-2, The Rules of Procedure for Asset Forfeiture Hearings.

## Notice of Seizure

Reference Number: CTAS-1292

Upon the seizure of any personal property subject to forfeiture pursuant to T.C.A. § 40-33-201, the seizing officer must prepare a receipt entitled "Notice of Seizure" and provide the person found in possession of the property, if known, a copy of the receipt. The notice of seizure is a standard form promulgated by the agency charged by law or permitted by agreement with conducting the forfeiture proceeding for the particular property seized. T.C.A. § 40-33-203(a) and (c). The notice of seizure must contain the following:

1. A general description of the property seized and, if the property is money, the amount seized;
2. The date the property was seized and the date the notice of seizure was given to the person in possession of the seized property;
3. The vehicle identification number (VIN) if the property seized is a motor vehicle;
4. The reason the seizing officer believes the property is subject to seizure and forfeiture;
5. The procedure by which recovery of the property may be sought, including any time periods during which a claim for recovery must be submitted; and
6. The consequences that will attach if no claim for recovery is filed within the applicable time period.

T.C.A. § 40-33-203(c). See *Holt v. Young*, 2001 WL 1285880, \*5 (Tenn. Ct. App. 2001).

Upon the seizure of a conveyance, the seizing officer must make reasonable efforts to determine the owner or owners of the property seized as reflected by public records of titles, registrations and other recorded documents. T.C.A. § 40-33-203(b)(1). If the conveyance seized is a commercial vehicle or common or contract carrier and the person in possession of the vehicle at the time of seizure does not have an ownership interest in the vehicle, the seizing officer must make reasonable efforts to determine the owner of the conveyance and notify the owner of the seizure. If the cargo is not contraband and is not subject to forfeiture under some other provision of state or federal law, the seizing agency must release the cargo to the owner or transporting agent upon request. If the interest of the owner of the commercial vehicle or common or contract carrier is not subject to forfeiture under T.C.A. § 40-33-210(a)(2), then the vehicle or carrier is not subject to forfeiture, and the seizing officer may not seek a forfeiture warrant. The seizing agency must release the vehicle or carrier to the owner or transporting agent upon request. T.C.A. § 40-33-203(b)(2) and (b)(4). For purposes of T.C.A. § 40-33-203(b), "commercial vehicle" includes a private passenger motor vehicle that is used for retail rental for periods of 31 days or less.

If the conveyance seized is a commercial vehicle or common or contract carrier and the person in possession of the vehicle at the time of seizure has an ownership interest in the vehicle, the seizing officer must make reasonable efforts to determine the common or contract carrier responsible for conveying the cargo and notify the carrier of the seizure. If the cargo is not contraband and is not subject to forfeiture under some other provision of state or federal law, the seizing agency must release the cargo to the owner or transporting agent upon request. T.C.A. § 40-33-203(b)(3).

## Forfeiture Warrant

Reference Number: CTAS-1290

Once personal property is seized pursuant to the applicable provision of law, no forfeiture action can proceed unless a forfeiture warrant is issued in accordance with T.C.A. § 40-33-204 by a judge who is

authorized to issue a search warrant. The forfeiture warrant authorizes institution of the forfeiture proceeding. T.C.A. § 40-33-204(a). General sessions judges may authorize magistrates or judicial commissioners to issue forfeiture warrants. However, prior to such authorization, the general sessions judge must train and certify that the magistrates or judicial commissioners understand the procedure and requirements relative to issuing a forfeiture warrant. T.C.A. § 40-33-204(c)(3).

The officer making the seizure must apply for a forfeiture warrant by filing an affidavit within five working days following the property seizure. The forfeiture warrant is based upon proof by affidavit and must have attached to it a copy of the Notice of Seizure. The affidavit in support of the forfeiture warrant must state the legal and factual basis making the property subject to forfeiture. If the owner or co-owner of the property was not the person in possession of the property at the time of seizure and can be determined from public records of title, registrations or other recorded documents, the affidavit must state with particular specificity the officer's probable cause for believing that the owner or co-owner of the property knew that such property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture as well as the legal and factual basis for the forfeiture of such interest. If the interest of a secured party with a duly perfected security interest as reflected in the public records of title, registration or other recorded documents is sought to be forfeited, the affidavit must state with particular specificity the officer's probable cause that the secured party's interest in the property is nevertheless subject to forfeiture as well as the legal and factual basis for the forfeiture of such interest. T.C.A. § 40-33-204(b).

If the seizing officer asserts to the judge that he or she was unable to determine the owner of the seized property or whether the owner's interest is subject to forfeiture within the required five-day period, the judge may grant up to 10 additional days to seek a forfeiture warrant. In order to grant additional time, the judge must find that the seizing officer has exercised due diligence and good faith in attempting to determine the owner of the property or whether the owner's interest is subject to forfeiture and made a factual showing that because of the existence of extraordinary and unusual circumstances an exception to the five-day forfeiture warrant requirement is justified. T.C.A. § 40-33-204(c)(2).

If the person in possession of the property is not the registered owner as determined from public records of titles, registration or other recorded documents, the judge may consider other indicia of ownership that proves that the possessor is nonetheless an owner of the property. Such other indicia of ownership shall include, but is not limited to, the following:

1. How the parties involved regarded ownership of the property in question;
2. The intentions of the parties relative to ownership of the property;
3. Who was responsible for originally purchasing the property;
4. Who pays any insurance, license or fees required to possess or operate the property;
5. Who maintains and repairs the property;
6. Who uses or operates the property;
7. Who has access to use the property; and
8. Who acts as if they have a proprietary interest in the property.

T.C.A. § 40-33-204(d).

The judge will issue the forfeiture warrant if the judge finds that the offered proof establishes probable cause to believe that the property is subject to forfeiture and if the property is owned by one whose interest is described in public records of titles, registrations or other recorded documents, that the owner's interest is subject to forfeiture. T.C.A. § 40-33-204(c)(1). Once the forfeiture warrant has been issued, the officer must, within seven working days, send the warrant, a copy of the affidavit and the notice of seizure to the Department of Safety Legal Division. The sheriff's office must maintain a copy of the notice of seizure for all property seized at its main office. The notices and receipts are public records. T.C.A. § 40-33-204(g). If no forfeiture warrant is issued and the property is not needed for evidence in a criminal proceeding, the sheriff's office must return the property to the owner, as determined from public records of titles, registration or other recorded documents, or if the owner cannot be determined, to the person in possession of the property at the time of seizure. T.C.A. § 40-33-204(f).

Upon receipt of the documents, the legal division will notify any other owner, as may be determined from public records of titles, registration or other recorded documents, or secured party that a forfeiture warrant has been issued. T.C.A. § 40-33-204(g). Any person asserting a claim to the seized property may, within 30 days of being notified by the legal division that a forfeiture warrant has issued, file a written claim requesting a hearing and stating the person's interest in the seized property for which a claim is made. T.C.A. § 40-33-206(a). See T.C.A. § 40-33-205 regarding interests of a secured party. Only the sheriff or the sheriff's designee may be permitted to negotiate or enter into any type of settlement

agreement or agreements prior to the forfeiture hearing. In no event may any officer involved in seizing the property be allowed to negotiate or enter into any type of settlement agreement or agreements prior to the forfeiture hearing. All negotiated settlements by the sheriff's office are subject to the approval of the commissioner of safety. T.C.A. § 40-33-212. If a claim or proof of a security interest is not filed with the legal division within the specified time, the seized property will be forfeited and disposed of as provided by law. T.C.A. § 40-33-206(c).

Within 30 days from the day a claim is filed, the legal division will establish a hearing date and set the case on the docket. T.C.A. § 40-33-207(a). At the hearing, if it is determined that the state has carried the burden of proof with regard to all parties claiming an interest in the property and the ruling of the commissioner of safety is adverse to the claimant or claimants, the property will be sold or disposed of as provided by law. T.C.A. § 40-33-210(d). Once property has been forfeited, it is the duty of the sheriff to remove it for disposition in accordance with the law. T.C.A. § 53-11-451(e).

## Seizure of Vehicle

Reference Number: CTAS-1291

### Seizure of Vehicle Used in the Commission of DUI Offense

The sheriff is authorized to seize the vehicle used in the commission of a person's second or subsequent violation of T.C.A. § 55-10-401, or the second or subsequent violation of any combination of T.C.A. § 55-10-401 and a statute in any other state prohibiting driving under the influence of an intoxicant. Only POST-certified or state-commissioned law enforcement officers are authorized to seize such vehicles. T.C.A. § 55-10-414(a) and (d). In order for the provisions of T.C.A. § 55-10-414(a) to be applicable to a vehicle, the violation making the vehicle subject to seizure and forfeiture must occur in Tennessee within five years of the first offense, which must have occurred on or after January 1, 1997. T.C.A. § 55-10-414(b).

All vehicles subject to forfeiture under the provisions of T.C.A. § 55-10-414 shall be seized and forfeited in accordance with the procedure set out in Title 40, Chapter 33, Part 2. T.C.A. § 40-33-201. The Department of Safety is designated as the applicable agency, as defined by T.C.A. § 40-33-202, for all forfeitures authorized by T.C.A. § 55-10-414. See also Rules of Tennessee Department of Safety Administrative Division, CHAPTER 1340-2-2, The Rules of Procedure for Asset Forfeiture Hearings.

See Notice of Seizure and Forfeiture Warrant under Seizure of Controlled Substances and Related Property for a discussion of the applicable procedure to be used.

