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# Sheriff

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Dear Reader:

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Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

The University of Tennessee  
County Technical Assistance Service  
226 Anne Dallas Dudley Boulevard, Suite 400  
Nashville, Tennessee 37219  
615.532.3555 phone  
615.532.3699 fax  
[www.ctas.tennessee.edu](http://www.ctas.tennessee.edu)

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# Sheriff

Reference Number: CTAS-35

The office of sheriff is ancient in origin; its beginning can be traced back centuries to medieval England. The office of sheriff has been provided for in each of Tennessee's three constitutions (1796, 1835 and 1870) and was retained in the latest amendment in 1978. The sheriff is elected to a four-year term in the August general election in the same year in which the governor is elected. Tenn. Const., art. VII, § 1; T.C.A. § 2-3-202. *Smith v. Plummer*, 834 S.W.2d 311, 313 (Tenn. Ct. App. 1992) (Sheriffs are constitutional officers.).

## Persons Ineligible for the Office of Sheriff

No member of the General Assembly shall be nominated or commissioned, nor shall any practicing attorney be obligated, to act as sheriff. T.C.A. § 8-8-101.

For additional information about the Office of Sheriff, see Law Enforcement and Jail Administration under Public Safety.

# Qualifications-Sheriff

Reference Number: CTAS-36

In addition to the general qualifications of officeholders specified in T.C.A. § 8-18-101, the sheriff, in all counties, except those with a metropolitan form of government in which law enforcement powers have been assigned to some other official, must have the following specific qualifications:

1. Be a citizen of the United States;
2. Be at least 25 years of age prior to the date of qualifying for election;
3. Be a qualified voter of the county and a resident of the county for one full year prior to the date of the qualifying deadline for running as a candidate for sheriff;
4. Have obtained a high school diploma or its equivalent in educational training as recognized by the Tennessee state board of education;
5. Not have been convicted of or pleaded guilty to or entered a plea of nolo contendere to any misdemeanor crime of domestic violence or any felony charge or violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor or controlled substances;
6. Be fingerprinted and have the Tennessee Bureau of Investigation (TBI) make a search of local, state and federal fingerprint files for any criminal record. Fingerprints are to be taken under the direction of the TBI. It is the responsibility of the TBI to forward all criminal history results to the Peace Officer Standards and Training (POST) Commission for evaluation of qualifications;
7. Not have been released, separated or discharged from the armed forces of the United States with a dishonorable or bad conduct discharge, or as a consequence of conviction at court martial for either state or federal offenses;
8. Have been certified by a Tennessee licensed health care provider qualified in the psychiatric or psychological field as being free from any impairment, as set forth in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association at the time of the examination, that would, in the professional judgment of the examiner, affect the applicant's ability to perform an essential function of the job, with or without a reasonable accommodation;
9. Have at least three (3) years of full-time experience as a POST commission certified law enforcement officer in the previous ten (10) years or at least three (3) years of full-time experience as a state or federal certified law enforcement officer with training equivalent to that required by the POST commission in the previous ten (10) years; provided that any person holding the office of sheriff on May 30, 2011 shall be deemed to have met this requirement (does not apply in Davidson County); and
10. Not have been convicted of or pleaded guilty to or entered a plea of nolo contendere to any felony charge or violation of any federal or state laws relating to controlled substance analogues.

T.C.A. § 8-8-102(a). See also Rules of the Tennessee Peace Officer Standards and Training Commission,

Rule 1110-2-.03 (2). Any full-time deputy employed after July 1, 1981, and any person employed or utilized as a part-time, temporary, reserve, or auxiliary deputy or as a special deputy after January 1, 1989, must meet certain minimum standards similar to those required for sheriffs. T.C.A. § 38-8-106.

## Elections-Sheriff

Reference Number: CTAS-1216

The sheriff is elected to a four-year term in the August general election in the same year in which the governor is elected. Elections for the office of sheriff are held on the first Thursday in August at the regular August election when the election immediately precedes the commencement of a full term. Tenn. Const., art. VII, § 1; T.C.A. § 2-3-202.

### Certification by the POST Commission

Any person seeking the office of sheriff must file with the POST Commission, at least 14 days prior to the qualifying deadline, the following:

1. An affidavit sworn to and signed by the candidate affirming that the candidate meets the requirements of T.C.A. § 8-8-102; and
2. A confirmation of psychological evaluation form certified by the psychologist/psychiatrist providing psychological evaluation as provided for in T.C.A. § 8-8-102(a)(8) for the purposes of sheriff candidacy qualification. The form shall be made available by the POST Commission upon request by any candidate for the office of sheriff.

T.C.A. § 8-8-102(b)(1)(A) and (B).

If the affidavit and psychological evaluation form are not filed with the commission by the 14 day prior to the qualifying deadline, the candidate's name may not be placed on the ballot. The commission has the authority to verify the validity of the affidavit and psychological evaluation form. T.C.A. § 8-8-102(b)(2).

The POST commission must verify peace officer standards and training certification of any person seeking the office of sheriff to the extent subdivision (a)(9) requires such person to have such certification. If the person does not have such certification on the date the person files the affidavit seeking to qualify as a candidate for the office of sheriff, the POST commission shall certify whether the person has the three (3) years of full-time experience as a POST commission certified law enforcement officer and whether the certification is current. If the candidate does not have a current certification, or if the person has the law enforcement experience as a state or federal law enforcement officer pursuant to subdivision (a)(9), then such candidate shall certify with the county election commission by the withdrawal deadline their exemption pursuant to such subdivision. T.C.A. § 8-8-102(b)(3)(A).

The original notarized verification form from the commission must be filed by the commission with the county election commission by the withdrawal deadline. T.C.A. § 8-8-102(b)(3)(B).

If the POST commission or the candidate, as appropriate, has not certified to the county election commission by the withdrawal deadline a person seeking to qualify as a candidate for the office of sheriff as meeting the qualifications as provided for in T.C.A. § 8-8-102, such person's name shall not appear on the ballot. T.C.A. § 8-8-102(b)(3)(C).

### Challenge of Qualifications

A person may challenge whether a candidate has the required qualifications for sheriff, as identified in T.C.A. § 8-8-102 (a); provided, that the challenge is filed in writing with the POST commission no later than twelve o'clock (12:00) noon prevailing time on the third day after the qualifying deadline, as determined under T.C.A. § 2-5-101(a).

T.C.A. § 8-8-102 (d).

If a candidate's qualifications are challenged pursuant to subsection (d), the POST commission shall:

1. Notify the candidate of the challenge;
2. Review and verify the candidate's required qualifications, identified in subsection (a);
3. Review and verify the candidate's affidavit and psychological evaluation form, in accordance with subsection (b); and
4. If the POST commission determines the candidate does not possess the required qualifications for sheriff:
  - A. Disqualify the candidate;
  - B. Notify the candidate and county election commission of its determination no later

than twelve o'clock (12:00) noon prevailing time on the seventh day after the qualifying deadline, as determined under T.C.A. § 2-5-101(a); and

- C. Request that the county election commission: (i) Not print the candidate's name on any ballot; and (ii) Remove the candidate's name from any printed ballot.

T.C.A. § 8-8-102 (e).

It is an offense for a person to intentionally file a fraudulent challenge. A violation is a Class A misdemeanor punishable by fine only. T.C.A. § 8-8-102 (f).

See Nominations and Qualifying Deadlines, Campaign Financial Disclosure Act of 1980, the Campaign Contribution Limits, and Conflict of Interest Disclosure Statements.

## Oath of Office and Bond-Sheriff

Reference Number: CTAS-37

In addition to filing the required bond and the usual oath of office, a sheriff must "take an oath that [he or she] has not promised or given, nor will give, any fee, gift, gratuity, or reward for the office or for aid in procuring such office, that [he or she] will not take any fee, gift, or bribe, or gratuity for returning any person as a juror or for making any false return of any process, and that [he or she] will faithfully execute the office of sheriff to the best of [his or her] knowledge and ability agreeably to law." T.C.A. § 8-8-104.

Sheriff's deputies must take the same oaths as the sheriff, which are certified, filed, and endorsed in the same manner as the sheriff's. T.C.A. § 8-18-112. See Oaths under General Information tab of the County Offices topic for additional information and an example of the full oath of office for a sheriff and regular deputies.

Bonds are covered under the General Information tab of the County Offices topic.

## Compensation-Sheriff

Reference Number: CTAS-38

The sheriff receives a minimum statutory compensation amount according to county population class. T.C.A. § 8-24-102. Pursuant to T.C.A. § 8-24-102(g), compensation for the sheriff must be at least 10 percent higher than the salary paid to the general officers of the county. However, the county legislative body may increase the compensation of the sheriff above the minimum amount required by the state law. T.C.A. §§ 8-24-103 and 8-24-111.

### Additional Compensation

At their first session in each and every year, the county legislative body is required to make an allowance that they in their discretion think sufficient to compensate the sheriff for *ex officio* services. T.C.A. §§ 5-9-101(6), 8-24-111. The county legislative body is authorized to pay the sheriff an amount, in addition to the salary allowed by T.C.A. § 8-24-102, for *ex officio* services as the superintendent of the workhouse if the workhouse is combined with the jail as provided for by Title 41, Chapter 2. T.C.A. § 8-24-103(a)(3).

More information about Compensation can be found under the General Information tab of the County Offices topic.

