

Office of Sheriff

SOURCES OF REVENUE

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FEEES

Sheriffs receive fees from the public for services they perform. In this sense, the sheriff is like the other fee officials in the county.

Anti-Fee Act

In 1921 the legislature passed what is known as the “Anti-Fee Act,” (Chapter 101 of the Public Acts of 1921). *See Ledbetter v. Duncan*, 676 S.W.2d 91 (Tenn. App. 1984) for a discussion of this Act.

This Act has been amended ten times since it was enacted.

SALARY SYSTEM

Because the sheriff is no longer on the “fee system,” it is the duty of the county legislative body to make the necessary appropriation and pay to the sheriff the authorized expenses fixed by law for the operation of the sheriff’s office, direct from the county trustee in 12 equal monthly installments, irrespective of the fees earned by the sheriff.

T.C.A. § 8-24-103(a)(1).

FEES – COLLECTED

Paid Over to the Trustee

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.

T.C.A. § 8-24-103(a)(2).

FEEES

Three Important Rules

FEEs AUTHORITY

RULE 1

The sheriff is not allowed to demand or receive fees or other compensation for any service further than is expressly provided by law.

T.C.A. § 8-21-101.

FEEs AUTHORITY

TENN. ATTY. GEN. OP. 01-139 (SEPT 4, 2001)

As an arm of a political subdivision of state government, a local law enforcement agency derives its power from statutes passed by the General Assembly and may only exercise powers derived explicitly or by necessary implication from state law.

Tenn. Atty. Gen. Op. 01-139 (Sept 4, 2001).

FEEs AUTHORITY

TENN. ATTY. GEN. OP. 01-139 (SEPT 4, 2001)

Thus, a local law enforcement agency must be given the authority through constitutional mandate or acts of the Legislature to charge a fee to defray the cost of providing a service or benefit.

Tenn. Atty. Gen. Op. 01-139 (Sept 4, 2001).

FEEs

CRIMINAL LIABILITY

T.C.A. § 8-21-103

RULE 2

If any officer demands or receives any other or higher fees than are prescribed by law, such officer is liable to the party aggrieved in the penalty of \$50.00, to be recovered before any judge of the court of general sessions, and the officer also commits a Class C misdemeanor.

FEES INDIVIDUAL LIABILITY T.C.A. § 8-22-105

RULE 3

Any officer who fails to charge or collect from the one liable therefor, every fee, commission, compensation that the county may be entitled to, and which, by the exercise of reasonable diligence could have been collected, or by failing to present the statement of receipts as herein directed, shall be held individually liable to the county for the amount that should have been collected, and the same shall be charged against the officer and be deducted from the officer's salary, or collected from the officer by law.

RESOLVING FEE QUESTIONS

It is the duty of the courts to decide, upon application by the officer entitled to compensation, any question arising under the law, and such decision will protect the officer acting under it.

T.C.A. § 8-21-105.

See Tenn. Atty. Gen. Op. No. 04-088 (May 06, 2004).

THE SHERIFF'S FEE STATUTE

THE SHERIFFS FEE STATUTE SPECIFIC FEES AUTHORIZED

T.C.A. § 8-21-901

Lists Fees A Sheriff May Collect

(But Not All)

THE SHERIFF'S FEE STATUTE

T.C.A. § 8-21-901

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

T.C.A. § 8-21-901(a).

THE SHERIFF'S FEE STATUTE

T.C.A. § 8-21-901(a)(1)

Service of Process

(A) For serving any process except as otherwise provided in this section or other applicable law, whether issued by a clerk for a general sessions, criminal, circuit, chancery or any other court, the sheriff shall be entitled to the following fees, based on the manner in which process is served, for each item of process that must be served separately per person served:

- (i) For service in person: \$40.00;
- (ii) For service by mail: \$10.00;
- (iii) For service by acceptance or consent or any other authorized method: \$10.00.

THE SHERIFF'S FEE STATUTE

T.C.A. § 8-21-901(a)(1)

Service of Process

(B) For summoning jurors in any proceeding: \$5.00.

(C) For serving or delivering any other process or notice not related to a judicial proceeding and issued by an entity other than a court: \$10.00.

(D) For returning any service of process where the sheriff attempts service but is unsuccessful, the sheriff shall be entitled to the same fees specified in subdivision (a)(1)(A); provided, that service is attempted in accordance with the laws of the state.