### Seizure of Vehicle Used by Person Driving on Revoked License

The sheriff is authorized to seize the vehicle used in the commission of a person's violation of T.C.A. § 55-50-504 when the original suspension or revocation was made for a violation of T.C.A. § 55-10-401 or a statute in another state prohibiting driving under the influence of an intoxicant. A vehicle is subject to seizure and forfeiture upon the arrest or citation of a person for driving while such person's driving privileges are cancelled, suspended or revoked. A conviction for the criminal offense of driving while such person's driving privileges are cancelled, suspended or revoked is not required. T.C.A. § 55-50-504(g).

All vehicles subject to forfeiture under the provisions of T.C.A. § 55-50-504(g) shall be seized and forfeited in accordance with the procedure set out in Title 40, Chapter 33, Part 2. T.C.A. § 40-33-201. The Department of Safety is designated as the applicable agency, as defined by T.C.A. § 40-33-202, for all forfeitures authorized by T.C.A. § 55-50-504(g). See also Rules of Tennessee Department of Safety Administrative Division, CHAPTER 1340-2-2, The Rules of Procedure for Asset Forfeiture Hearings.

See Notice of Seizure and Forfeiture Warrant under Seizure of Controlled Substances and Related Property for a discussion of the applicable procedure to be used.

## Shooting Ranges

Reference Number: CTAS-1293

Sheriffs are authorized by statute to open their shooting ranges for public use when the range is not being used by the sheriff's personnel. The sheriff may establish reasonable regulations for use of the range in order to promote the full use of the range without interfering with the needs of the sheriff's personnel. The sheriff may also charge a reasonable fee for people or organizations using the range and may require users to make improvements to the range. T.C.A. § 38-8-116.

## Special Deputies

Reference Number: CTAS-1294

Special Deputies - Appointment Under T.C.A. § 8-8-212

On urgent occasions, or when required for particular purposes, the sheriff may appoint as many special deputies as the sheriff deems proper. T.C.A. § 8-8-212(a). No person may serve as a special deputy under this statute unless that person proves to the appointing sheriff financial responsibility as evidenced by a corporate surety bond in no less amount than \$50,000 or by a liability insurance policy of the employer in no less amount than \$50,000. T.C.A. § 8-8-303(c).

Special Deputies - Emergency Appointment Under T.C.A. § 8-22-110

In case of great emergencies, such as in the case of a strike, riot, putting down a mob, or other like emergencies, when there is an immediate need for the sheriff to appoint an additional number of deputies to deal efficiently with the situation and to preserve order, the sheriff is authorized to make emergency appointments of special deputies without making application to the court. These special deputies may serve during the term of the emergency only. Once the emergency is over, the sheriff is required to make an itemized statement showing the services of the deputies and the time during which the special deputies served. The itemized statement must be presented to the county mayor for auditing and allowance. The mayor is required to authorize payment of the claims once the mayor is satisfied with the justness of the claims provided that no special deputy appointed by the sheriff may receive more than \$4 per day for services actually performed. T.C.A. § 8-22-110(b).

## Service of Civil Process

Reference Number: CTAS-1295

These pages provide a very general overview of Tennessee law regarding service of civil process, to examine a few of the most serious concerns in more detail, and, most importantly, to offer information that may help sheriffs avoid exposure to the legal pitfalls and liabilities that may arise if the sheriff or sheriff's officers fail to provide effective, sufficient service and return of service of civil process.

## Definitions for Civil Process

Reference Number: CTAS-1296

The definitions below include commonly used terms related to service of process. Most are condensed or simplified when compared to their meanings as "legal terms of art." Nearly all are found in *Black's Law Dictionary*, 7<sup>th</sup> Edition (1999), where they are more fully defined.

Action – Any judicial proceeding which, if conducted to the court's final decision, will result in a judgment or decree. See also, "Suit."

Attachment – The procedure whereby the court takes control of specific property that is located in the court's jurisdiction.

Body Attachment - Locally used language for "Body Execution." See below.

Body Execution – A court's order to take a named person into custody, most often to bring the person before the court to pay a debt. Locally known as a "body attachment," it is most often used when child support has not been paid as ordered.

Complaint – The pleading that initiates a civil action. It states the basis for the court's jurisdiction, the basis for the plaintiff's claim, and the demand for relief, i.e., damages.

Decree – The judgment of a court of equity or chancery. See also, "Judgment."

Execution – The act of carrying out a court's order. Also, judicial enforcement of a money judgment, most often through seizure and sale of the judgment debtor's property.

Fieri Facias – Judicial writ directing the sheriff to satisfy a money judgment from the debtor's property. A form of execution usually referred to simply as an execution.

Foreign Judgment – Any judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in Tennessee.

Garnishment – An order to a third party, such as an employer, to turn over a debtor's property (such as wages or bank accounts) held by the third party.

Indemnity Bond – A bond given by the plaintiff to protect the sheriff or other officer against all damages and costs in cases where there is a dispute regarding the title to the property upon which the sheriff is executing the levy.

Injunction – A court order prohibiting someone from doing some specified act or commanding

someone to undo some wrong or injury.

Instanter Subpoena – A writ commanding the person to whom it is directed to appear before the court immediately.

Judgment – The official decision of a court of law upon the rights and claims of the parties to an action.

Judgment Creditor – A person having a legal right to enforce execution of a judgment for a specific sum of money.

Judgment Debtor – A person against whom a money judgment has been entered but not yet satisfied.

Levy – The court ordered seizure and sale of real or personal property or the money obtained from the sale, usually in order to satisfy a judgment. See also, "Levy of execution."

Levy of Execution – See "Levy."

"Not Found" – A return of service that signifies the defendant is believed to have left the jurisdiction for another county, state or foreign country.

"Not to Be Found in My County" – The return used when an officer cannot locate the defendant yet has no information about whether the defendant has left the jurisdiction.

Process – The means by which a defendant in a civil action is compelled to appear in court or through which a court compels compliance with its directives.

Proof of Service – An officer's written statement of what has been done under the process issued from the court for service. If service was made, the return must identify the person served and describe how service was accomplished. If process is returned unserved, the officer must state the reason service could not be effectuated. See also, "Return of Process."

Return of Process – See "Proof of Service."

Sale on Execution – The procedures whereby levied real or personal property is advertised and sold to satisfy a judgment. See also, "Sheriff's Sale."

Sheriff's Sale – See "Sale on Execution" above.

Subpoena – A writ that commands a person to appear before the court or other tribunal.

Subpoena Duces Tecum – A subpoena ordering the witness to appear and bring specified records or documents.

Suit – See "Action" above.

Summons – A writ or order commencing the plaintiff's action that directs the defendant to file an answer to the complaint and to appear in court.

Unlawful Detainer – The unjustified retention of real property by one who was there first lawfully, such as a tenant, but who then refuses to vacate the premises despite the termination of the lease and the landlord's demand for possession.

Writ - A court's written order commanding the addressee to do or refrain from doing some specified act.

Writ of Attachment – An order directing the sheriff to seize the defendant's property in order to satisfy a judgment.

Writ of Possession – A court's order directing an officer to take specified property out of the defendant's possession and deliver it to the plaintiff.

Writ of Restitution – A court's order to the sheriff, issued after a hearing, to remove the defendant (most often a tenant), by force if necessary, from the property and restore peaceful possession of the premises to the plaintiff (most often a landlord), and to make a return within 20 days of how the officer executed the writ.

Writ of Supersedeas – A writ or bond that suspends a judgment creditor's power to levy execution, usually pending appeal.

## Sheriff's Duty to Serve Civil Process

Reference Number: CTAS-1297

If confronted with the impending loss of your home, bank account, or personal belongings, how hard would you work to neutralize the threat? This question is relevant because the statutory duty of care for

executing civil process in Tennessee demands that the sheriff:

Use, in the execution of process, a degree of diligence exceeding that which a prudent person employs in such person's own affairs.

T.C.A. § 8-8-201(10) (emphasis added).

While a sheriff's responsibility to serve civil process is not nearly as exciting as criminal law enforcement, nor as fraught with constitutional complications as jail operations, it *is* the means by which representatives of the sheriff's office are most likely to have contact with members of the business community, landlords, public and private organizations, civil attorneys, and many government agencies. Professional, competent service and execution of process enhances the reputation of the sheriff's office.

Conversely, disobedience of the command of the process, whether by negligence, ignorance, or indifference, not only harms the agency's reputation but may lead to an award of money damages or findings of contempt of court against the sheriff or the sheriff's deputies. T.C.A. § 8-8-207. It should be kept in mind that in many cases the acts of the deputy on the sheriff's behalf are deemed to be equivalent to those of the sheriff. T.C.A. §§ 29-18-115(d)(1) and 29-20-205.

Sanctions and penalties for various missteps along the civil process pathway vary. The aggrieved party may recover full damages from the sheriff for the harm caused by failure to comply with the orders contained on the process. T.C.A. § 8-8-207. The law also provides for a \$125 penalty against a sheriff who fails to execute and make return of any process issued by a general sessions court or a court of record within the time frames specified by statute. T.C.A. § 25-3-105(a)(1) and (b)(1). A sheriff or deputy who neglects or refuses to execute any process governed by Title 29 of the Code, which governs detainers, *i.e.*, evictions, "shall forfeit \$250 to the party aggrieved . . ." T.C.A. § 29-18-116.

Congress has not laid down rules for service of process; hence, it is generally governed by state laws. *Amy v. City of Watertown*, 130 U.S. 301, 304, 9 S.Ct. 530, 531, 32 L.Ed. 946 (1889). The *Tennessee Code Annotated* and the Tennessee Rules of Civil Procedure set forth requirements for legally effective service of civil process. Title 8 of the Code enumerates the duties of the sheriff, but several other titles include further particulars for executing specific kinds of process. Among the Rules of Civil Procedure, Rule 4, "Process," Rule 54, "Judgments and Costs," and Rule 69, "Execution on Judgments," are most relevant to understanding legal mandates to the sheriff regarding civil matters.