## In-Service Training-Sheriffs

Reference Number: CTAS-42

Every person who is elected or appointed to the office of sheriff after May 30, 1997 is annually required during the term of office to complete a 40-hour in-service training course appropriate for the rank and responsibilities of a sheriff. All such training must be approved by the POST Commission. Any sheriff who does not fulfill the obligations of this annual in-service training shall lose the power of arrest. T.C.A. § 8-8-102(c).

All sheriffs must complete annual in-service training as set forth in T.C.A. § 38-8-111. Sheriffs successfully completing annual in-service training receive a cash salary supplement in the same manner and under the same conditions as police officers except that the POST Commission makes the funds for sheriff's salary supplements available to the appropriate counties for payment to sheriffs. In performing its duties, the commission recognizes that the sheriff is an elected official without any employing agency. The commission must issue to any sheriff successfully completing recruit training, or possessing its

equivalency and completing continuing annual in-service training, a sheriff's certificate of compliance in the manner in which it issues police officers' certificates of compliance. A sheriff already holding any certificate of compliance from the commission may request the commission to recognize the sheriff's certification. A sheriff receiving a certificate of compliance has a continuing duty to meet all requirements as set forth in T.C.A. §§ 38-8-111 and 8-8-102. In the event a person holding a police officer's certificate of compliance assumes the office of sheriff, the commission must substitute a sheriff's certificate of compliance for the police officer certificate. T.C.A. § 38-8-111(f). See also Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-2-.03 (2).

The failure of a sheriff to successfully complete the in-service training requirement will result in the sheriff's loss of eligibility for the pay supplement set forth in T.C.A. § 38-8-111. The failure of a sheriff to successfully complete another in-service training session within one year will result in loss of certification. T.C.A. § 38-8-107(b).

## Newly Elected Sheriffs' School

Reference Number: CTAS-1217

Every person who is elected to the office of sheriff after August 1, 2006, in a regular August general election for a four year term, and is a first term sheriff, regardless of their previous law enforcement experience, must successfully complete the newly elected sheriffs' school prior to the 1st day of September immediately following their election. Thereafter, the sheriff must successfully complete 40 hours of annual in-service training appropriate for the rank and responsibilities of a sheriff. The newly elected sheriffs' school is taught at the Tennessee Law Enforcement Training Academy during August, only in the years elections for sheriffs are held. Any cost associated with attending the newly elected sheriffs' school is paid by the county. Any sheriff who does not fulfill the obligations of this training course loses the power of arrest. T.C.A. § 8-8-102(c).

## Funding for the Office of Sheriff

Reference Number: CTAS-1218

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 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 operating 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). Pursuant to T.C.A. § 8-20-120, the county legislative body is required to fund the operations of the sheriff's office. Accordingly, the county legislative body is authorized to appropriate moneys to purchase all necessary equipment for use by the sheriff for preservation of the peace and for the service and execution of all process, criminal and civil, and to pay the salaries of deputy sheriffs appointed pursuant to the provisions of Title 8, Chapter 20. T.C.A. § 5-9-101(21). All necessary books, stationery, office equipment, stamps, and supplies of all kinds used in the conduct of the sheriff's office are to be furnished and paid for by the county. T.C.A. § 8-22-107(a). Additionally, the sheriff is authorized to include in the sheriff's expense account, as part of the expenses of the office, the necessary cost of arresting criminals, of furnishing and operating the county jail and maintaining the state and county prisoners therein, and all other necessary and legitimate expenses incurred in the proper and efficient administration of the sheriff's office. T.C.A. § 8-22-110(a).

## Deputies and Assistants-Sheriff

Reference Number: CTAS-39

## Employment of Deputies and Assistants

Reference Number: CTAS-1221

The county sheriff has two options through which he may obtain authority to employ and compensate

personnel to assist him to "properly and efficiently conduct the affairs and transact the business" of his office. T.C.A. § 8-20-101(a) (Supp.1996). The sheriff may either file a salary petition, which is an adversary proceeding between himself and the county executive; or, if the county executive and the sheriff agree on the number of deputies and assistants to be employed and the salary to be paid to them, a letter of agreement may be prepared and submitted to the court for approval. T.C.A. § 8-20-101(a)(2) & (c) (Supp.1996).

*Shelby County Deputy Sheriff's Ass'n v. Gillless*, 972 S.W.2d 683 (Tenn. Ct. App. 1997).

*Tennessee Code Annotated* section 8-20-101 provides that when the sheriff cannot properly and efficiently conduct the affairs and transact the business of the sheriff's office by devoting his or her entire working time thereto, he or she may employ such deputies and assistants as may be actually necessary to the proper conducting of the sheriff's office. T.C.A. § 8-20-101(a). Like other county officials, the sheriff may employ deputies and other staff under a letter of agreement or a court order. The sheriff must file a salary suit or enter into a letter of agreement. Doing nothing is not an option.

## Salary Suits

Reference Number: CTAS-1219

"[T]he sheriff has sole discretion to request the number of assistants he believes are 'actually necessary to the proper conducting' of his office, as well as the salaries he feels are necessary to attract and retain them." *Shelby County Deputy Sheriff's Ass'n v. Gillless*, 972 S.W.2d 683, 686 (Tenn. Ct. App. 1997).

If the sheriff chooses to petition a court for additional deputies or assistants or for greater salaries than the budget adopted by the county legislative body allows, the sheriff must file the petition with the state trial court exercising criminal jurisdiction in the county, either criminal court or circuit court. The petition or application for authority to appoint or employ one or more additional deputies or assistants must be heard and determined by a judge (or chancellor) serving the judicial district in which the petition or application is filed. Public Chapter 276 of the Acts of 2005.

The statutory scheme enacted by the General Assembly for staffing and compensating the sheriff's office through a salary suit is clear. The sheriff must demonstrate that he or she cannot properly and efficiently conduct the affairs and transact the business of his or her office by devoting his or her entire working time thereto; and, the sheriff must show the necessity for the number of deputies and assistants required and the salary that should be paid each. *Boarman v. Jaynes*, 109 S.W.3d 286, 291 (Tenn. 2003). The sheriff is not required to demonstrate an inability to maintain his or her office by using the efforts of his or her staff as constituted and compensated at the time of the filing of the salary suit. *Boarman* at 291. Once the necessity of employing deputies or assistants is established, the appropriate trial court is empowered to determine the number of deputies and assistants needed and their salaries. *Id.* T.C.A. § 8-20-101(a) and (a)(2). *See also Shelby County Deputy Sheriffs' Ass'n v. Shelby County*, 1998 WL 74314, \*3 (Tenn. Ct. App. 1998) (The sheriff has an absolute right to petition the court pursuant to T.C.A. § 8-20-101.); *Roberts v. Lowe*, 1997 WL 189345 (Tenn. Ct. App. 1997); *Easterly v. Harmon*, 1997 WL 718430 (Tenn. Ct. App. 1997).

The petition must be filed by the sheriff within 30 days after the date of final adoption of the budget for the fiscal year. No order increasing expenditures shall be effective during any fiscal year if the petition is filed outside the 30-day window unless the order is entered into by agreement of the parties. Also, a new officeholder has 30 days from taking office to file a petition and any order entered with respect to such petition may be effective during the fiscal year in which the petition was filed. T.C.A. § 8-20-101(b).

In the petition, the sheriff must name the county mayor as the party defendant. The county mayor is required to file an answer within five days after service of the petition, either admitting or denying the allegations of the petition or making such answer as the county mayor deems advisable under the circumstances. The petition and the answer are to be docketed, filed, and kept as permanent records of the court. The court must promptly in term or at chambers have a hearing on the application, on the petition and the answer. The court will develop the facts, and the court may hear proof either for or against the petition. The court may allow or disallow the application, either in whole or in part, and may allow the whole number of deputies or assistants applied for or a less number, and may allow the salaries set out in the application or smaller salaries, all as the facts justify. T.C.A. § 8-20-102. *See Moore v. Cates*, 832 S.W.2d 570, 572 (Tenn. Ct. App. 1992) (These statutes do not authorize the Trial Court to identify deputies by name and award them salary increases for a fixed period in the nature of a judgment against the county. Rather, the Trial Judge under the statutes is limited to authorizing the required number of deputies and fixing salaries for the positions.); *Roberts v. Lowe*, 1997 WL 189345 (Tenn. Ct. App. 1997).

The trial court does not have the authority to order retroactive pay for personnel hired by the sheriff prior to the filing of the petition to hire and employ deputies.

The only Tennessee decision directly addressing the question of whether a petition to employ and pay deputies may seek retroactive pay for deputies hired prior to the filing of the petition is *State ex rel. Obion County v. Bond*, 8 S.W.2d 367 (Tenn. 1928). In that case, the court interpreting the predecessor of T.C.A. § 8-20-101, The Public Acts of 1921, chapter 101, section 7, concluded that the intention of the legislature in enacting this legislation was to require the sheriff or other county official named in this statute to petition the appropriate court to hire additional deputies and for the amount of salary to be paid to the additional deputies in *advance* of the expenditures. Therefore, the court concluded that a petition to employ and pay deputies could not properly seek retroactive pay for deputies hired prior to the filing of the petition. *Id.* at 368. We believe that in light of this interpretation of the statute by the Tennessee Supreme Court, Sheriff Woods was not authorized to petition the Circuit Court at Henderson County for funds to pay the three additional deputies retroactively that he had hired eight months prior to filing the petition. Accordingly, we hold that the trial court erred in granting Sheriff Woods' petition insofar as the petition seeks funds retroactively to pay these three deputies.