THE SHERIFF'S FEE STATUTE

T.C.A. § 8-21-901

There is no provision under this statute for a fee when a sheriff merely forwards documents to another sheriff for service.

On the other hand, the statutes clearly contemplate that it is the sheriff who actually serves the warrant or summons who will be compensated for that service.

For instance, T.C.A. § 8-8-202 authorizes the sheriff who receives a summons from another county to require payment of his fee in advance of service.

See Tenn. Atty. Gen. Op. No. 80-550 (Nov 14, 1980).

FEE NOT AUTHORIZED

Service of Process

Police officers cannot receive fees for serving process.

In *Lewis v. Nashville*, 101 Tenn. 659, 49 S.W. 749 (1899), the Tennessee Supreme Court concluded that a salaried policeman was not entitled to receive fees for serving subpoenas in his capacity as a deputy sheriff. The Court reasoned that the city paid the policeman a regular salary for his services, “whatever they may be.” *Id.* at 660.

ADVANCE FEES ON PROCESS FROM OTHER COUNTIES T.C.A. § 8-8-202

No sheriff shall be compelled to execute any subpoena or original summons in civil cases coming from any county other than the one in which such sheriff is an officer, unless the fees allowed such sheriff by law for the service of such process, if demanded, are paid in advance.

THE SHERIFF'S FEE STATUTE

T.C.A. § 8-21-901(a)(2)(A)

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

(A) For a levy of an execution on property or levy of an attachment or other process to seize property for the purpose of securing satisfaction of a judgment yet to be rendered or for executing a writ of replevin or writ of possession: \$40.00.

THE SHERIFF'S FEE STATUTE

T.C.A. § 8-21-901(a)(2)(B)

(B)

(i) For collecting money to satisfy a judgment, whether by execution, fieri facias, garnishment or other process, in civil cases each time collection is attempted: \$20.00.

THE SHERIFF'S FEE STATUTE

T.C.A. § 8-21-901(a)(2)(B)

(B)

(ii) For purposes of the payment of fees for garnishments as provided in this subdivision (a)(2)(B), all garnishments shall be deemed to be original garnishments and the sheriff shall be entitled to the fee provided for in this subdivision (a)(2)(B) for each such garnishment served.

See Tn. Atty. Gen. Op. 02-113 (Oct 10, 2002).

THE SHERIFF'S FEE STATUTE

T.C.A. § 8-21-901(a)(2)(C)

(C) Whenever the sheriff provides for the storage or maintenance of property including, but not limited to, vehicles, livestock and farm and construction equipment, that has been levied on by execution, attachment or other process, the sheriff is entitled to demand and receive a reasonable per day fee for such services.

THE SHERIFF'S FEE STATUTE

T.C.A. § 8-21-901(a)(2)(C)

(C) – continued

The sheriff is also entitled to demand and receive reimbursement for costs of transportation of such personal property to a suitable location for storage and maintenance when such action is necessary to secure such property.

THE SHERIFF'S FEE STATUTE

T.C.A. § 8-21-901(a)(2)(C)

(C) – continued

Any such fees for transportation, maintenance and/or storage shall be approved by the court issuing the execution, attachment or other process.

See T.C.A. § 26-3-117 – Costs paid by plaintiff.

COSTS TO BE PAID BY PLAINTIFF

T.C.A. § 26-3-117

Costs to be Paid by Plaintiff

In addition to any other fees required by law for levy of execution on tangible personal property, the plaintiff in a civil proceeding who causes an execution to be issued for levy of personal property shall pay the cost incurred by the court, sheriff, or other officers for transportation of the attached property to a storage facility, storage fees, advertisement fees, court costs, and any other necessary cost incurred by such officials. The plaintiff shall have a right of recovery from the defendant for all such costs.

THE SHERIFF'S FEE STATUTE

T.C.A. § 8-21-901(a)(3)

Arrest and Transportation of Prisoners, Bail Bond

(A) For executing every capias, criminal warrant, summons or other leading process, making arrests in criminal cases and carrying to jail, prison or other place of incarceration and guarding defendant arrested by warrant involving taking custody of a defendant: \$40.00

(E) When two (2) or more criminal warrants are executed at the same time against the same individual, there shall be but one (1) arrest fee allowed when the fee is chargeable to the county and/or the state.