Generally, effective service of process consists of a few seemingly simple steps:

1. Mark on all process the date it was received by the sheriff. T.C.A. § 8-8-201(a)(4); § 20-2-103(a).
2. Serve the process; execute all writs and other process legally issued and directed to the sheriff. T.C.A. § 8-8-201(a)(5)(A).
3. Make a timely, due return of the process, either personally or by a lawful deputy. T.C.A. § 8-8-201(a)(5)(A).

Judicial interpretation of the law surrounding service of process is generally well settled; many of the most cited cases reach back to Tennessee Supreme Court decisions from the 19th century.

However, the sheriff's job is complicated by several factors. On one hand, the Rules of Civil Procedure supply detailed guidance for effective service. On the other, our state Supreme Court has held that, where a statute dealing with a particular type of judicial action contains specific provisions for process and service, that method is permissible and may be followed in lieu of the Rules. *State Board of Education v. Cobb*, 557 S.W.2d 276 (Tenn. 1977). Since statutes regarding specific kinds of judicial actions are spread throughout a multitude of Tennessee Code titles, and different laws enacted at different times occasionally appear to conflict, compliance can become complicated.

The legal terms related to process and its service are generally a product of English laws dating back to the 17th and 18th centuries. The words themselves are often arcane, antiquated, and do not blend easily with modern vocabulary. What, for instance, might a citizen envision when advised that the sheriff has left the office to carry out a "body execution," or is off serving a "body attachment?" Fortunately, the legal expectation for carrying out that function is far less harsh than might be contemplated by a layperson.

Another impediment for the sheriff's staff is the occasional confusion among the counties caused by variations in local customs about what name a particular kind of process is actually called. For example, the judicial order called a "writ of restitution" in one county may be called a "writ of possession" in another, despite the fact that service, execution, and the results of those actions are exactly the same in both cases.

## How a Dispute Becomes a Lawsuit: The Complaint and



## Summons

Reference Number: CTAS-1298

Problems related to the sheriff's civil process duties most often arise because the process was improperly served, not served at all, or reflected an insufficient or inaccurate return.

All civil actions, whether equitable or legal, are commenced by filing a complaint with the clerk of the appropriate court. Rules 3 and 4.01, Tenn. R. Civ. P. When the civil complaint, *i.e.*, lawsuit, is filed, the clerk issues the required summons "forthwith." As of July 1, 2005, a summons must be served within 90 days of the date issued, a far more relaxed rule than the prior limit of 30 days.

The summons is extraordinarily important. It gives the person to whom it is directed notice that he or she is being sued, explains the time limit within which an answer to the complaint must be filed, and warns the defendant that a default judgment will be rendered in the plaintiff's favor if no answer is filed. Rule 4.03(1), Tenn. R. Civ. P. Clearly, the consequences can be grave if the return indicates that summons was properly served when in fact it was not.

Rule 4 of the Tennessee Rules of Civil Procedure contains nine subsections and two addendums detailing the specific requirements for serving summons under nearly every imaginable circumstance, including, but not limited to, serving defendants within and outside the state, minors, incompetents, partnerships, corporations, the state or a state agency, the county or a municipality. Rule 4 also dictates requirements for personal service and service by mail, and mandates who is eligible to accept service in each eventuality. It is also important to know whether a state statute exists regarding the method and means of proper service since the statute overrides the rules of civil procedure.

## Return of Service

Reference Number: CTAS-1299

The return is made by the deputy who serves the process. It is simply a written statement that constitutes proof of service or otherwise explains what was done under the process issued by the court for service. *David v. Reaves*, 75 Tenn. 585, 590 (1881). The return must either indicate that the command of the process was fully carried out or honestly state the facts that prevented compliance. *Eaken v. Boyd*, 37 Tenn. 204 (1857).

Returns are to be made in ink "or some other nonerasable material or fluid." Failure to follow this directive does not invalidate the return, but any deputy who violates the statute commits a Class A misdemeanor and is liable to any person harmed by the violation. T.C.A. § 20-2-111.

An inaccurate, carelessly made, or untruthful return is a serious matter that can lead to a damaging outcome for the parties and for the officer who may be penalized monetarily or otherwise held liable for his or her breach of duty. The return must identify the person served and describe the manner in which service was accomplished. Rule 4.03, Tenn. R. Civ. P. If the officer alleges on the return that the defendant is a resident of the county evading service of process, there must be a showing that a "diligent inquiry" was conducted, or the return is subject to be found untrue. *Willshire v. Frees*, 201 S.W.2d 675, 184 Tenn. 523 (1947).

In addition to the above-mentioned penalties and liabilities, T.C.A. § 25-3-101 allows for a judgment by motion to be obtained by a plaintiff against the sheriff if the sheriff or his deputy:

1. Fail to make due and proper return of an execution;
2. Make a false or insufficient return; or,
3. Fail to pay over money collected on an execution.

The time limitations for service and return of process vary greatly depending on the nature of the process itself. Some, such as orders of protection, instanter subpoenas, and orders for child custody transfer, are to be carried out immediately. Other forms of process, such as summons, may allow as much as 90 days for service.

Clearly, multitudinous legal mandates exist regarding what constitutes sufficient service and return of civil process, be they found in state statutes, the rules of civil procedure, case law, opinions of the attorney general, or some other legal authority or treatise. Sheriffs can seek guidance from their county attorney or some other attorney to assist in efforts to strictly comply with those mandates, and procedural details will not be examined at great length here.

## Avoiding Difficulties, Dilemmas, and Disasters

Reference Number: CTAS-1300

There are a number of limitations, boundaries, and prohibitions that, if respected, go a long way toward protecting sheriffs and deputies from legal liability, customer hostility, berating judges, indignant attorneys, public embarrassment, unnecessary confusion, and messy courtroom entanglements. Whether the sheriff's office serves 1,000 or 500,000 civil papers each year, it is the mistakes that invariably draw the most attention and are longest remembered. The following list is surely not all encompassing but contains a number of suggestions for avoiding the aforementioned unpleasant sorts of attention.

## Keep It Simple

Reference Number: CTAS-1301

Good faith efforts to ensure the integrity of the judicial process in matters not directly related to the sheriff's duties can become a very slippery slope. The sheriff's office may find itself dragged into a quagmire of confusion and controversy among the parties, the clerk's office, or the attorneys. The good news is the sheriff is not responsible for guaranteeing that the system work as it should. Read the process and follow the order to the sheriff contained thereon unless the order is illegal, too ambiguous to understand, or obviously erroneous. In those cases, the attorneys or clerk can be asked for clarification or a corrected order.

The sheriff "must look alone to the mandate in his hands. If the judgment awarding such mandate is void, that is a matter to be taken advantage of by the defendant in the execution, and it is no part of the duty of the sheriff to protect [the plaintiff]." *Perdue v. Dodd, et als.*, 69 Tenn. 710 (Tenn. 1878). See also *McCoy v. Dail*, 65 Tenn. 137 (Tenn. 1873); *State, to Use of Josiah Grigsby v. Manly et al.*, 79 Tenn. 636 (Tenn. 1883); and *Shaw v. Holmes*, 51 Tenn. 692 (Tenn. 871). In other words, the sheriff has no dog in the judicial hunt, and "cannot know, nor is it his province to inquire, what arrangements have been made between the principal and his securities."

## Levy On Disputed Property

Reference Number: CTAS-1302

There is an important exception to the statutory mandates that a sheriff obey the command of the process virtually without question. When executing a levy, no sheriff is required to seize any property the title of which is disputed, or to sell the same after levy, unless the plaintiff will first give an indemnity bond and security to the officer. The bond then protects the sheriff against all damages and costs in consequence of the levy or sale. T.C.A. § 26-3-104. Protection extends only to disputes based on the claim of a third party and does not include the defendant's objections that the property is exempt from execution, the execution is void, and so forth. *Baker v. Agey*, 21 Tenn. 13 (1840); *Hunter v. Agee*, 24 Tenn. 57 (1844).

The most efficient way to address this issue is for the plaintiff's attorney to sign the indemnity bond, which requires no fee, at the time the levy order is sought. The plaintiff cannot be required to give an indemnity bond in advance. However, if none is given and a dispute over ownership of the property arises when the deputy goes to execute the levy, the deputy should suspend further action until the bond is given.

In the meantime, the judgment debtor may use the delay to remove, transfer, or abscond with the property designated for levy. It is unlikely the sheriff can spare personnel to wait at the scene for a bond to be given that may never actually arrive. The simple form below, adopted from a form used in Chancery Court for Knox County, is found at 16 Tenn. Prac., Debtor-Creditor Law and Practice § 19.04 (2005). The sheriff can perhaps enlist cooperation from the clerk's office to make it easily available to the plaintiff's attorney at the location where the levy order is filed.

### INDEMNITY BOND OF PLAINTIFF: T.C.A. § 26-3-104

We, the Attorney for the Judgment Creditor and Surety, indemnify the Sheriff of \_\_\_\_\_ County, Tennessee, and all the Sheriff's Deputies, and all and every person aiding the Sheriff in the premises, from harm, loss, damages, costs, suits, judgments and executions, that may at any time arise or be brought against the Sheriff or any of them for the levy or sale and that we shall pay any judgment that may be obtained against the Sheriff or any of them by virtue of the levy or sale.

\_\_\_\_\_  
Surety

THIS DAY \_\_\_\_\_ OF \_\_\_\_\_, 20\_\_\_\_.