*Woods v. Smith*, 1992 WL 151443 (Tenn. Ct. App. 1992). *See also Roberts v. Lowe*, 1997 WL 189345 (Tenn. Ct. App. 1997) (T.C.A. § 8-20-101, *et seq.* (1993 & Supp. 1996), contains no provision for an award of retroactive raises, nor has Roberts cited any authority in his brief to support the trial court's action. We therefore conclude that the trial court abused its discretion in making the salaries effective retroactively.).

The order of the court is to be spread upon the minutes of the court and may from time to time, upon application, be amended or modified by increasing or decreasing the number of deputies and the salaries paid each. However, the sheriff may, without formal application to the court, decrease either the number of deputies or assistants and the salaries of any of them where the facts justify such course. T.C.A. § 8-20-104. *See Moore v. Cates*, 832 S.W.2d 570 (Tenn. Ct. App. 1992).

Either party dissatisfied with the decree or order of the court in the proceedings set out above has the right of appeal as in other cases. Pending the final disposition of the application to the court, or pending the final determination on appeal, the sheriff may appoint deputies or assistants to serve until the final determination of the case, who shall be paid according to the final judgment of the court. T.C.A. § 8-20-106.

The cost of the suit is paid out of the fees of the sheriff's office. The sheriff is allowed a credit for the same in settlement with the county trustee. T.C.A. § 8-20-107. *See Moore v. Cates*, 832 S.W.2d 570, 572 (Tenn. Ct. App. 1992) (Finally, the judgment against the county for attorney's fees is not authorized. While the Trial Court would have jurisdiction to approve fees for the filing of the application, such fees could only be ordered paid out of the Sheriff's funds, with the proviso that he receive credit for such items of cost in his settlement with the trustee.).

Pursuant to T.C.A. § 8-20-105, it is the duty of the sheriff to reduce the number of deputies and assistants and the salaries paid them when it can be reasonably done. The court or judge having jurisdiction may, on motion of the county mayor and upon reasonable notice to the sheriff, have a hearing on the motion and may reduce the number of deputies or assistants and the salaries paid any one or more when the public good justifies.

FIELD DEPUTIES. Pursuant to T.C.A. § 8-20-103, if the sheriff cannot establish that he or she is unable to personally discharge the duties of the sheriff's office by devoting his or her entire working time thereto, no deputy or deputies or assistants shall be allowed except for field deputy sheriffs. In addressing the former version of T.C.A. § 8-20-103, the Tennessee Court of Appeals noted that the "sheriff must apply to the court for the appointment of field deputy sheriffs, but need not show a necessity for their appointment." *Carter v. Jett*, 370 S.W.2d 576, 581 (Tenn. Ct. App. 1963).

Neither the current nor former version of T.C.A. § 8-20-103 define the term "field deputy sheriffs." However, the former version of the code, T.C.A. § 8-2003, stated that "the sheriff in each county may appoint all necessary field deputies for misdemeanor and criminal work and civil work before the justices of the peace; said field deputies to be appointed as provided under §§ 8-2001 and 8-2002. And in *Jones v. Mankin*, 1989 WL 44924 (Tenn. Ct. App. 1989), the court, in addressing the provisions of T.C.A. § 8-20-103, refers to field deputies as patrol deputies. Recent appellate court cases dealing with salary suits filed by sheriffs have overlooked or failed to address the clear and unambiguous language of T.C.A. § 8-20-103, which does not require the sheriff to demonstrate an inability to discharge the duties of his or her office by devoting his or her entire working time thereto before the court is authorized to award the sheriff additional field deputies, and instead have focused on the language of T.C.A. § 8-20-101 which does require the sheriff to meet the aforementioned threshold showing before the court is authorized to



award the sheriff additional field deputy sheriffs.

## Letters of Agreement

Reference Number: CTAS-1222

In 1993, the General Assembly amended T.C.A. § 8-20-101, adding the language that is now codified in subsection (c), in order to provide county elected officials with an alternate method of obtaining the authority to employ and compensate personnel. If the sheriff agrees with the number of deputies and assistants and the compensation and expenses related thereto, as set forth in the budget adopted by the county legislative body, a court order is not necessary. Instead of filing a petition in court, the sheriff can enter into a letter of agreement with the county mayor using a form prepared by the comptroller of the treasury, setting forth the fact that they have reached an understanding in this regard. The letter is then filed with the court. Sheriffs must file their letters of agreement with the circuit court except in counties where criminal courts are established, in which case the sheriff must file the letter of agreement with the criminal court. T.C.A. § 8-20-101(c)(1) and (c)(2). Comptroller's form for Letter of Agreement.

## Funding for Salaries - Writ of Mandamus

Reference Number: CTAS-1223

The county legislative body is required by law to fund authorized expenses fixed by law for the operation of the sheriff's office, including the salary of all the sheriff's deputies. T.C.A. § 8-24-103(a)(1). *State ex rel. Ledbetter v. Duncan*, 702 S.W.2d 163, 165 (Tenn. 1985) (We hold that the provision requires the county legislative body to fully fund the salaries of all deputies as set by the circuit or criminal court pursuant to T.C.A. Chapter 20 of Title 8.). The county legislative body may not adopt a budget that reduces below current levels the salaries and number of employees in the sheriff's office without the sheriff's consent. In the event the county legislative body fails to budget any salary expenditure that is a necessity for the discharge of the statutorily mandated duties of the sheriff, the sheriff may seek a writ of mandamus to compel such appropriation. T.C.A. § 8-20-120. The writ of mandamus authorized by T.C.A. § 8-20-120 "is the same writ that has been recognized by the courts for many years. It can only be sought after the sheriff has gone through the local budget process and the application procedure required by" T.C.A. § 8-20-101(a)(2). *Jones v. Mankin*, 1989 WL 44924, \*3 (Tenn. Ct. App. 1989) (If the county legislative body refuses to appropriate the funds required by the court's order, the sheriff may seek a writ of mandamus to compel it to do so.). *See also State ex rel. Ledbetter v. Duncan*, 702 S.W.2d 163, 165 (Tenn. 1985); *Sapp v. State ex rel. Nipper*, 524 S.W.2d 652, 653-54 (Tenn. 1975); *Atkinson v. McClanahan*, 520 S.W.2d 348, 353 (Tenn. Ct. App. 1974) (It would seem to us that the remedy of the sheriff, in the event the decree of the Circuit Judge becomes final and is not carried out and its implementation refused, would be to file a bill for mandamus.); Op. Tenn. Atty. Gen. 04-104 (July 2, 2004).

## Removal of Deputies and Assistants

Reference Number: CTAS-1224

The sheriff may terminate, at will, any and all deputies and assistants in his or her office. T.C.A. § 8-20-109. However, in any county having a civil service system for the sheriff's office pursuant to Title 8, Chapter 8, Part 4, or other provision of general law or the provisions of a private act, or a civil service system for all county employees pursuant to the provisions of a private act, the employment or termination of employment of any deputy or assistant in any offices covered by Title 8, Chapter 20 shall be pursuant to the provisions of such civil service system. The provisions of T.C.A. § 8-20-109 do not apply to counties with civil service. T.C.A. § 8-20-112. *See Patterson v. Rout*, 2002 WL 1592674 (Tenn. Ct. App. 2002).

### Patronage Dismissals

A sheriff may not dismiss a nonpolicymaking employee for political reasons. Such an unlawful firing may subject the sheriff and the county to liability under the federal civil rights laws.

At the same time that the [United States Supreme] Court has held that "the practice of patronage dismissals is unconstitutional under the First and Fourteenth Amendments," *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976), it has held that this protection does not extend to public employees who occupy "policymaking" positions in the government, *id.* at 367;

see also *Rutan v. Republican Party*, 497 U.S. 62, 110 S.Ct. 2729, 111 L.Ed.2d 52 (1990) (extending *Elrod*'s reasoning to promotions and demotions). Where the effective performance of a particular office demands affiliation with a particular party or subscription to a particular policy, the Constitution permits dismissal based on political grounds. See *Branti v. Finkel*, 445 U.S. 507, 518, 100 S.Ct. 1287, 63 L.Ed.2d 574 (1980).

*Cagle v. Headley*, 2005 WL 2108367, \*2 (6th Cir. 2005). See also *Garvey v. Montgomery*, 128 Fed.Appx. 453, 463 (6th Cir. 2005) (The First Amendment protection against political discharges does not extend to public employees who hold positions in which "an employee's private political beliefs would interfere with the discharge of his public duties." This principle is known as the *Branti/Elrod* exception to the general rule that public employees may not be discharged on account of their political affiliations.); *Justice v. Pike County Bd. of Educ.*, 348 F.3d 554, 559 (6th Cir. 2003) ("Limiting patronage dismissals to policymaking positions is sufficient to achieve the valid governmental objective of preventing holdover employees from undermining the ability of a new administration to implement its policies." *Id.* In contrast, "[n]onpolicymaking individuals usually have only limited responsibilities and are therefore not in a position to thwart the goals of the in-party.") (citations omitted).