THE SHERIFF'S FEE STATUTE

T.C.A. § 8-21-901(a)(3)

Arrest and Transportation of Prisoners, Bail Bond

(B) For citation in lieu of arrest or criminal warrant not involving physical custody of a defendant:
\$25.00

(C) For every bail bond to be paid as cost at the time there is a disposition of the case \$10.00

THE SHERIFF'S FEE STATUTE

T.C.A. § 8-21-901(a)(3)(D)

Arrest and Transportation of Prisoners, Bail Bond

(D) If a sheriff is required to act as a guard to escort prisoners, such sheriff shall be entitled to a per mile fee equal to the mileage allowance granted federal employees. Such fee shall be separate for each prisoner and computed on the distance actually traveled with the prisoner and shall be for no more than two (2) guards.

THE SHERIFF'S FEE STATUTE

T.C.A. § 8-21-901(a)(3)(D)

Arrest and Transportation of Prisoners, Bail Bond

Such fee shall only apply when the sheriff is required to transport a prisoner from county to county or from state to state. Similarly, the sheriff shall be entitled to the same mileage allowance when required to transport a prisoner to a hospital or other mental health facility in another county or state for a judicially ordered evaluation.

THE SHERIFF'S FEE STATUTE

T.C.A. § 8-21-901(a)(4)

Security Services

(A)

(i) For attending on grand jury, or waiting in court per day \$75.00

(ii) In Wilson County, the sheriff, bailiff or other court officer, as applicable, shall be entitled to receive \$100 per day for attending on grand jury or waiting in court. Such daily per diem allowance shall be a minimum daily per diem and may be increased no more than once annually by resolution of the county legislative body.

THE SHERIFF'S FEE STATUTE

T.C.A. § 8-21-901(a)(4)

Security Services

(B) For waiting with a sequestered jury: \$100 per day

THE SHERIFF'S FEE STATUTE

T.C.A. § 8-21-901(a)(5)

Data Processing Services

(A) For data processing services: \$2.00.

(B) The revenue from the two dollar data processing fee must be allocated by the sheriff's county for computerization, information systems and electronic records management costs of the sheriff's office. The funds must remain earmarked within the general fund and must be reserved for the purposes authorized by law at the end of each fiscal year.

THE SHERIFF'S FEE STATUTE T.C.A. § 8-21-901(a)(5)

Data Processing Services

The data processing fee may be charged each and every time data processing services of the sheriff's department are utilized.

Tenn. Atty. Gen. Op. 88-177 (September 27, 1988).

FESS LIMITED

T.C.A. § 8-21-901(b)

Fess Limited

Notwithstanding other provisions of this section to the contrary, any fee or mileage allowance permitted under this section, which is assessed against the state or which otherwise represents a cost to the state, shall be limited in amount to the fees allowable immediately prior to May 28, 1977.

See Tn. Atty. Gen. Op. 80-425 (Aug 26, 1980).



MORE FEES

TRANSPORTATION OF PRISONER BY SHERIFF - FEE AUTHORIZED T.C.A. § 8-26-108

Transportation of Prisoner by Sheriff

(a) When the sheriff is required by law to remove a person on a writ of habeas corpus, change of venue, or otherwise, or to remove a person of unsound mind to or from an asylum, the sheriff shall make out a statement of expenses, itemized, of the sheriff, of the person being conducted, and of an escort, if one was necessary, and shall make oath that the same is true and correct. The sheriff shall present the same to the county mayor, for auditing and allowance, and if approved by the county mayor, it shall be allowed as other claims are allowed.

TRANSPORTATION OF PRISONER BY SHERIFF - FEE AUTHORIZED T.C.A. § 8-26-108

Transportation of Prisoner by Sheriff

(b) Where a municipality or other governmental agency in the state of Tennessee owns, leases or contracts for the use of an airplane for the purpose of air travel facilities, and such facilities are used in going after and returning any fugitive from another part of the state, the municipality or other governmental agency shall be reimbursed the cost of the plane fare for the sheriff, deputy, guard, or escort, and the fugitive, in the amount which

TRANSPORTATION OF PRISONER BY SHERIFF - FEE AUTHORIZED T.C.A. § 8-26-108

may be charged by any regular commercial airline, plus such other expenses as may be necessary for meals, lodging and such other actual expenses incurred going to and from the airport. The sheriff, deputy, guard or escort may also utilize regular commercial airlines where the cost of such transportation is comparable economically to ground transportation.