## Warrantless Searches

Reference Number: CTAS-1303

"The service of civil process does not authorize a warrantless search of private property." *State of Tennessee v. Harris*, 919 S.W.2d 619, 625 (1995). Failing to respect that legal fact invites disaster on two fronts. First, suit may be filed in federal court alleging a violation of civil rights pursuant to 42 U.S.C. §1983. There is no cap on damages in such actions, and attorneys' fees are awarded to the prevailing plaintiff in addition to damages. Second, evidence of criminal conduct discovered under such circumstances is inadmissible in court, allowing the offender to escape prosecution even for serious felony offenses. It is crucial to distinguish civil from criminal procedural rules here, and the ramifications for not doing so can be astonishingly harsh. For that reason, the limits on an officer's authority to enter or remain on the property are examined more comprehensively below.

The parameters are inflexible; the rule of law is that an officer attempting to serve civil process is permitted to go anywhere on the premises a (well behaved) member of the general public might be expected to go and no further. *State v. Marcus Ellis*, No. 01C01-9001-CR 00021, slip op. at 4, 1990 WL 198876, (Tenn. Crim. App., Nashville, Dec. 12, 1990).

The obligation to serve process indisputably gives officers the right to approach a dwelling and knock on the door. After all, the sheriff is required to "go to the house or place of abode of every defendant against whom the sheriff has process, before returning on the same that the defendant is not to be found." T.C.A. § 8-8-201(a)(8). An individual has no expectation of privacy in the area in front of his residence that leads from the street to the front door, and what an officer sees while standing on the sidewalk between the street and door is not protected. *State v. Baker*, 625 S.W.2d 724, 727 (Tenn. Crim. App. 1981).

However, the Fourth Amendment to the United States Constitution and Article I, Section 7, of the Tennessee Constitution protect a citizen of this state from unreasonable searches and seizures of his dwelling and the curtilage that adjoins the dwelling. *State v. Prier*, 725 S.W.2d 667, 671 (Tenn. 1987); *Welch v. State*, 154 Tenn. 60, 289 S.W. 510 (1926).

Therefore, any significant departure from an area where the public is impliedly invited "exceed[s] the scope of the implied invitation and intrude[s] upon a constitutionally protected expectation of privacy." *Id.* (quoting *State v. Seagull*, 95 Wash.2d 898, 632 P.2d 44, 47 (Wash.1981) (en banc)). And, while an officer attempting to serve process does have the right to go to the intended recipient's home or "place of abode," the officer may not enter the home itself without consent. Op. Tenn. Atty. Gen. No. 01-148 (September 24, 2001).

If it is obvious that no one is home, the deputy is at liberty to await the arrival of the residents. The deputy is not authorized to peer in windows or prowl around private, occupied, or fenced property. In *Harris*, the court pointedly stated: "Moreover, nothing in the law justifies the sheriff's proceeding down the lane behind a residence for over a hundred yards to serve civil process even if the sheriff had believed that Harris was 'hiding' from service." *Harris*, 919 S.W.2d at 623. "Consequently, the warrantless search of appellant's property and the resulting seizure of (over 100) marijuana plants was unconstitutional. Any statements made by appellants must likewise be suppressed." *Id.* at 624-625.

Although it may represent the deputy's diligence, or may simply be an innocent effort to determine whether the property is inhabited or abandoned, walking around the exterior of a dwelling or attempting to gaze inside a window constitutes a search, and, "[e]xcept in certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant." *State v. Lakin*, 588 S.W.2d 544, 547 (Tenn. 1979) (quoting *Hester v. United States*, 265 U.S. 57, 44 S.Ct. 445, 68 L.Ed. 898 (1924)). Tennessee courts have consistently held that police entry upon private, occupied, fenced land without a warrant and absent exigent circumstances is unreasonable, and evidence obtained as a result of such a search must be suppressed. *State v. Prier*, 725 S.W.2d 667 (Tenn. 1987).

## Never on Sunday

Reference Number: CTAS-1304

The general rule is that civil process shall not be executed on Sunday. The exception to the rule is where it appears the parties to be sued are leaving the county or state or are about to remove themselves or their property beyond the court's jurisdiction. T.C.A. §§ 20-2-104, 105, and 106. Other exceptions are orders of protection, T.C.A. § 36-3-601 *et seq.*, and a few other types of extraordinary process.

## No Shopping Allowed

Reference Number: CTAS-1305

No sheriff or deputy may purchase, either directly or indirectly, any property for sale under process of law, *i.e.*, from a sheriff's sale. Any such purchase shall be absolutely void. T.C.A. § 8-8-206. Interestingly enough, the prohibition applies to sheriffs but to no other law enforcement officers or agencies. Additionally, an officer cannot bid at his own execution sale even if the bid is placed purely for the benefit of a third party. *Chambers v. State*, 22 Tenn. 237 (1842).

## Service of Process by an Employee of a Party Is Prohibited

Reference Number: CTAS-1306

In any civil action where an officer is a salaried or commissioned employee of a party to the suit and serves a summons, writ, process or other proceeding, said officer commits a Class C misdemeanor. T.C.A. § 8-8-216. Any process served in a civil action in violation of the statute is void. T.C.A. § 8-8-217.

## Witnesses and Parties

Reference Number: CTAS-1307

Witnesses and parties to a suit cannot be served with any "writ, process, warrant, order, judgment, or decree in any civil cause" except as to a subpoena to testify as a witness while attending, going, or coming from the place of suit. T.C.A. § 24-2-105; *Hinkle v. Cravens*, 219 Tenn. 253 (1966). The privilege extends to corporate officers who come to testify as a witnesses, and they cannot be served with process in a suit against the corporation. *Sewanee Coal, Coke & Land Co. v. W.W. Williams & Co.*, 120 Tenn. 339, 107 S.W.2d 968 (1907) (A resident of another state or county, who has in good faith come to testify as a witness, is exempt from service of process for the commencement of a civil action, either against him in his individual capacity or against a corporation of which he is an officer or agent.).

The travel exemption allows one day for every 30 miles of travel, which illustrates the fact that the privilege has been in effect since 1794. The privilege holds even where the individual has come from a foreign jurisdiction. *Sofge v. Lowe*, 131 Tenn. 626 (1915); *Purnell v. Morton Live Stock Co.*, 156 Tenn. 383 (1928).

## Serving a Company

Reference Number: CTAS-1308

When serving a company by certified mail, the letter must be addressed to a specific corporate officer, a managing or general agent, or another agent authorized to receive service of process on the company's behalf. Service cannot be accomplished by merely mailing a copy of the summons and complaint to the company to be received along with the general mail sorted by lower-level employees. *Taylor v. Stanley Works*, 2002 WL 32058966 (E.D. Tenn. 2002); Fed. R. Civ. P. 4(h)(1).

## Service of High-Risk Process

Reference Number: CTAS-1309

It is easy to be lulled into complacency when one spends months or years serving civil process without serious incident, so it is important to remember and honor the fact that several Tennessee sheriff's deputies have lost their lives or been seriously injured fulfilling that duty. Civil actions are not necessarily conducive to civilized conduct on the part of those involved, and an officer cannot afford to maintain a casual attitude when there is no way to know what waits on the other side of a closed door.

Although service of any kind of process can lead to confrontation, some kinds of legal disputes engender such fierce emotion that they are more likely to instigate irrational or violent reactions, especially from the respondent and the respondent's loved ones.

## Child Custody Transfer Orders

Reference Number: CTAS-1310

These orders are surely the most disturbing judicial orders deputies execute. They are often distressing for everyone present, including the officers charged with the duty to effect the transfer. Custody transfer orders require the sheriff to take physical custody of a child and place that child in the hands of the party directed by the court.

The transfer may be ordered pursuant to a judicial determination that the child has been abandoned or is subjected to or threatened with abuse. T.C.A. § 36-6-219(a). It may be initiated by an order for immediate physical custody, issued because the petitioner has properly registered a foreign decree, and

the petition has been verified pursuant to T.C.A. §§ 36-6-229 through 234. Or, where a petition seeking enforcement of a custody determination is filed and the petitioner files a verified application, the court may issue a warrant for immediate physical custody if the child is in imminent danger of serious physical harm or is about to be removed from Tennessee. T.C.A. § 36-6-235(a).

A warrant to take physical custody of a child is enforceable throughout the state and may authorize officers to enter private property to take custody. If required by exigent circumstances, officers may make a forcible entry at any hour. T.C.A. § 36-6-235(e). The officer must serve the respondent with the petition, warrant, and order immediately after the child is taken into physical custody. T.C.A. § 36-6-235(d).

Below are a few guidelines for facilitating child custody transfers that may help protect the child's physical and emotional safety while minimizing the problems likely to be encountered during the transfer process.

1. Coordinate the transfer closely with the party taking physical custody in order to confirm the child's identity and make the transfer as quickly as reasonably possible. The person taking custody should wait nearby but out of the respondent's sight so as to avoid confrontation.
2. Never send a lone officer to execute a warrant for physical custody. Ideally, the transfer should be facilitated by a team of no fewer than three officers. It may take two or more to restrain the respondent and at least one more to transport the child to the petitioner.
3. Act quickly and efficiently. Officers should not allow the respondent to engage them in discussion or argument. While the respondent may consent to a peaceful surrender for the sake of the child, and negotiations to that end are desirable, they should be not be prolonged.
4. If the child is to be transported in a sheriff's vehicle, he or she must be properly restrained by a seatbelt or in an age and size appropriate child safety seat.
5. Young children may be consoled by a small stuffed animal, doll, or book. Officers should calmly reassure and comfort the child, who may appear calm while suffering severe emotional shock. Some agencies have found it helpful to use at least one female officer where available, as many children feel less threatened if there is a female presence.