The Sixth Circuit Court of Appeals has held "that a deputy sheriff does not fall within the policymaking exception where 'the position of deputy sheriff was at the bottom of the chain of command in the [department],' the primary duty of the deputy sheriff was 'to patrol the roads of the county' and the record did not indicate that the deputy had 'the amount of discretion or policymaking authority[ ] that would make political affiliation an appropriate requirement for employment.'" *Cagle* at \*3 (6th Cir. 2005) quoting *Hall v. Tollett*, 128 F.3d 418, 429 (6th Cir. 1997). See also *Heggen v. Lee*, 284 F.3d 675, 684 (6th Cir. 2002) (noting that serving civil and arrest warrants, transporting prisoners and providing courtroom security did not make a deputy sheriff a policymaker); *Sowards v. Loudon County*, 203 F.3d 426, 438 (jailer was not a policymaker where her duties included "providing for the needs and safety of the jail's inmates, such as providing food, bedding, and support for the inmates, taking precautions to ensure their safety, and arranging communications between inmates and the public"); *Ruffino v. Sheahan*, 218 F.3d 697, 700 (7th Cir. 2000) ("We note as well that it would be a remarkable extension of the policymaker line of cases to hold that the hundreds of deputy sheriffs in Cook County are all policymakers, for whom the Sheriff has a legitimate interest in insisting on personal and political loyalty.").

By contrast, the Court has held that the position of a chief deputy does qualify as a policymaking position where the employee "assumed the sheriff's duties in the sheriff's absence, supervised the deputies, scheduled their shifts, and recommended employees for dismissal to the sheriff." *Hall v. Tollett*, 128 F.3d 418, 425 - 426 & n. 4 (6th Cir. 1997). "A sheriff, no less than a governor, is 'entitled to select a person whom he kn[ows] to share his political beliefs to occupy a position with such high levels of discretion and policymaking authority.'" *Cagle* at \*4 quoting *Hall* at 426. In *Cagle*, the Court found that the position of lieutenant in the sheriff's office qualified as a policymaking position and held that "political affiliation" was an appropriate requirement for employment where the employee attended weekly and often confidential meetings, possessed the authority to discipline other employees and had managerial power over a division. *Cagle* at \*4. The Court noted that although lieutenants in the sheriff's office were required to handle pedestrian tasks as well as substantial ones and that they were required to "pursue the goals and objectives" of the sheriff, these facts did not prevent their position from being a policymaking one. See also *Garvey v. Montgomery*, 128 Fed.Appx. 453, 463 (6th Cir. 2005) (Former county employee's position of administrative officer was one in which an employee's private political beliefs would interfere with the discharge of his public duties, and thus, the First Amendment protection against political discharges did not extend to the employee); *Fuerst v. Clarke*, 389 F.Supp.2d 1042 (E.D. Wis. 2005) (Promotion to sergeant sought by deputy sheriff was for a policymaking position exempt from First Amendment protections, and thus deputy sheriff could not maintain claim against county sheriff, alleging retaliatory failure to promote due to deputy's political activities; sergeants in position at issue worked autonomously and operated with some discretion when performing their duties and had meaningful input into implementation of department policy.).

## Deputy Sheriffs

Reference Number: CTAS-1225

A deputy sheriff may be deemed a full-time police officer under the laws pertaining to peace officers. "Full-time police officer" means any person employed by any municipality or political subdivision of the state of Tennessee whose primary responsibility is to prevent and detect crime and to apprehend offenders, and whose primary source of income is derived from employment as a police officer. T.C.A. § 38-8-101(1). See Op. Tenn. Atty. Gen. No. 85-224 (July 30, 1985).

# Minimum Qualifications

Reference Number: CTAS-1226

After July 1, 1981, any person employed as a full-time deputy sheriff shall:

1. Be at least 18 years of age;
2. Be a citizen of the United States;
3. Be a high school graduate or possess its equivalency which shall include a general educational development (GED(R)) certificate;
4. Not have been convicted of or pleaded guilty to or entered a plea of nolo contendere to any felony charge or to any violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor, controlled substances or controlled substance analogues;
5. Not have been released or discharged under any other than honorable discharge from any of the armed forces of the United States;
6. Have their fingerprints on file with the Tennessee Bureau of Investigation;
7. Have passed a physical examination by a licensed physician;
8. Have a good moral character as determined by a thorough investigation conducted by the employing agency; and
9. Have been certified by a Tennessee licensed health care provider qualified in the psychiatric or psychological field as being free from any impairment, as set forth in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association at the time of the examination, that would, in the professional judgment of the examiner, affect the applicant's ability to perform an essential function of the job, with or without a reasonable accommodation.

T.C.A. § 38-8-106. *See also* Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-2-.03 (1).

The minimum standards set forth in T.C.A. § 38-8-106 and in Rule 1110-2-.03 (1) are mandatory and are binding upon the county. Any person who appoints an applicant, who, to the knowledge of the appointor, fails to meet the minimum standards as set forth in T.C.A. § 38-8-106 and in Rule 1110-2-.03 (1), and any person who signs the warrant or check for payment of salary of a person who, to the knowledge of the signer, fails to meet the qualifications as a deputy sheriff as provided in T.C.A. § 38-8-106 and in Rule 1110-2-.03 (1), commits a Class A misdemeanor and upon conviction shall be subject to a fine not exceeding \$1,000. T.C.A. § 38-8-105(a) and (b). This provision does not apply to any officer hired by a county prior to July 1, 1982. T.C.A. § 38-8-105(c). *See also* Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-2-.01 and Rule 1110-2-.02. Nothing in Title 38, Chapter 8, precludes an employing agency from establishing qualifications and standards for hiring and training deputy sheriffs that exceed those set by the POST Commission. T.C.A. § 38-8-109.

# Recruit Training and Certification

Reference Number: CTAS-1227

Pursuant to T.C.A. § 38-8-107, all deputy sheriffs employed after July 1, 1983, must successfully complete recruit training within one year of the date of their employment. However, pursuant to POST rules, any officer seeking certification under the POST rules must satisfactorily complete the basic course within six months of initial employment as a law enforcement officer. During this initial six-month period prior to attending the basic course, the recruit must be paired with a field training officer or other certified senior officer. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-2-.03 (3).

The POST Commission will issue a certificate of compliance to any person who meets the qualifications for employment and satisfactorily completes an approved recruit training program. The commission may issue a certificate to any person who has received training in another state provided that the commission makes a determination that the training was at least equivalent to that required by the commission for approved police education and training programs in this state. In addition, the person seeking certification must satisfactorily comply with all of the other requirements of Title 38, Chapter 8. T.C.A. § 38-8-107. *See also* Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-2-.03 (1).

# Bond-Deputy Sheriff

## Reference Number: CTAS-1228

There is no general law requirement that regular deputy sheriffs be bonded. However, in 2013, the Legislature amended T.C.A. § 8-19-101 to require county governments to obtain and maintain blanket surety bond coverage for all county employees not covered by individual bonds referenced elsewhere in statute. The minimum amount of such blanket bonds is one hundred fifty thousand dollars. T.C.A. § 8-19-101(e).

## In-Service Training Requirements

### Reference Number: CTAS-1229

All deputy sheriffs, except those who have attended the Basic Law Enforcement School within the calendar year must successfully complete a POST-approved 40-hour in-service training session appropriate for their rank and responsibilities each calendar year. The failure of an individual deputy to successfully complete the annual in-service training requirement will result in the deputy's loss of eligibility for the pay supplement provided for in T.C.A. § 38-8-111. The failure of this individual deputy to successfully complete another in-service training session within one year will result in the loss of that deputy's certification. Each sheriff's office participating in the POST Commission's training program must file a letter of intent with the commission stating its commitment to mandatory training for all law enforcement officers. The failure of several deputies from one sheriff's office will be cause for the commission to examine that sheriff's office training policy and may result in the office being declared out of compliance with state standards and thereby not eligible to participate in the commission's training programs at no cost. Any travel expense is the responsibility of the individual sheriff's office. T.C.A. § 38-8-107; Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.01 (1) and Rule 1110-4-.12.

Certified or recognized courses must be at least 40 hours in duration and established by the sheriff's office to meet the educational requirements normal to the deputy's position and responsibility in accord with the course curriculum requirements established by the POST Commission. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.01 (2). Each in-service training session must include at least eight hours of firearms training requalification with the deputy's service handgun and any other firearm authorized by the sheriff's office. Each deputy must score at least 75 percent to qualify. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.02. Each in-service training session must also include training in child sexual abuse. This training is mandatory for a deputy to be eligible for the salary supplement authorized in T.C.A. § 38-8-111. T.C.A. § 37-1-603(b)(4)(B); Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.05 (4). In addition, pursuant to Public Chapter 243 of the Acts of 2005, each deputy who operates an emergency vehicle must receive no less than two hours of annual training and pass a comprehensive examination covering all applicable laws pertaining to emergency vehicles, the operation of the vehicle in emergency and nonemergency situations, and response to actions of nonemergency vehicles. Each deputy must obtain a passing grade of at least 75 percent on all tests, 75 percent on the firearms qualification, and 75 percent on the defensive driving qualification. The in-service training session is not complete until the officer has taken the test and qualified with his firearm. Any deputy who fails the test or firearms or driving qualification must make up the failing score during the calendar year in order to keep their certification. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.12.

Attendance records must be maintained on each deputy and must be submitted to the POST Commission. An attendance roster listing the names of all deputies attending a scheduled block of training on a particular day must be maintained and kept on file by the sheriff's office. The sheriff and the instructor must certify to the POST Commission those deputies who successfully complete the in-service training. The certification must include the name of the reporting sheriff's office and the name, rank, and Social Security number of each deputy along with their test scores and firearm qualification score. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.06.

If a deputy attends a specialized school appropriate to his or her rank and responsibility, the eligibility of the school must be approved by the commission. Only schools of a law enforcement related nature will be considered for in-service credit toward meeting the 40 hour training requirement. A curriculum of each school and proof of successful completion by the individual attendee is required. See Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.09.

Any deputy who successfully completes a law enforcement course at any accredited institution of higher education, college, or university may be considered for annual fulfillment of all or a portion of the required

40 hours in-service credit hours, not including firearms training. See Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.11.