UNIFORM CRIMINAL EXTRADITION ACT

T.C.A. § 40-9-126

THIS STATUTE IS VERY DETAILED

For Returning a Fugitive From Justice

If the sheriff is appointed to return any fugitive from justice to this state for trial, the sheriff is authorized to employ a guard or escort sufficient to return the fugitive from justice to this state and contract the other expenses as are absolutely required in performing the duties of the agent.

All of the costs and expenses incurred in the return of any fugitive from justice to this state shall be paid out of the treasury of the State of Tennessee on the certificate of the Governor by the warrant of the Commissioner of Finance and Administration.



UNIFORM CRIMINAL EXTRADITION ACT

T.C.A. § 40-9-127

For Returning an Absconding Felon

The sheriff shall receive the same mileage allowance received by a state employee using a personal vehicle for the convenience of the state for each mile necessarily traveled in going and coming, both inside and outside the state of Tennessee, and reasonable expenses for meals and lodging.

The provisions of this section shall apply only when the case is actually tried by a jury, or the defendant pleads guilty.



MENTAL HEALTH PROCEEDINGS RULE 15 TN.SUP.CT.

Rule 15.

Reimbursement of Costs in Mental Health Proceedings

Pursuant to T.C.A. § 33-3-503(c), the Supreme Court hereby prescribes the nature of costs for which reimbursement may be allowed in judicial proceedings relating to indigent persons under Title 33, Mental Health and Developmental Disabilities.

This rule does not apply to those costs incurred in criminal proceedings, including hearings to determine competency to stand trial, which are regulated under other Supreme Court Rules and statutes.



MENTAL HEALTH PROCEEDINGS RULE 15 TN. SUP. CT.

Rule 15.4. Sheriff Fees

In all judicial proceedings under Chapters 3 through 8 of Title 33 requiring the services of sheriffs or deputies, the sheriff shall submit a request to the clerk of the court where the proceedings were held, demanding fees pursuant to T.C.A. § 8-21-901.

MENTAL HEATH PROCEEDINGS RULE 15 TN. SUP. CT.

Rule 15.4. Sheriff Fees

The sheriff's itemized statement for all travel expenses shall be appended to the bill of costs submitted to the director of the Administrative Office of the Courts.

The clerk of court shall tax these costs as part of the bill of costs submitted on the approved Supreme Court form to the director of the Administrative Office of the Courts.

MENTAL HEALTH PROCEEDINGS TRANSPORTATION TO HEARING

T.C.A. § 33-3-611

The chief officer of a facility in which the defendant is found shall arrange for suitable transportation of the person to the court where the hearing is to be held, except that the sheriff shall provide transportation if the defendant has been committed in connection with criminal charges.

See T.C.A. §§ 8-21-901(a)(3)(D) and 8-26-108.



SPECIAL PROVISIONS FOR MENTAL HEALTH TRANSPORTATION T.C.A. § 33-6-901(a) & (b)

Transportation of Persons With Mental Illness or Serious Emotional Disturbance

The sheriff in a county in which a person with mental illness or serious emotional disturbance is to be transported under part 4 or 5 of this chapter, shall transport the person.

SPECIAL PROVISIONS FOR MENTAL HEALTH TRANSPORTATION T.C.A. § 33-6-901(a) & (b)

When a sheriff is required to transport a person to a hospital or treatment resource for screening, evaluation, diagnosis or hospitalization, the county in which the person is initially transported by the sheriff is responsible for the remainder of such person's transportation requirements.

SPECIAL PROVISIONS FOR MENTAL HEALTH TRANSPORTATION T.C.A. § 33-6-901(a) & (b)

The initial transporting county is responsible for the continuing transportation of the person even if the person is assessed, diagnosed, screened or evaluated in a second county before being admitted to a facility, hospital or treatment resource in a third county.

SPECIAL PROVISIONS FOR MENTAL HEALTH TRANSPORTATION T.C.A. § 33-6-901(a) & (b)

If the person is transported to a hospital or treatment resource by the sheriff of a county other than the initial transporting county, the sheriff actually providing transportation may bill the initial transporting county for transportation costs.