## Writs of Restitution

Reference Number: CTAS-1311

Writs of restitution are commonly known as evictions; they are another kind of process that brings with it significant and inherent risks to officer and public safety during execution. They are also among the very few civil orders that mandate use of force, where necessary, to achieve service. T.C.A. § 29-18-127.

The sheriff has not obeyed or executed a writ of restitution until he or she delivers actual possession of the premises to the plaintiff and leaves the plaintiff in quiet possession. If the tenant does not yield possession peacefully, it is the officer's duty to remove him from the premises, and the writ is not executed until he does so. *Farnsworth v. Fowler*, 31 Tenn. 1, 55 Am. Dec. 718 (1851).

The officer executing the writ is responsible only for overseeing the procedure and keeping the peace until it is finished and the plaintiff is restored to peaceful possession. Officers should not act as the plaintiff's movers. Plaintiffs are responsible for the removal and storage of the tenant's belongings.

However, it is not uncommon for a plaintiff to direct that movers simply take the tenant's property to the edge of the roadway. In either case, there may be items removed from the premises that pose a hazard to public safety, e.g., weapons, incendiary devices, firearms, prescription medications or toxic chemicals. Such items should be inventoried, secured, and held for further disposition in accordance with law. Some items of obvious value, such as cash, should also be inventoried and secured.

Some articles or substances discovered during removal of the tenant's belongings, such as child pornography or controlled substances, may have criminal implications and must be dealt with accordingly.

The proliferation of methamphetamine labs is a relatively new danger confronted by those whose duty it is to oversee or carry out evictions. Officers should be acquainted with signs that such a lab is present so the appropriate authorities can be summoned to perform decontamination procedures.

Tenants faced with the execution of a writ of restitution sometimes become agitated, hostile or belligerent, and may call for reinforcements amongst their relatives and friends, whereupon the situation usually deteriorates rapidly. In such cases, it may be prudent for officers to withdraw to a safe distance until their own reinforcements arrive. Often the mere show of force effectively deters further disruption.

If tenants or other persons on the scene become threatening, assaultive, or otherwise engage in violent conduct, and efforts to encourage reasonableness are unsuccessful or clearly futile, the officer should not hesitate to use restraints or other force as required to stabilize the situation and restore safety and order.

Occasionally an officer arriving to execute a writ of restitution discovers an unattended child or adult occupants who are intoxicated, disabled, infirm, or mentally ill. A person who cannot leave the premises safely, attend to his or her own needs, or avoid risk of serious harm if left unattended should never be abandoned. If no responsible person is available to take charge of such an individual, the appropriate social services or other agency must be contacted for assistance. An officer who abandons an obviously incompetent individual who subsequently comes to serious harm may be found culpable for negligence.

While unrelated to public or officer safety, it is worth mention that a surprising number of actions filed related to writs of restitution arise because the deputies and plaintiff's movers enter the wrong residence and remove the property while the owner or occupant is away. Even if the property is put back in place undamaged and no locks, doors, or fixtures are broken in the process, this is an error with considerable tort liability and constitutional implications. A claim for damages by the indignant, embarrassed owner, whose constitutional rights to privacy and due process have been violated, is almost certain to follow.

## Orders of Protection

Reference Number: CTAS-1312

"In America, early settlers held European attitudes towards women. Our law, based upon the old English common-law doctrines, explicitly permitted wife-beating for correctional purposes. However, certain restrictions did exist and the general trend in the young states was toward declaring wife-beating illegal. For instance, the common-law doctrine had been modified to allow the husband 'the right to whip his wife provided that he used a switch no bigger than his thumb' -- a rule of thumb, so to speak." Del Martin, *Battered Wives* Volcano Press, 1976, page 31.

Societal attitudes toward domestic violence have changed dramatically, and Tennessee laws related to it are modified almost yearly. Each revision has placed a greater burden on the law enforcement community to protect alleged victims, and the liability for failure to do so can be tremendous where an order of protection has been issued by the courts and served by the sheriff.

For law enforcement officers, domestic disputes and domestic violence are among the most difficult and dangerous situations to address. Some individuals seem to repeatedly manipulate the justice system for their own vindictive purposes, wasting valuable resources. Others petition the courts for protective orders, then fail to appear and testify, having returned to the alleged abuser. Officials may therefore become cynical and reluctant to take action.

However, in 2002, 3.1 percent of all male homicide victims and almost one-third of all female homicide victims in the United States were killed by a former or current "intimate partner." U.S. Department of Justice, Bureau of Justice Statistics, *"Homicide Trends in the U.S."* Domestic violence results in nearly 2 million injuries and 1,300 deaths nationwide each year. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control; 2003. Additionally, there have been a number of cases, in Tennessee and other jurisdictions, in which domestic conflict culminated in the murder of the perpetrator's own or estranged partner's children.

## Definitions for Orders of Protection

Reference Number: CTAS-1313

For Orders of Protection, the following definitions will apply:

**Petitioner** — The victim; the plaintiff; "the person alleging domestic abuse, sexual assault or stalking in a petition for an order for protection." T.C.A. § 36-3-601(6).

**Respondent** — The defendant; the perpetrator; "the person alleged to have abused, stalked or sexually assaulted another in a petition for an order for protection." T.C.A. § 36-3-601(9).

**Petition for Order of Protection** — A standardized form filed with the court that provides relevant information about the petitioner, the respondent, their children, the domestic situation, and what events took place that led to the request for an order of protection. The petition asks that the court direct Respondent not to threaten, assault, contact, or stalk Petitioner.

**Ex Parte Order of Protection** — A temporary, emergency order issued when the court finds there is good cause to believe there is an immediate and present danger Petitioner will be victimized by Respondent. An ex parte order is issued immediately, without giving Respondent notice or an opportunity to be heard.

**Order of Protection** — An order issued after a hearing in which the court finds there is sufficient proof that Petitioner's allegations of domestic abuse, stalking or sexual assault are true, and that Petitioner needs to be shielded by the law from the Respondent. The order is valid for a defined

period, not to exceed one year. For purposes of this chapter, such orders will be called “standard orders of protection” or “standard protective orders.”

**Sexual Assault Victim** — Any person, regardless of the relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of any form of rape, including aggravated rape (T.C.A. § 39-13-502), rape (T.C.A. § 39-13-503), aggravated sexual battery (T.C.A. § 39-13-504), sexual battery (T.C.A. § 39-13-505), sexual battery by an authority figure (T.C.A. § 39-13-527), statutory rape (T.C.A. § 39-13-506), or rape of a child (T.C.A. §§ 39-13-522, 33-3-601(9)).

**Stalking Victim** — Any person, regardless of the relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of the offense of stalking. T.C.A. §§ 36-3-601(11), 39-17-315.

## Legislative Intent

Reference Number: CTAS-1314

In 1995, our legislature took the somewhat unusual step of codifying (enacting as part of the Tennessee Code) its intent regarding application of state statutes related to domestic abuse:

The purpose of this part is to recognize the seriousness of domestic abuse as a crime and to assure that the law provides a victim of domestic abuse with enhanced protection from domestic abuse. A further purpose of this chapter is to recognize that in the past law enforcement agencies have treated domestic abuse crimes differently than crimes resulting in the same harm but occurring between strangers. Thus, the general assembly intends that the official response to domestic abuse shall stress enforcing the laws to protect the victim and prevent further harm to the victim, and the official response shall communicate the attitude that violent behavior is not excused or tolerated.

T.C.A. § 36-3-618.

## Parties Who May Petition for an Order of Protection

Reference Number: CTAS-1315

With the exceptions added in 2005 to include sexual assault and stalking victims, state law requires that the petitioner have some past or present link of a domestic or familial nature with the respondent, though it may be indirect. The statute does not include acquaintances, neighbors, business associates and others who do not fall into the specified categories, which include:

1. Adults or minors who are current or former spouses;
2. Adults or minors who live together or who have lived together;
3. Adults or minors who are dating or who have dated or who have or had a sexual relationship; as used herein “dating” and “dated” do not include fraternization between two individuals in a business or social context;
4. Adults or minors related by blood or adoption;
5. Adults or minors who are related or were formerly related by marriage; or
6. Adult or minor children of a person in a relationship described above.

T.C.A. § 36-3-601(5)(A - F).

## Venue: Where the Petition May Be Filed

Reference Number: CTAS-1316

The petition may be filed in the county where the Respondent lives; or, in which the domestic abuse, stalking, or sexual assault happened; or, if the Respondent is not a Tennessee resident, in the county where the victim lives. T.C.A. § 36-3-602(d).

## Ex Parte Protective Orders and Standard Orders of Protection

Reference Number: CTAS-1317

An ex parte order is issued by the court without giving Respondent notice or an opportunity to tell his or her side of the story. It is a temporary order. There must be a hearing within 15 days after Respondent is served with the ex parte order. Respondent must be given at least five days notice of the hearing date.

T.C.A. § 36-3-605.

If, at the hearing, the court finds by a preponderance of the evidence that the victim's allegations are true, the court can extend the order for up to one year. The victim can return each year to ask that the order be extended for another year. A new hearing is required for each extension. T.C.A. §§ 36-3-605 and 36-3-608.

## Serving the Order

Reference Number: CTAS-1318

Rules for serving ex parte and standard protective orders are identical, with one exception: To effect proper service, the deputy must:

1. Personally read the order to Respondent and leave a copy with him or her, or
2. If Respondent is not a Tennessee resident, the order can be served by mail on the appropriate secretary of state, who must then promptly send a certified copy to Respondent by registered or certified return receipt mail, along with written notice that service was so made. If Respondent refuses to accept delivery of the registered or certified mail, his or her refusal is the same as delivery and constitutes service.