Requests for waivers of in-service training for a calendar year on the basis of medical disability must be submitted to the POST Commission by the chief administrative officer of the sheriff's office explaining the individual case. A doctor's statement must accompany the request. Each request will be considered individually. Requests for the waiver of in-service training for a calendar year on the basis that a deputy will retire during that year must be submitted by the deputy to his or her chief administrative officer stating the intention to retire prior to completion of in-service training for the calendar year. If the request is approved by the sheriff's office, then a letter must be forwarded to the POST Commission for approval. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.10.

## Authority to Carry Handguns

Reference Number: CTAS-1230

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. See *also* Op. Tenn. Atty. Gen. No. 99-024 (February 16, 1999).

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), 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. § 39-17-1321 prohibiting the possession of a handgun while under the influence of alcohol or any controlled substance or controlled substance analogue.

Finally, T.C.A. §§ 39-17-1315(b)(2) and 39-17-1359 authorize private entities and governmental entities to prohibit the possession of weapons by any person at meetings conducted by, or on premises owned, operated, managed or under the control of the private entity or governmental entity. Notice of such prohibition must be posted and must be displayed in prominent locations. The attorney general has opined that T.C.A. § 39-17-1359 does not allow private entities or governmental entities to prohibit the possession of weapons by law enforcement officers on their property. The Attorney General has also opined that T.C.A. § 39-17-1315(b)(2) does not allow private entities or governmental entities to prohibit the possession of weapons by state law enforcement officers or POST-certified local law enforcement officers on their property. See Op. Tenn. Atty. Gen. No. 00-161 (October 17, 2000). Based upon the attorney general's reasoning, T.C.A. § 39-17-1315(b)(2) does allow private entities or governmental entities to prohibit the possession of weapons by off-duty non-POST certified local law enforcement officers (i.e., reserve, auxiliary, part-time and temporary deputy sheriffs and police officers) on their property.

## Salary Supplement-Deputy Sheriffs

Reference Number: CTAS-1231

Every county that requires all deputy sheriffs to complete an annual 40-hour in-service training course appropriate to the deputy's rank and responsibility at a school certified or recognized by the POST Commission is entitled to receive 5 percent of each qualified deputy's annual salary, but not more than \$600 for any one deputy in any one year, from the commission to be paid to each deputy in addition to the deputy's regular salary. In the event that 5 percent of a qualified deputy's annual salary does not amount to \$600, the deputy is nevertheless entitled to receive the full amount of \$600 as is any other qualified deputy, subject only to the specific appropriation of funds in the general appropriations act for the purpose of implementing the provisions of Title 38, Chapter 8. T.C.A. §§ 38-8-111(a)(1) and 38-8-111(c); Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-6-.01. *Carter v. McWherter*, 859 S.W.2d 343 (Tenn. Ct. App. 1993).

To be eligible to receive the salary supplement, a deputy sheriff must successfully complete 40 hours of in-service training during the calendar year. A deputy who has not completed eight months of full-time service during the calendar year is not eligible to receive the salary supplement except in the case of the deputy's death, retirement, or medical disability provided that the 40 hours of in-service training was completed prior to the death, retirement, or medical disability. Upon the submission of the proper documentation by a deputy, the commission will include time spent in active military service when calculating the required eight months of full-time service. Deputies who attend the Basic Law Enforcement School are not eligible to receive the salary supplement during that calendar year and are not required to attend in-service training during that year. These deputies are eligible to receive the salary supplement the following calendar year after successfully completing 40 hours of in-service training. Deputies terminated for cause or decertified during the calendar year are not eligible to receive the salary supplement. Notwithstanding any other provision of law, rule or regulation to the contrary, any deputy sheriff who served or serves on active duty in the armed forces of the United States during Operation Enduring Freedom or any other period of armed conflict prescribed by presidential proclamation or federal law that occurs following the period of Operation Enduring Freedom will receive the cash salary supplement if his or her service prevented or prevents attending the in-service training program. T.C.A. § 38-8-111(a)(2) and (a)(3); Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-6-.02.

POST Commission funds made available to the county under T.C.A. § 38-8-111(a) and (b) must be received, held and expended in accordance with the provisions of T.C.A. § 38-8-111(a)-(c), the rules and regulations issued by the commission, and the following specific restrictions:

1. Funds provided shall be used only as a cash salary supplement to deputy sheriffs;
2. Each deputy sheriff shall be entitled to receive the state supplement which the deputy's qualifications brought to the county;
3. Funds provided shall not be used to supplant existing salaries or as substitutes for normal salary increases periodically due to deputy sheriffs; and
4. The cash salary supplement shall be considered as a bonus for the successful completion of training and shall not be considered as salary for subsequent years' determination of supplement or retirement purposes.

T.C.A. § 38-8-111(b). See *also* Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-6-.03. All accounts are subject to audit by the state comptroller, and all records pertaining to salary supplements are subject to inspection by personnel of the POST Commission. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-6-.04.

## Off-Duty Status

Reference Number: CTAS-1232

There is no statute or rule of law in this state that places a mandatory duty upon police officers to keep the peace when "off duty." "To the contrary, when officers are 'off duty,' our statutes generally treat the officer as an ordinary private citizen and not as an agent or employee of the municipal police department under a general duty to keep the peace." *White v. Revco Discount Drug Centers, Inc.*, 33 S.W.3d 713, 720-721 (Tenn. 2000). "Of course, to say that officers do not continuously function in an official capacity is not to say that off-duty officers are prevented from assuming a duty to remedy a breach of the peace, or that officers are incapable of being summoned to official duty by the municipality. Nevertheless, it is clear that officers are not under a general duty to enforce the law while 'off duty,' and a blanket rule declaring that police officers are under a never-ending duty to keep the peace is contrary to existing Tennessee law." *Id.* at 721.

# Off-Duty Employment

Reference Number: CTAS-1233

The current state of the law regarding off-duty employment by law enforcement officers indicates that law enforcement agencies may constitutionally restrict or prohibit their law enforcement officers from engaging in secondary employment during off-duty time if, at the time in question, the agency had a clear policy restricting or prohibiting such employment and if the agency can articulate how its policy is rationally related to a legitimate government interest (the "rational basis" test). Courts treat cases involving the issue of secondary employment of law enforcement officers on a case-by-case basis. However, generally speaking, if the two requirements stated above are met, courts have upheld restrictions or even prohibitions on secondary employment set by law enforcement agencies. *Op. Tenn. Atty. Gen. No. 01-075 (May 8, 2001)*.

In two cases, the plaintiffs had worked in the outside employment positions before that employment was prohibited by the public employer, "yet the courts nevertheless held that the plaintiffs' due process rights were not violated by the prohibition." *Allen v. Miami-Dade County*, 2002 WL 732108, \*3 (S.D. Fla. 2002) citing *Ammon v. City of Coatesville*, 1987 WL 15032, \*4 (E.D. Pa.) and *Ft. Wayne Patrolmen's Ben. Assoc. v. City of Ft. Wayne*, 625 F.Supp. 722, 730 (N.D. Ind. 1986). See also *Shelby County Deputy Sheriffs' Ass'n v. Gillless*, 2003 WL 21206067 (6th Cir. 2003) (Sheriff's regulation prohibiting full-time deputy sheriffs from wearing uniform while performing off-duty work was not unconstitutional.); *Campbell v. City of Fort Worth*, 69 Fed.Appx. 657 (5th Cir. 2003) (Prohibition on off-duty work by a suspended police officer did not infringe on any interest protected by the Due Process Clause.); *Davis v. Carey*, 63 F.Supp.2d 361 (S.D. N.Y. 1999) (The regulation of police officers' off-duty employment is commonplace and lawful.); *McEvoy v. Spencer*, 49 F.Supp.2d 224, 227 (S.D. N.Y. 1999) (holding that "plaintiff does not have any interest of constitutional dimension in being a private investigator in his off-duty hours" and therefore dismissing the plaintiff's due process claim); *Puckett v. Miller*, 821 S.W.2d 791 (Ky. 1991) (It is widely recognized that the rights of public employees may be abridged in the interest of preventing conflicts with official duties or promoting some legitimate interest of the governmental employer.); *Decker v. City of Hampton*, 741 F.Supp. 1223 (E.D. Va. 1990) (City police department regulation limiting types of off-duty work in which officers could engage did not deny due process to police detective who wanted to moonlight as private investigator.); *Bowman v. Township of Pennsauken*, 709 F.Supp. 1329 (D. N.J. 1989) (While it may be true that economic factors have forced police officers into the practice of moonlighting, a township has a legitimate interest in regulating its police department, including the off-duty activities of its officers. It is clear that such goals as reducing mental and physical fatigue, limiting litigation and lessening liability insurance expenses serve as legitimate government interests supporting regulation. Because of these legitimate goals, it is also clear that a municipality can regulate and even prohibit off-duty work.) (citations omitted); *Ammon v. City of Coatesville*, 1987 WL 15032 (E.D. Pa.), *aff'd* 838 F.2d 1205 (3d Cir. 1988) (The majority of courts considering the validity of regulations that in some way restrict the outside employment of government employees have upheld the regulations.); *Allison v. Southfield*, 432 N.W.2d 369 (Mich. 1988) (holding that secondary employment rule was not void for vagueness and did not violate due process or equal protection, where police officers were unambiguously prohibited from secondary employment unless prior approval had been obtained); *Rhodes v. Smith*, 254 S.E.2d 49 (S.C. 1979) (Regulations prohibiting all outside employment have been upheld.).

"[P]rivate employers may be held vicariously liable for the acts of an off-duty police officer employed as a private security guard under any of the following circumstances: (1) the action taken by the off-duty officer occurred within the scope of private employment; (2) the action taken by the off-duty officer occurred outside of the regular scope of employment, if the action giving rise to the tort was taken in obedience to orders or directions of the employer and the harm proximately resulted from the order or direction; or (3) the action was taken by the officer with the consent or ratification of the private employer and with an intent to benefit the private employer." *White v. Revco Discount Drug Centers, Inc.*, 33 S.W.3d 713, 724 (Tenn. 2000).

## Reserve, Auxiliary, Part-Time, Temporary Deputy Sheriffs

Reference Number: CTAS-1234

Reserve, auxiliary, part-time and temporary deputy sheriff means any person employed by the county whose primary responsibility is to support the sheriff in preventing and detecting crime, apprehending offenders, and assisting in the prosecution of offenders for appropriate remuneration in measure with specifically assigned duties or job description. These deputies may not work more than 20 hours per week

for a total of not more than 100 hours per month. Any deputy who works in excess of the prescribed maximum hours must be reclassified to full-time status and must meet all the requirements for standards and training as mandated under the law and the Peace Officer Standards and Training Commission rules. In any situation where a deputy is assigned temporarily for a period of one month or less to work more than 20 hours per week for a total of not more than 100 hours per month, the deputy does not need to be reclassified to full-time status. T.C.A. § 38-8-101(2); Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-8-.01.

#### Minimum Qualifications

After January 1, 1989, any person employed or used as a reserve, auxiliary, part-time or temporary deputy sheriff shall have the same minimum qualifications as a full-time deputy sheriff. T.C.A. § 38-8-106; Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-8-.02.

Reserve, auxiliary, part-time or temporary deputy sheriffs who were employed prior to January 1, 1989, and have had continuous service are exempt from the pre-employment requirements as long as they remain on active service with the sheriff's office that originally employed them. Any reserve, auxiliary, part-time or temporary deputy sheriff who has a break in service of any length whatsoever is required to meet the pre-employment and training standards. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-8-.02..

The minimum standards set forth in T.C.A. § 38-8-106 and in Rule 1110-8-.02 are mandatory and are binding upon the county. Any person who appoints an applicant who, to the knowledge of the appointor, fails to meet the minimum standards as set forth in T.C.A. § 38-8-106 and in Rule 1110-8-.02, and any person who signs the warrant or check for payment of the salary of a person who, to the knowledge of the signer, fails to meet the qualifications as a reserve, auxiliary, part-time or temporary deputy sheriff as provided in T.C.A. § 38-8-106 and in Rule 1110-8-.02, commits a Class A misdemeanor and upon conviction shall be subject to a fine not exceeding \$1,000. T.C.A. § 38-8-105(a) and (b). Nothing in Title 38, Chapter 8, precludes an employing agency from establishing qualifications and standards for hiring and training reserve, auxiliary, part-time or temporary deputy sheriffs that exceed those set by the POST Commission. T.C.A. § 38-8-109.

#### Training Requirements

After January 1, 1989, any person newly employed or used as a reserve, auxiliary, part-time or temporary deputy sheriff must receive 80 hours of training in whatever duties they are required by the sheriff's office to perform. This training must be accomplished during the first calendar year of employment. During this initial period, prior to receiving 80 hours of training, the part-time/temporary/reserve/auxiliary law enforcement officer must be paired with a field training officer or other certified officer. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-8-.03.

#### Oath

Reserve, auxiliary, part-time and temporary deputy sheriffs must take the same oaths as the sheriff, which are certified, filed, and endorsed in the same manner as the sheriff's. T.C.A. § 8-18-112. Oaths are covered under the General Information tab of the County Offices topic.

#### Bond

There is no general law requirement that reserve, auxiliary, part-time or temporary deputy sheriffs be bonded. However, in 2013, the Legislature amended T.C.A. § 8-19-101 to require county governments to obtain and maintain blanket surety bond coverage for all county employees not covered by individual bonds referenced elsewhere in statute. The minimum amount of such blanket bonds is one hundred fifty thousand dollars. T.C.A. § 8-19-101(e).

#### In-Service Training Requirements

After the initial training has been completed, all reserve, auxiliary, part-time and temporary deputy sheriffs are required to attend 40 hours of in-service training each calendar year. This training may be spread over a 12-month period, but must be completed during the calendar year. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-8-.04.

## Special Deputies Appointed Under T.C.A. § 8-8-212

Reference Number: CTAS-1235

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). *See General Truck Sales, Inc. v. Simmons*, 343 S.W.2d 884 (Tenn. 1961) ("This clearly gives the Sheriff the right, when in his judgment it is necessary, to



appoint a Special Deputy for any particular occasion"). See also *Reves v. State*, 79 Tenn. 124, (1883) ("The act of 1870 shows a change of policy by the State, for the sheriff is thereby authorized to appoint as many regular deputies as he pleases, and special deputies on urgent occasions, of which he alone is to judge, 'or when required for particular purposes.'"); *State v. Kizer*, 36 Tenn. 563 (1857) ("...it is not necessary, to make a valid deputation, that it should appear in the endorsement of the sheriff that an 'urgent occasion' existed, but that will be presumed.").

Special deputy means any person who is assigned specific police functions as to the prevention and detection of crime and general laws of this state on a volunteer basis, whether working alone or with other deputies. A special deputy working on a volunteer basis does not receive pay or benefits, except for honoraria, and may be used for an unlimited number of hours. T.C.A. § 38-8-101(3); Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-8-.01.

#### Minimum Qualifications

After January 1, 1989, any person employed or used as a special deputy shall have the same minimum qualifications as a full-time deputy sheriff. T.C.A. § 38-8-106; Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-8-.02.

Special deputies who were employed prior to January 1, 1989, and have had continuous service are exempt from the pre-employment requirements as long as they remain on active service with the sheriff's office that originally employed them. Any special deputy who has a break in service of any length whatsoever is required to meet the pre-employment and training standards. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-8-.02.

The minimum standards set forth in T.C.A. § 38-8-106 and in Rule 1110-8-.02 are mandatory and are binding upon the county. Any person who appoints an applicant who, to the knowledge of the appointor, fails to meet the minimum standards as set forth in T.C.A. § 38-8-106 and in Rule 1110-8-.02, and any person who signs the warrant or check for payment of the salary of a person who, to the knowledge of the signer, fails to meet the qualifications as a special deputy as provided in T.C.A. § 38-8-106 and in Rule 1110-8-.02, commits a Class A misdemeanor and upon conviction shall be subject to a fine not exceeding \$1,000. T.C.A. § 38-8-105(a) and (b). Nothing in Title 38, Chapter 8 precludes an employing agency from establishing qualifications and standards for hiring and training special deputies that exceed those set by the POST Commission. T.C.A. § 38-8-109.

#### Training Requirements

After January 1, 1989, any person newly employed or used as a special deputy must receive 80 hours of training in whatever duties they are required by the sheriff's office to perform. This training must be accomplished during the first calendar year of employment. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-8-.03.

#### Oath

Special deputies must take the same oaths as the sheriff, which are certified, filed, and endorsed in the same manner as the sheriff's. T.C.A. § 8-18-112. Oaths are covered under the General Information tab of the County Offices topic.

#### Bond

No person may serve as a special deputy 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). "The purpose of this provision is to protect third parties who may be injured by the special deputy." *State v. Epps*, 1989 WL 28906 (Tenn. Crim. App. 1989). Anyone incurring any wrong, injury, loss, damage, or expense resulting from any act or failure to act on the part of any special deputy appointed by the sheriff but not employed by the sheriff or the county may not bring suit against the sheriff or the county. The sheriff and county are immune from such suits. See *Hensley v. Fowler*, 920 S.W.2d 649 (Tenn. Ct. App. 1995). The plaintiff must proceed against the special deputy or the employer or employers of the special deputy, whether the special deputy is acting within the scope of employment or not. T.C.A. § 8-8-303(b). See *Hensley v. Harbin*, 782 S.W.2d 480 (Tenn. Ct. App. 1989) (wrongful death action brought against special deputy).

#### In-Service Training Requirements.

After the initial training has been completed, all special deputies are required to attend 40 hours of in-service training each calendar year. This training may be spread over a 12-month period but must be completed during the calendar year. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-8-.04.

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

Reference Number: CTAS-1236

Pursuant to T.C.A. § 8-22-110(b), the sheriff is authorized to make emergency appointments of special deputies when there is an immediate need for an additional number of deputies to deal efficiently with an emergency situation, such as in the case of a strike, riot, putting down a mob, or other like emergencies.

## Oath

Special deputies appointed pursuant to T.C.A. § 8-22-110(b) are not required to take an oath. T.C.A. § 8-18-112.

## Limited Appointment

Special deputies appointed under T.C.A. § 8-22-110 may serve only during the term of the emergency.

## Payment Authorized

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.