T.C.A. § 20-2-215.

However, if Respondent was served with a copy of the petition, notice of hearing, and any ex parte order issued, and the court rules that the ex parte order be extended to a standard order of protection, *that* order shall be served by:

1. Delivering a copy of the order of protection to Respondent or Respondent's lawyer, or
2. By the clerk mailing it to Respondent's last known address. If the address "cannot be ascertained upon diligent inquiry," the certificate of service shall so state. Service by mail is complete upon mailing.

T.C.A. § 36-3-609(d); §§ 20-2-215, 216.

Because violating a protective order is now a crime rather than merely civil contempt, it is absolutely *essential* that the deputy serving the order comply with every detail of the rules of service. It is *never* acceptable to leave the order with a third party who promises to give it to the Respondent.

## TCIC and NCIC

Reference Number: CTAS-1319

Entry into the Tennessee Crime Information System (TCIC) and Transmission of Information to the National Crime Information Center (NCIC).

Each time a court issues, modifies, or dismisses a protective order, the local law enforcement agency is to immediately enter the order, modification, or dismissal in the Tennessee Crime Information System "and take any necessary action to immediately transmit it to the National Crime Information Center." T.C.A. § 36-3-609(e).

When an order is served, the entry is updated to include the court appearance date. If, at the time of the hearing, an ex parte order is extended into a standard protective order, the updated entry will include the order's expiration date (usually one year from the date of the order), the judge's name, and any additional relevant information, such as whether the order allows "social contact."

"Social contact" is sometimes specified in the order, usually to allow Respondent to interact with Petitioner for the purpose of arranging visitation with minor children or other communication related to the welfare of the couple's children. Orders that permit "social contact" are often later modified to prohibit all contact if the court finds Respondent is using that proviso as an excuse to further harass Petitioner.

## Scope, Duration, and Enforceability of Protective Orders

Reference Number: CTAS-1320

The order is valid and enforceable in any county in Tennessee. T.C.A. § 36-3-606(e). It may:

1. Direct Respondent not to commit domestic abuse, stalk or sexually assault Petitioner or petitioner's minor children;
2. Prohibit Respondent from calling, e-mailing, writing, or communicating with Petitioner, directly or indirectly;
3. Prohibit the Respondent from stalking the Petitioner, as defined in § 39-17-315;



4. Give Petitioner possession of the residence and evict the Respondent;
5. Require Respondent to provide suitable housing for Petitioner if respondent is the sole owner or lessee of the residence;
6. Award temporary custody of or establish temporary visitation rights with their minor children;
7. Award support to Petitioner if the parties are legally married and award child support for Respondent's children;
8. Require Respondent to get treatment or counseling for anger management or substance abuse;
9. Place the care, custody, or control of any animal residing in the household in the care, custody or control of the Petitioner or in an appropriate animal foster situation;
10. Direct the Respondent to immediately and temporarily vacate a residence shared with the petitioner, pending a hearing on the matter; or
11. Direct the Respondent to pay the Petitioner all costs, expenses and fees pertaining to the Petitioner's breach of a lease or rental agreement for residential property if the Petitioner is a party to the lease or rental agreement and if the court finds that continuing to reside in the rented or leased premises may jeopardize the life, health and safety of the Petitioner or the Petitioner's children.

T.C.A. § 36-3-606(a).

## The Duty to Arrest a Respondent Who Violates an Order of Protection

Reference Number: CTAS-1321

Law enforcement officers generally have considerable discretion about whether to make an arrest in a given situation and are usually protected from liability if the decision not to arrest results in harm to a member of the general public. However, Tennessee does *not* allow officer discretion when it comes to arresting individuals who violate protective orders. Arrest is *mandatory*.

Illustrating how inflexible state law is on the matter, the attorney general's office issued an opinion that "a law enforcement officer, having observed the commission of a felony, may choose not to arrest or charge the offending party, *except when the officer has probable cause to believe that a suspect has violated an order of protection.*" Op. Tenn. Atty. Gen. No. 01-119 (July 27, 2001).

In other words, while an officer has discretion to ignore a felony committed right before his or her eyes, that option does not exist if the misconduct violates a valid order of protection, regardless of whether it would otherwise constitute a misdemeanor, or no criminal offense at all. If Petitioner or Petitioner's property come to harm after an officer fails to arrest the violator, the county is subject to liability for damages. *Matthews v. Pickett County*, 996 S.W.2d 162 (Tenn. 1999); *Hudson v. Hudson*, 2005 WL 2253612 (W.D. Tenn. 2005).

On the other hand, if the law enforcement agency fails to notify TCIC and NCIC that an order has been dismissed or of its expiration date, and the former Respondent is wrongfully arrested, the prospect of legal liability again rears its ugly head. That is one of many reasons it is *so* important that such orders be correctly served and that modifications and other required information be correctly entered in the Tennessee and National Crime Information Systems.

An arrest for violating a protective order may be made *with or without* a warrant. A law enforcement officer shall arrest Respondent without a warrant if:

1. The violation took place in the officer's jurisdiction;
2. The officer reasonably believes Respondent has violated or is violating the order; and
3. The officer verifies that an order of protection is in effect, which can be through telephone/radio communication with the appropriate law enforcement department.

T.C.A. § 36-3-611(a)(1-3).

Even if Respondent is violating an ex parte order and not a standard order of protection, the officer is required to make an arrest, *but only if* Respondent "has been served with the ex parte order or otherwise has acquired actual knowledge of the order." T.C.A. § 36-3-611(b). The term "actual knowledge" means Respondent has direct, clear knowledge of information that would lead a reasonable person to inquire further. *Black's Law Dictionary*, 7<sup>th</sup> Edition. Otherwise, an ex parte order cannot be enforced by arrest.

## Ex Parte Orders and “Actual Knowledge”

Reference Number: CTAS-1322

Although an ex parte order is effective for only a matter of days, this is often the time during which emotions run high and violence or increased harassment are most likely to erupt. At what point is Respondent deemed to have actual knowledge? If the deputy reads the order to Respondent over the phone, is it in effect? What if the deputy gives oral notice of the order’s existence and requirements, but does not have a copy to give Respondent at that time? What is the deputy’s duty if, when serving an ex parte order, Petitioner is on the premises, and Respondent refuses to leave?

First, let us look at the issue of “actual knowledge.” If the ex parte order has been personally served, Respondent, of course, has actual knowledge. If it has not, Respondent may be deemed to have actual knowledge when he is put on notice of its existence and general requirements by a law enforcement officer.

*EXAMPLE:* Officer Bob responds to a call and arrives at the scene to find Respondent Bubba duct-taping love notes all over Petitioner Patty’s front door. Patty advises Officer Bob she was granted an ex parte order of protection against Bubba, her former boyfriend, two hours earlier. Officer Bob calls his dispatcher and verifies that the judge did indeed issue an ex parte order, which has not yet been served. Officer Bob informs Bubba that the order has been issued and Bubba is to stay away from Patty until the hearing; and directs Bubba to leave the premises. Brimming with *actual knowledge*, Bubba stumbles off into the night to seek solace at his favorite bar.

Two hours later, Officer Bob is again called to Patty’s house, and there’s Bubba, drawing big red hearts on the vinyl siding. It is his house, and he insists on his right to decorate it. Anyway, no one has given him any piece of paper that says he can’t be in his own blankety-blank yard. At this point, Officer Bob arrests Bubba and hauls him away to jail. Of course, Officer Bob could and should have arrested Bubba on the *first* call *if* he had been able to verify the protective order was personally served on Bubba earlier that day.

Some officers are concerned when they serve an ex parte order of protection and realize Petitioner is on the premises. If Respondent has previously assaulted Petitioner, vandalized Petitioner’s property, or otherwise threatened or harmed Petitioner, it is foreseeable that Respondent may be at it again by the time the deputy reaches the end of the driveway. The best practice is for the deputy to ensure Respondent is away from the premises before the deputy departs the scene. If, after the order is served, Respondent becomes belligerent or threatening, or refuses to leave, the order is being violated and the duty to arrest arises.

It is a crime and contempt of court to violate an order of protection and Respondent may be found guilty of both. T.C.A. § 36-3-610. Op. Tenn. Atty. Gen. No. 05-183 (December 22, 2005).

A critical change in Tennessee law took effect July 1, 2005. Under the old law, a Respondent arrested for violating the protective order was charged with contempt, a civil offense that carries a penalty of only 10 days in jail and a \$50 fine. At the time of arrest, the magistrate set bond pending the hearing, which was to be conducted within 10 days, and Petitioner was required to appear and show cause why the contempt order should be issued. Of course, if Respondent committed a crime in the process of violating the protective order, *e.g.*, burglary, vandalism, assault, he or she could be prosecuted for that criminal act.

As of July 1, 2005, a knowing violation of a protective order became a crime in and of itself, a Class A misdemeanor carrying a sentence of up to 11 months and 29 days in jail. Furthermore, the new law directs that such a sentence is to be consecutive to any other sentences resulting from the same factual allegations, unless the judge specifically directs otherwise. T.C.A. § 36-3-612(g).

It is important to reiterate that the new criminal penalty applies only to orders of protection issued after a hearing, *not* to ex parte orders. Op. Tenn. Atty. Gen. No. 05-183 (December 22, 2005).

Once Respondent is arrested, the magistrate must consider certain factors and set conditions of release. Upon release, Respondent is given written notice of the conditions, which may include orders to stay away from Petitioner, not to possess or use alcohol, not to possess a firearm or other weapon, or other directives. T.C.A. §40-11-150(a-b). If a law enforcement officer later has probable cause to believe Respondent has violated any condition of release, the officer *shall* arrest Respondent, without a warrant, regardless of whether the officer actually witnessed Respondent committing the violation. T.C.A. §40-7-103(b).