# Bailiffs

Reference Number: CTAS-1237

Except in Davidson County, it is the duty of the sheriff to attend upon all the courts held in the county when in session. 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. *Taylor v. Wilson County*, 216 S.W.2d 717 (Tenn. 1949) (Sheriff of Wilson County had statutory duty to wait on the general sessions court for Wilson County, and he had the right to collect the compensation provided for by general law for performing required duty of attending the court for a substantial portion of a day.); Op. Tenn. Atty. Gen. No. 05-026 (March 21, 2005) (The sheriff has the duty to appoint court officers for general sessions courts except in municipalities with a metropolitan form of government and a population of more than 450,000.). Op. Tenn. Atty. Gen. No. 92-55 (Oct. 6, 1992) (It is the sheriff's responsibility to assign deputies to wait upon the courts. The judge cannot, however, order the sheriff to assign specific personnel to the courtroom.). 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. Accordingly, the sheriff is authorized to employ deputies to carry out these functions. *Jones v. Mankin*, 1989 WL 44924, \*9 (Tenn. Ct. App. 1989).

Beginning July 1, 2008, deputy sheriffs newly assigned to courts pursuant to T.C.A. §§ 8-8-201(a)(2)(A), 16-15-715, and 37-1-213 shall participate in forty hours of basic training in courthouse security within twelve months of assignment to that duty. Every year thereafter the deputies shall participate in a minimum of sixteen hours of training specific to courthouse security that has been approved by the peace officers standards and training commission. T.C.A. § 5-7-108(a)(2).

The Attorney General has opined that all bailiffs and court officers must be certified by the Peace Officer Standards and Training Commission (POST). The Attorney General noted that sheriffs are peace officers who are under a duty, among other things, to provide courtroom security, attend to the courts, and obey the lawful orders and directives of the courts. Deputy sheriffs, likewise, are required to be certified as peace officers within one year of employment. Tenn. Code Ann. §§ 38-8-102 to 122. As with sheriffs, the Legislature has imposed training requirements for deputy sheriffs who serve as bailiffs. Op. Tenn. Att'y Gen. 12-32 (March 9, 2012).

The Attorney General noted that reading T.C.A. §§ 5-7-108(a)(2), 8-8-201(a)(2)(A) and 38-8-102 to 122 *in pari materia* confirms that the Legislature intended to impose certification and training requirements upon the persons a sheriff assigns to serve as bailiffs and court officers. As this Office previously opined, to construe such statutes as authorizing a sheriff to circumvent such express requirements by assigning persons who do not possess the title of deputy sheriff to serve as bailiffs or court officers would be contrary to that intent. Op. Tenn. Att'y Gen. 12-32 (March 9, 2012), citing Op. Tenn. Att'y Gen. 10-107 (October 28, 2010).

# Criminal Investigators and Detectives

Reference Number: CTAS-1238

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. Pursuant to statute, 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.

## **Child Sexual Abuse Cases**

### Child Protective Team

Each county is required by law to have a child protective team. T.C.A. § 37-1-607(a)(1). Pursuant to the same statute, each team must have a properly trained law enforcement officer with countywide jurisdiction (i.e., a deputy sheriff) from the county where the child resides or where the alleged offense occurred. In addition, 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, and one juvenile court officer or investigator from a court of competent jurisdiction. The team may also include a representative from one of the mental health disciplines. T.C.A. § 37-1-607(a)(2).

The teams conduct child protective investigations of reported child sexual abuse and also support and provide appropriate services to sexually abused children. The team determines the level of risk for the child and the services, including medical evaluations, psychological evaluations and short-term psychological treatment, and casework and coordination. The Department of Children's Services is responsible for coordinating the services of these teams. T.C.A. § 37-1-607(a)(1).

See Department of Children's Services, Administrative Policies and Procedures: 14.05, Investigation of Alleged Child Abuse and Neglect. See *also* Department of Children's Services, Administrative Policies and Procedures: 14.28, Child Protective Services Investigation of Children Exposed To Chemical Laboratories for the Manufacture of Methamphetamine.

### Child Sex Crime Investigation Unit

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 objective, as part of the annual in-service training requirement the sheriff and every deputy sheriff must receive training in the investigation of cases involving child sexual abuse, including law enforcement response to and treatment of victims of such crimes. T.C.A. § 37-1-603(b)(4)(A).; Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.05 (4)

For additional information, see Investigation of Child Abuse under the Public Safety topic.

# Dispatchers

Reference Number: CTAS-1239

While sheriffs do not have a statutory obligation to provide dispatching services, dispatching is a necessary and reasonable support activity that helps the modern sheriff's office carry out the sheriff's statutory duties. *Jones v. Mankin*, 1989 WL 44924 (Tenn. Ct. App. 1989) (Courts may approve the cost of support personnel when they are required).

### Minimum Qualifications .

After May 1, 1989, any person employed as a public safety dispatcher shall:

1. Be at least 18 years of age;
2. Be a citizen of the United States;
3. Be a high school graduate or possess equivalency;
4. Not have been convicted or pleaded guilty to or entered a plea of nolo contendere to any felony charge or to any violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor or controlled substances;
5. Not have been released or discharged under other than an honorable or medical discharge from any of the armed forces of the United States;
6. Have their fingerprints on file with the Tennessee Bureau of Investigation;
7. Have passed a physical examination by a licensed physician; and

8. Have a good moral character as determined by a thorough investigation conducted by the employing agency.

T.C.A. § 7-86-205(d).

Notwithstanding other provisions of law to the contrary, the law in effect prior to May 1, 1994, relative to public safety dispatchers applies to any person who had more than five years of continuous employment as a public safety dispatcher on May 1, 1994. T.C.A. § 7-86-205(f).

### Training

Pursuant to T.C.A. § 7-86-205(a), all emergency call takers and public safety dispatchers who receive initial or transferred 911 calls from the public are subject to the training and course of study requirements established by the Emergency Communications Board created pursuant to T.C.A. § 7-86-302.

Beginning July 1, 2006, all emergency call takers and public safety dispatchers must have successfully completed a course of study approved by the Emergency Communications Board. All emergency call takers and public safety dispatchers employed after July 1, 2006, have six months from the date of their employment to successfully complete the approved course of study. T.C.A. § 7-86-205(c) and (e).

## Jail Personnel

Reference Number: CTAS-1240

Jailer Qualifications

### Guard

Reference Number: CTAS-1242

The sheriff is authorized by statute to employ guards to:

1. Protect a defendant from violence, and to prevent the defendant's escape or rescue in all cases where a defendant charged with the commission of a felony is committed to jail, either before or after trial, and the safety of the defendant, or the defendant's safekeeping, requires a guard;
2. Transport a prisoner to another jail when the county jail is insufficient for the safekeeping of the prisoner; and
3. Transport a prisoner charged with a crime from one county to another for trial or safekeeping.

T.C.A. §§ 41-4-118, 41-4-121, and 41-4-126.

### Minimum Qualifications

After July 1, 2006, any person employed as a corrections officer or guard in a county jail or workhouse must have the same minimum qualifications as a jailer. T.C.A. § 41-4-144.

### Oath

Jail deputies must take the same oaths as the sheriff, which are certified, filed, and endorsed in the same manner as the sheriff's. T.C.A. § 8-18-112. See Oaths under General Information tab of the County Offices topic for additional information.

## Nurse and Cook

Reference Number: CTAS-1243

### Nurse

The sheriff is authorized to hire a female registered nurse and a male registered nurse who are authorized to make complete physical examinations of all people committed to the custody of the sheriff for the purpose of preventing the spread of any contagious disease. T.C.A. § 41-4-138. See *Haywood County v. Hudson*, 740 S.W.2d 718, 719 (Tenn. 1987); *George v. Harlan*, 1998 WL 668637, \*4 (Tenn. 1998) ("[I]t is clear that the Circuit Court has the power to authorize employment of personnel necessary to properly perform the duties of the office of the sheriff and the legislative body has the duty to provide the funds to carry out the order of the Circuit Court.").

### Cook

Pursuant to statute, the jailer has a duty to furnish adequate food to prisoners in the jail. T.C.A. § 41-4-109. Tennessee courts have recognized that cooks are necessary for the operation of a jail. See *Jones v. Mankin*, 1989 WL 44924, \*7 (Tenn. Ct. App. 1989).

## Training

Reference Number: CTAS-1244

Each facility is required to offer jail personnel a pre-service orientation program designed to familiarize each person with the functions and mission of the facility. All personnel whose duties include the industry, custody, or treatment of prisoners are required to complete a 40-hour basic training program during the first year of employment. This training is provided by the Tennessee Corrections Institute. Rules of the Tennessee Corrections Institute, Rule 1400-1-.06 (2) and (3). *But see Russell v. Robertson County*, 99 F.3d 1139 (Table) (6th Cir. 1996) *citing Beddingfield v. City of Pulaski*, 861 F.2d 968, 971 (6th Cir. 1988) (The City's decision to exclude its jail personnel from TCI training did not amount to a constitutionally impermissible failure to train "because the City provided its own in-house training program.").

### In-Service Training

All personnel whose duties include the industry, custody, or treatment of prisoners are required to complete 40 hours of in-service training each year covering the specific skill areas of jail operations. At least 16 hours will be provided by the Tennessee Corrections Institute. The remaining 24 hours may be provided by the facility if course content is approved and monitored by the Tennessee Corrections Institute. Rules of the Tennessee Corrections Institute, Rule 1400-1-.06 (4).

The county legislative body may by resolution choose, by a two-thirds vote of its entire membership to establish an in-service training program for certified correction officers employed by the county. Each participating county is required to establish criteria and rules and regulations governing its own program. T.C.A. § 38-8-111(d).

### Training in Use of Firearms and Chemical Agents

All jail personnel who are authorized to use firearms or chemical agents must receive basic and ongoing in-service training in the use of these weapons. All such training must be recorded with the dates completed and kept in the officer's personnel file. Rules of the Tennessee Corrections Institute, Rule 1400-1-.06 (6).