## Domestic Violence Victim Notification

Reference Number: CTAS-1323

An order of protection is a form of civil process. Violating the order can be a civil offense, a criminal offense, or both. Op. Tenn. Atty. Gen. No. 05-183 (December 22, 2005). When releasing a defendant charged with domestic violence related offenses, including stalking, *violating an order of protection*, or any assaultive offense, the jailer is required to provide the victim with notice. The table below details the statutory requirements. T.C.A. § 40-11-150(f-h).

Protected Victim	Family or Household Member (Includes current or ex-spouse; adult or minor who lives or has lived with defendant; adult or minor related/formerly related by blood/marriage; adult/minor dating/dated in past or having/had a sexual relationship; adult/minor child of anyone described above).
Who Notifies Victim of Release	Law enforcement agency with custody of Defendant shall initiate notification whether or not victim requests it.
Time Frame for Notification Measures Required to Contact Victim	Notification is to be made at the time of Defendant's release. "Use all reasonable means to immediately notify the victim."
Information to be Given to Victim	Notice that Defendant is being/has been released; address and phone # of nearest shelter and counseling center.
Delay Release Until Victim Notified?	Statute prohibits delay.
Other Duties	Send/give victim copy of conditions of release. Must also provide copy of the conditions to Defendant.
Hold Required Before Bail/Release	Twelve hours from time of arrest. Judge may order release in less time if he or she determines that sufficient time has, or will have, elapsed for the victim to be protected.

## The Public Duty Doctrine

Reference Number: CTAS-1324

Mary Matthews v. Pickett County

*Mary Matthews v. Pickett County*, 996 S.W.2d 162 (Tenn. 1999), is the most cited Tennessee case regarding liability for failure to arrest a Respondent who violates an order of protection.

The court held that an order of protection creates a special duty to protect the victim named on the order and that special duty includes protection of the victim's property. The complainant can win personal injury *and* property damages if the Petitioner shows that the deputies breached their duty to arrest the Respondent when the Respondent violated an order of protection, and that the Petitioner was harmed as a result.

The public duty doctrine gives officers immunity for injuries caused by breach of a duty owed to the general public.

*EXAMPLE:* Officer Bob pulls over drunk driver and recognizes Buddy, who is only a few blocks from home. Officer Bob lets Buddy go on his promise to go straight home, but Buddy heads for another bar, running over Valerie Victim on the way. Officer Bob clearly breached his duty to protect the public at large, but Valerie Victim will not win her lawsuit against Officer Bob or the county *because she was not a foreseeable victim*. When Officer Bob breached his duty to protect the public by failing to arrest Buddy, he did not know this *particular* Victim was a block away and could be harmed by his failure to act.

The public duty doctrine did not protect the officers in *Matthews* because the order was not issued to protect the public at large but *solely to protect Mary Matthews*, whose calls for help indicate she relied on the court's order to keep her safe from Winningham. Her reliance created a special duty exception to the public duty doctrine, an exception that applies when a public official undertakes to protect an individual, and that person relies on the official to do so.

The special duty exception creates a special relationship between the parties, in this case the government and Ms. Matthews. The officers had a duty protect her by arresting Winningham if there was reason to believe he had violated a valid order of protection. The court held that if the breach of that duty allowed Winningham freedom to burn down Ms. Matthews' house, the deputies and the county are liable for her harm.

The Tennessee Supreme Court makes it clear by this ruling that, if the government violates its special duty to safeguard a party named by an order of protection, and the individual is harmed as a result, compensation can be awarded for personal injury *and* property damage.

# Sheriff's Fees for Service of Process

Reference Number: CTAS-1326

The sheriff is entitled to collect fees for performing various duties related to serving civil process, and they are specified in T.C.A. § 8-21-901(a)(1). Fees differ depending on factors such as the specific type of process and whether service was completed or merely attempted. It should be noted that the \$2 data processing services fee the sheriff is to collect must be "allocated by the sheriff's county for computerization, information systems and electronic records management costs of the sheriff's office." The funds are to be earmarked within the general fund and reserved for those purposes. T.C.A. § 8-21-901(a)(5)(B).

As of January 1, 2006, Tennessee's court clerks are permitted in many instances to collect costs in the form of a flat fee at the time services are requested. TCA § 8-21-401(a). Unfortunately, the legislature made no similar provisions for county sheriffs, who are not permitted to demand fees in advance, TCA § 8-21-102; § 8-21-901(a), and who, in some instances, are entitled to a fee for each *attempt* at services, as in the case of collecting money to satisfy a judgment under T.C.A. § 8-21-901(a)(2)(B)(i). Op. Tenn. Atty. Gen. No. 02-113 (October 10, 2002). A rare exception to the rule is where the process to be served is coming from another county. T.C.A. § 8-8-202.

Since clerks are charged with collecting and distributing fees, and sheriff's fees cannot be calculated or collected in advance, procedures under the new law may not be as streamlined for the clerks as anticipated.

Clerks maintain records of all sums of money they receive and disburse. TCA § 18-2-101(a). In all cases, the clerk prepares the bill of fees and costs. TCA §§ 8-21-104; 18-1-105(a)(4). Costs are part of the *final judgment* in a case. TCA § 20-12-101; Tenn. R. Civ. Pro. 69; Op. Tenn. Atty. Gen. Nos. 99-003 (January 19, 1999) and 02-072 (June 3, 2002).

Among other responsibilities, the clerk of a trial court is required to collect all costs incident to litigation, including sheriff's fees. Op. Tenn. Atty. Gen. No. 02-072 (June 3, 2002).

Additionally, when selling real or personal property, the clerk must "collect the sheriff's fee, plus the sheriff's fee for each additional defendant in proceedings to sell real estate." TCA § 8-21-401(i)(7). For receiving and paying over all taxes, fines, forfeitures, fees and penalties, the clerk is entitled to commissions that vary between 5 percent and 10 percent. TCA § 8-21-401(h).

The court decides whether to award costs and against whom. However, if costs *are* awarded and any money is received, the sheriff's fee ranks very high on the priority list. In cases where the amount collected is not enough even to pay the whole litigation tax and costs, the state tax should be paid before payment to officers and witnesses. Op. Tenn. Atty. Gen. No 92-10 (February 19, 1992), citing *State v. Stanley*, 71 Tenn. 524, 526 (1879). And in turn, payments of costs to officers of the court take priority over witness fees and other costs. *Id.*, citing *Locke v. McFalls*, 35 Tenn. 674 (1856); Op. Tenn. Atty. Gen. No. 80-286 (June 9, 1980).

Sheriffs may rightfully be concerned that since clerks can now collect their fees "up front" in many cases, there will be little incentive to pursue collection of sheriff's fees beyond one billing. However, motivation may be found in a state law captioned "Liability for Failure to Collect or Account," which holds that court clerks, county trustees, sheriffs and other officers who fail to collect "every fee" that "the county may be entitled to, and which, by the exercise of reasonable diligence could have been collected" is "individually liable to the county for the amount that should have been collected . . ." TCA § 8-22-105.

See Service of Process under Specific Fees Authorized for additional information.

# Tennessee Code Quick Reference for Service of Civil Process

Reference Number: CTAS-1325

Laws regarding service of process are found among several volumes of the Code, and this is by no means an exhaustive list. However, it may be useful as a starting point for further research.

T.C.A. § 8-8-201	Duties of the Sheriff
T.C.A. § 8-8-202	Advance Fees for Service of Out of County Process
T.C.A. § 8-8-207	Disobedience of Process
T.C.A. § 8-8-216	Service of Process by Employee Prohibited
T.C.A. § 8-21-901	Sheriff's Fees
T.C.A. § 8-22-105	Liability for Failure to Collect or Account

T.C.A. § 25-3-105	Penalties for Failure to Return Process
T.C.A. § 26-1-402	Duties of Executing Officer to Make Sufficient Return
T.C.A. § 26-3-104	Indemnity Bond of Plaintiff Where Title of Levied Property Is in Dispute
T.C.A. § 26-3-101 et seq.	Levy of Execution
T.C.A. § 26-3-117	Costs to Be Paid by Plaintiff for Transport/Storage of Levied Property
T.C.A. § 26-5-101 et seq.	Sale on Execution (Sheriff's Sale)
T.C.A. § 26-6-101 et seq.	Foreign Judgments and Their Authentication
T.C.A. § 29-15-114	Writ of Possession for Land in Ejectment Action
T.C.A. § 29-18-101 et seq.	Forcible Entry and Detainer (Evictions)
T.C.A. § 29-30-101 et seq.	Recovery of Personal Property
T.C.A. § 36-6-219	Child Custody - Temporary Emergency Jurisdiction and Order Enforcement
T.C.A. § 36-6-227	Child Custody - Recognition and Enforcement of Foreign Decrees

## Sheriff's Fees

Reference Number: CTAS-1327

Sheriffs receive fees from the public for services they perform. However, pursuant to T.C.A. § 8-24-103(a)(2), the sheriff must pay over to the trustee, on a monthly basis, all of the fees, commissions, and charges collected by the sheriff's office during the month. Because the sheriff is no longer on the "fee system," it is the duty of the county legislative body to make the necessary appropriation and pay to the sheriff the authorized expenses fixed by law for the operation of the sheriff's office, direct from the county trustee in 12 equal monthly installments, irrespective of the fees earned by the sheriff. T.C.A. § 8-24-103(a)(1).