## Salary Supplement-Jail Personnel

Reference Number: CTAS-1245

The attorney general has opined that jailers are not entitled to receive the salary supplement provided for in T.C.A. § 38-8-111(a)-(c) because the primary duty of a full-time jailer is the confinement and control of persons held in lawful custody, not the prevention and detection of crime. Only full-time police officers, as defined in T.C.A. § 38-8-101, whose primary responsibility is the prevention and detection of crime, are eligible for the salary supplement provided for in T.C.A. § 38-8-111. Op. Tenn. Atty. Gen. 85-222 (July 29, 1985). See *also* Op. Tenn. Atty. Gen. 77-235A (July 22, 1977).

However, pursuant to T.C.A. § 38-8-111(d), the county legislative body may by resolution choose by a two-thirds vote of its entire membership to establish a cash supplement along with an in-service training program for certified correction officers employed by the county. Each participating county is required to establish criteria and rules and regulations governing its own program.

## Process Servers and Warrant Officers

Reference Number: CTAS-1246

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). And, it is the duty of the sheriff to execute all writs and other process legally issued and directed to the sheriff, within the county, 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). Note, 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). See *George v. Harlan*, 1998 WL 668637 (Tenn. 1998) (The circuit court has jurisdiction to authorize the

employment and pay of deputies and assistants needed by the sheriff to perform his statutory duties.).

## Training Officers and Instructors

Reference Number: CTAS-1247

### General Departmental Instructor

Each sheriff's office that conducts a 40-hour in-service training course is required to designate one training officer who meets the POST Commission general departmental instructor standards for certification. The training officer who is designated as the general departmental instructor must apply for and be certified as a general departmental instructor as defined in Rule 1110-3-.04(3) of the Rules of the Tennessee Peace Officer Standards and Training Commission. The general departmental instructor is responsible for coordinating in-service training programs and developing lesson plans, goals and objectives, and may be required to instruct in more than one subject area. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.03.

### Instructors

Instructors used for in-service training sessions must be approved by the general department instructor and must be qualified by experience and training. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.04.

### In-Service Training

The general departmental instructor and all training officers are required to attend a POST Commission workshop at a time and place determined by the POST Commission and the Tennessee Law Enforcement Training Officer Association as part of their annual in-service training requirement for training officers. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.03.

## Duties-Sheriff

Reference Number: CTAS-40

The sheriff is obligated to execute and return, according to law, the process and orders of the courts of record, and of all officers of competent authority, with due diligence, when delivered to the sheriff. The sheriff must attend upon all of the courts held in the county, cause the courtroom to be kept in order and obey the lawful orders and directions of the court. The sheriff also may be ordered to levy execution upon a defendant's property, first upon goods or chattels, if there are any, and land in order to satisfy judgment, and upon a surety's property in the proper case. Many of the sheriff's duties regarding service of process and other matters are detailed in T.C.A. § 8-8-201. The sheriff is charged with the custody and security of the courthouse unless the county legislative body assigns this duty to someone else. T.C.A. § 5-7-108.

Law enforcement duties, jail administration, and workhouse administration are explained in detail under the Public Safety topic.

## Relationship to County Legislative Body and Other Officials-Sheriff

Reference Number: CTAS-41

The sheriff must interact with the county mayor and/or a finance/budget director as well as the county legislative body regarding the sheriff's budget and budget amendments. The exact procedures vary from county to county depending upon whether the county operates under a charter or optional general law regarding budgeting or has a private act dealing with this subject. However, all sheriffs must submit budget requests in a timely manner in the first half of each calendar year for inclusion in the county's annual budget. Most counties have budget committees that may recommend appropriations for the sheriff's budget that differ from the budget submitted by the sheriff. The county legislative body determines the amount of the sheriff's budget, subject to certain restrictions, such as not reducing the sheriff's budget for personnel without the consent of the sheriff and following the requirements of any court order regarding a salary suit for deputies or assistants or any other lawsuit that may have been filed to require the county legislative body to fund an adequate jail or otherwise meet its statutory or constitutional duties. In many counties, depending upon the applicable law, the county mayor has the

authority to approve line item amendments to the sheriff's budget within major categories unrelated to personnel costs, whereas major category amendments require the approval of the county legislative body. T.C.A. § 5-9-407.

Since the sheriff waits upon the courts and serves process directed to the sheriff, the sheriff must interact with judges and chancellors holding court in the county as well as with the clerks serving these courts. Clerks of court routinely add sheriff's fees to the bills of costs that are prepared in each case and collect these fees along with the fees of the clerks of court and other costs. Also, the sheriff or deputy must go before an official deemed a "magistrate" by state law to obtain arrest warrants, search warrants, and orders to a jailer to incarcerate a prisoner (*mittimus*).

The sheriff interacts with the office of the district attorney general in the vast majority of counties wherein the sheriff has law enforcement duties. It is the district attorney's office that prosecutes criminal cases in the courts with criminal jurisdiction that are held in the county. Therefore, a good working relationship with the district attorney's office is vital to successful law enforcement in the county. The district attorney's office also has investigators who can be very valuable in helping the sheriff carry out the sheriff's law enforcement duties.

## Duties Upon Leaving Office-Sheriff

Reference Number: CTAS-1248

Upon leaving office, the sheriff must deliver to the sheriff's successor all books and papers pertaining to the office, all property attached and levied on and in the sheriff's hands unless authorized by law to retain the same, and all prisoners in the jail, and take a receipt therefor, which receipt will be an indemnity to the retiring officer. T.C.A. § 8-8-214. Upon the expiration of the sheriff's term, it is the duty of the sheriff to deliver the jail and the prisoners therein, with everything belonging or pertaining thereto, over to the sheriff's successor or any person duly authorized by law to take charge of the jail. The failure to discharge this duty is a misdemeanor. T.C.A. § 41-4-102. The sheriff is allowed two years from the time of leaving office to close unsettled business, with all the power and subject to all the limitations and restrictions of the actual sheriff. T.C.A. § 8-8-215.

UNEXECUTED PROCESS. The sheriff's power after going out of office is confined to unfinished business. It does not extend to the execution of process not yet commenced. The sheriff cannot execute a *feri facias* (writ of execution) after the expiration of his term of office unless he has levied it before the expiration of his term. *Todd v. Jackson*, 22 Tenn. 398 (1842) (Indeed the sheriff has no power to execute or return process after he goes out of office. He can do no further official act. He cannot even return writs executed before he ceases to be an officer where the return day comes after he goes out of office. The writs should be delivered, even in such cases, to the new sheriff, who returns it into court.); *Fondrin v. Planters' Bank*, 26 Tenn. 447 (1846) (Held that where a sheriff received an execution before his term of service expired, returnable afterward, that unless he had made a levy before the expiration of his term, he had no power to act on the writ afterward, and that he and his sureties would not be liable on motion for its non-return.); *State ex rel. Nolin v. Parchmen*, 40 Tenn. 609 (1859) (It has been held that where the sheriff's term expires, as in the present case, the only duty imposed upon the outgoing sheriff is to deliver over the process to his successor because he has no power to execute or return the same after his term was at an end unless, while in office, he had begun its execution.); *Haynes v. Bridge, Townley & Co.*, 41 Tenn. 32 (1860).

UNLEVIED EXECUTION. If the outgoing sheriff has not levied an execution before the expiration of his term and the return date is after the expiration of his term, he has no power to act on the writ afterward. His only duty is to deliver it to his successor. This rule applies to all unexecuted process. A failure to execute and return such execution or other process, or deliver it to his successor, is not a breach of the sheriff's bond, and does not render the sheriff's sureties liable. *Todd v. Jackson*, 22 Tenn. 398 (1842) (If Webb had levied or began the execution of the writ before his term expired, then his securities would have been fixed with the debt.); *Sherrell v. Goodrum*, 22 Tenn. 419 (1842); *Fondrin v. Planters' Bank*, 26 Tenn. 447 (1846); *State ex rel. Nolin v. Parchmen*, 40 Tenn. 609 (1859); *Haynes v. Bridge, Townley & Co.*, 41 Tenn. 32 (1860).

It has been held that the sheriff's failure to deliver an unlevied execution to his successor does not render the sheriff's sureties liable, but the sheriff was liable individually in an action on the case for failure to deliver. *State ex rel. Nolin v. Parchmen*, 40 Tenn. 609 (1859).

SALE AFTER EXPIRATION OF TERM. If the sheriff has levied an execution on personal property and has not sold it before the expiration of his term of office, the sheriff has to sell it afterward and make return in the same manner as if the sheriff's office had continued. A failure to do so renders the sheriff and the sheriff's

sureties liable, and they are not discharged from liability by the sheriff's delivery of the writ and goods to the sheriff's successor. *Evans v. Barnes*, 32 Tenn. 292 (1852); *Campbell v. Cobb*, 34 Tenn. 18 (1854); *Testaman v. Holt*, 2 Shannon's Cases 375 (1877) (The officer who commences execution of a writ of *feri facias* is bound to finish it, and if he has levied writ on debtor's goods, he cannot even deliver writ and goods to his successor in discharge of himself but must sell goods and make proper return in same manner as if his office had continued.). See *Overton v. Perkins*, 18 Tenn. 328 (1837).

A sale of land by a sheriff after the expiration of his term, under a *venditioni exponas* (a writ of execution commanding the sheriff to sell lands that he has taken in execution by virtue of a *feri facias*) issued upon a levy made by the sheriff while in office is void. *Bank of Tenn. v. Beatty*, 35 Tenn. 305 (1855).

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