## Specific Fees Authorized

Reference Number: CTAS-1328

Notwithstanding any other provision of law to the contrary, the sheriff is entitled to demand and receive the respective fees for the following services where services are actually rendered:

### Service of Process

1. For serving any process except as otherwise provided in T.C.A. § 8-21-901 or other applicable law, whether issued by a clerk for a general sessions, criminal, circuit, chancery or any other court, the sheriff is entitled to the following fees, based on the manner in which process is served, for each item of process that must be served separately per person served:
  - a. For service in person: \$40;
  - b. For service by mail: \$10;
  - c. For service by acceptance or consent or any other authorized method: \$10.
2. For summoning jurors in any proceeding: \$5.
3. For serving or delivering any other process or notice not related to a judicial proceeding and issued by an entity other than a court: \$10.
4. For returning any service of process where the sheriff attempts service but is unsuccessful, the sheriff shall be entitled to the same fees specified in number 1 above; provided, that service is attempted in accordance with the laws of the state.

T.C.A. § 8-21-901(a)(1).

See Sheriff's Fees for Service of Process for additional information.

### Original Process in Delinquent Tax Collection Proceedings

The sheriff receives \$7.50 for serving all original processes in delinquent tax suits as costs to be taxed against each delinquent tax payer and the statutory fees for all other services performed by the sheriff. T.C.A. § 67-5-2410(c)(1).

### Collection of Money ; Returning, Transporting, Storing or Establishing Possession of Property

1. For a levy of an execution on property or levy of an attachment or other process to seize property for the purpose of securing satisfaction of a judgment yet to be rendered or for executing a writ of replevin or writ of possession: \$40.
2. For collecting money to satisfy a judgment, whether by execution, fieri facias, garnishment or other process, in civil cases each time collection is attempted: \$20.

For purposes of the payment of fees for garnishments as provided above, all garnishments are deemed to be original garnishments and the sheriff or other person authorized by law to serve garnishments is entitled to the fee provided above for each such garnishment served.

3. Whenever the sheriff provides for the storage or maintenance of property including, but not limited to, vehicles, livestock and farm and construction equipment that has been levied on by execution, attachment or other process, the sheriff is entitled to demand and receive a reasonable per day fee for such services. The sheriff is also entitled to demand and receive reimbursement for costs of transportation of such personal property to a suitable location for storage and maintenance when such action is necessary to secure such property. Any such fees for transportation, maintenance and storage shall be approved by the court issuing the execution, attachment or other process.

T.C.A. § 8-21-901(a)(2).

#### Security Services

1. For attending the grand jury or waiting in court: \$75 per day.
2. For waiting with a sequestered jury: \$100 per day.

T.C.A. § 8-21-901(a)(4).

#### Data Processing Services

1. For data processing services: \$2.

The revenue from the two dollar data processing fee must be allocated by the sheriff's county for computerization, information systems and electronic records management costs of the sheriff's office. The funds must remain earmarked within the general fund and must be reserved for the purposes authorized by law at the end of each fiscal year. T.C.A. § 8-21-901(a)(5)(A) and (B).

#### Fees Limited

Notwithstanding other provisions of this section to the contrary, any fee or mileage allowance permitted under this section, which is assessed against the state or which otherwise represents a cost to the state, shall be limited in amount to the fees allowable immediately prior to May 28, 1977. T.C.A. § 8-21-901(b).

## Fees on Collection of Costs

Reference Number: CTAS-1329

Sheriffs and other collecting officers of this state are allowed the same fees for collecting and paying over costs as they are allowed by law for collecting other moneys. However, they are not allowed to charge or receive commissions on costs in their favor. T.C.A. § 8-21-902.

## Judgments Paid after Execution Issued

Reference Number: CTAS-1330

The plaintiff in all judgments is liable to any sheriff for the commission on the amount so received if the plaintiff or the plaintiff's agent or attorney receives any or all of the judgment after an execution has been issued on the judgment and given into the officer's hands for collection. T.C.A. § 8-21-903.

## Other Authorized Fees

Reference Number: CTAS-1331

#### Handgun Carry Permit Application Fingerprint Fee

As part of the process of applying for a handgun carry permit, an applicant is required to provide two full sets of classifiable fingerprints at the time the application is filed with the Department of Safety. The applicant may have his or her fingerprints taken by the department at the time the application is submitted, or the applicant may have his/her fingerprints taken at any sheriff's office and submit the fingerprints to the department along with the application and other supporting documents. The sheriff may charge a fee not to exceed five dollars for taking the applicant's fingerprints. At the time an applicant's fingerprints are taken either by the department or a sheriff's office, the applicant is required to present a photo identification. If the person requesting fingerprinting is not the same person as the person whose picture appears on the photo identification, the department or sheriff must refuse to take the applicant's fingerprints. T.C.A. § 39-17-1351(d)(1).

#### Range Fee

Sheriffs are authorized by statute to open their shooting ranges for public use when the range is not being used by the sheriff's personnel. The sheriff may charge a reasonable fee for persons or organizations using the range and may require users to make improvements to the range. T.C.A. § 38-8-116.

#### Sexual Offender and Violent Sexual Offender Administrative Fee

Each year during the month of March, violent sexual offenders are required to pay an administrative fee, not to exceed \$150. Sexual offenders pay the administrative fee during their annual reporting period. One hundred (\$100.00) is This fee is retained by the sheriff to be used to purchase equipment, to defray personnel and maintenance costs, or any other expenses incurred as a result of the implementation of the "Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004." The remaining fifty dollars (\$50.00) shall be submitted to the TBI for maintenance, upkeep and employment costs, as well as any other expenses. Violent sexual offenders and sexual offenders who reside in nursing homes and assisted living facilities and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities are exempt from the in-person reporting and administrative fee requirement. T.C.A. § 40-39-204(b) and (c).

## Jailers' Fees

Reference Number: CTAS-1332

#### Misdemeanant Prisoners

The county legislative body of each county has the authority to pass a resolution fixing the amount of jailers' fees that may be applied to misdemeanor prisoners. The rate fixed shall apply to such prisoners confined in the county jail or county workhouse or workhouses but not meeting the conditions required for a state subsidy under Title 41, Chapter 8. T.C.A. § 8-26-105(a). See Sample Resolution to Fix Jailer's Fee.

Sheriffs and jailers must make written statements of account, properly proven and sworn to, for the keeping of prisoners, specifying distinctly each item and the amount due for each item. T.C.A. § 41-4-129.

Jailer's fees are taxed separately from the general bills of costs of criminal cases. All state costs must be properly proved and sworn to before the clerk of the criminal or circuit court of the county and certified by the clerk for payment. T.C.A. § 41-4-131.

Jailer's fees for county prisoners shall be referred monthly to the county mayor for inspection, who shall audit the fees and cause the clerk to issue a warrant for the amount allowed. T.C.A. § 41-4-136.

#### Federal Prisoners

The jailer is liable for failing to receive and safely keep all persons delivered under the authority of the United States, to the like pains and penalties as for similar failures in the case of persons committed under authority of the state. However, the marshal or person delivering such prisoner under authority of the United States is liable to the jailer for fees and the subsistence of the prisoner while so confined, which shall be the same as provided by law for prisoners committed under authority of the state. The jailer will also collect from the marshal 50 cents a month for each prisoner, under the resolution of the first Congress, and pay the same to the county trustee forthwith, to be accounted for by the trustee as other county funds. T.C.A. § 41-4-105.

#### Inmate Copay

Any county may, by resolution adopted by a two-thirds vote of the county legislative body, establish and implement a plan authorizing the county jail administrator to charge an inmate in the county jail a copay amount for any medical care, treatment, pharmacy services or substance abuse treatment by a licensed provider provided to the inmate by the county. A county adopting a copay plan must establish the amount the inmate is required to pay for each service provided. However, an inmate who cannot pay the copay amount established by the plan cannot be denied medical care, treatment, pharmacy services or substance abuse treatment by a licensed provider. T.C.A. § 41-4-115(d).

If an inmate cannot pay the copay amount established by a plan adopted pursuant to T.C.A. § 41-4-115(d), the plan may authorize the jail administrator to deduct the copay amount from the inmate's commissary account or any other account or fund established by or for the benefit of the inmate while incarcerated. T.C.A. § 41-4-115(e).

#### Fees for Issued Items

Any county may, by a resolution adopted by a two-thirds vote of the county legislative body, establish and implement a plan authorizing the jail administrator to charge an inmate committed to the county jail a fee, not to exceed the actual cost, for items issued to the inmate upon each new admission to the county jail. T.C.A. § 41-4-142(a).

Additionally, any county may, by a resolution adopted by a two-thirds vote of its county legislative body, establish and implement a plan authorizing the jail administrator to charge an inmate committed to the jail a nominal fee set by the county legislative body at the time of adoption for the following special services, when provided at the inmate's request:

1. Participation in GED or other scholastic testing for which the administering agency charges a fee for each test administered;
2. Escort by correctional officers to a hospital or other healthcare facility for the purpose of visiting an immediate family member who is a patient at such facility; or
3. Escort by correctional officers for the purpose of visiting a funeral home or church upon the death of an immediate family member.

T.C.A. § 41-4-142(b).

A plan adopted pursuant to T.C.A. § 41-4-142(a) or (b) may authorize the jail administrator to deduct the amount from the inmate's jail trust account or any other account or fund established by or for the benefit of the inmate while incarcerated. Nothing in T.C.A. § 41-4-142 shall be construed as authorizing the jail administrator to deny necessary clothing or hygiene items or to fail to provide the services specified in T.C.A. § 41-4-142(b) based on the inmate's inability to pay such fee or costs. T.C.A. § 41-4-142(c).

For additional information, see Jail Fees.

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