SPECIAL PROVISIONS FOR MENTAL HEALTH TRANSPORTATION T.C.A. § 33-6-901(a) & (b)

NOTE

The transported person's county of residence has no bearing on the payment of transportation costs.

JUVENILE POST-COMMITMENT PROCEDURES T.C.A. § 37-1-310(b)(1)

Transportation of Petitioner

The superintendent of the institution that has custody of the petitioner shall arrange for transportation of the petitioner to and from the court upon proper orders issued by the judge.

The sheriff of the county where the proceedings are pending shall have the authority to receive and transport the petitioner to and from the institution and the court, if the court so orders, or if for any reason the superintendent is unable to transport the petitioner.

JUVENILE POST-COMMITMENT PROCEDURES T.C.A. § 37-1-310(b)(2)

Transportation of Petitioner - COSTS

The sheriff shall be entitled to the same costs allowed for the transportation of prisoners as provided in criminal cases upon the presentation of the account certified by the judge and district attorney general.

JUVENILE POST-COMMITMENT PROCEDURES T.C.A. § 37-1-317(b)

COSTS

Costs shall be taxed as in criminal cases.

T.C.A. § 37-1-317(b)

TRANSPORTATION TO YOUTH DEVELOPMENT CENTER T.C.A. § 37-5-205(a)

(a) Fees that are allowed by law for carrying prisoners to the penitentiary shall be allowed to the sheriffs for taking children found to have committed offenses punishable in the penitentiary to such youth centers.

See T.C.A. § 8-21-901(a)(3)(D) & T.C.A. § 40-25-111

TRANSPORTATION TO YOUTH DEVELOPMENT CENTER T.C.A. § 37-5-205(b)

(b) The state shall only be responsible for the transfer of such children as have been found to have committed offenses punishable by imprisonment in the penitentiary.

The expense of transporting delinquent children not found to have committed offenses punishable in the penitentiary shall be paid by the counties from which committed.

TRANSPORTATION TO YOUTH DEVELOPMENT CENTER T.C.A. § 37-5-205(c)

(c) When any female child is to be transported to such youth centers, the sheriff shall deputize a suitable woman of good moral character to convey such child.

In the event the sheriff shall not find such a woman in the county, the department shall provide a proper and suitable escort for the child, and this escort shall be paid from the allowance provided for the sheriff.

The expense of the woman so deputized shall be paid from the allowance for the sheriff.

SHERIFF'S SALE FORFEITURE OF BAIL T.C.A. § 40-11-206

State Purchase of Land Sold to Collect on Forfeiture

In all cases where land or lands shall be sold at sheriff's sale for the purpose of collecting the amount due on forfeited appearance bonds in criminal cases, the state shall be authorized to purchase any of the lands.

The amount paid by the state for the purchase of the lands shall in no case be greater than the amount of the bond upon which forfeiture has been taken and upon which the forfeiture the execution was issued.

SHERIFF'S SALE FORFEITURE OF BAIL T.C.A. § 40-11-207

Notice to District Attorney General of Sale of Land

In all cases of sales under execution issued to collect the amount of forfeiture taken upon appearance bonds in criminal cases, it is the duty of the sheriff to send to the district attorney general for the district in which the sale is to be made a copy of the advertisement of the sale.

SHERIFF'S SALE FORFEITURE OF BAIL T.C.A. § 40-11-212

Sheriff's Deed Delivered to District Attorney General

Upon delivery of the certificate by the district attorney general to the sheriff, the sheriff shall issue a deed to the state for the lands so purchased by the state and deliver it to the district attorney general in whose district the purchase is made.

SHERIFF'S SALE FORFEITURE OF BAIL T.C.A. § 40-11-214(a)

Payment of Costs

Whenever property has been purchased by the state, it is the duty of the district attorney general to certify to the commissioner of finance and administration the amount of costs incurred by the sheriff in making the sale, including the fees and commissions of the sheriff for making the sale, and forward same, together with the sheriff's deed, to the commissioner.

SHERIFF'S SALE FORFEITURE OF BAIL T.C.A. § 40-11-214(a)

Payment of Costs

Upon receipt of the certification, the amount of costs so certified shall be paid by the commissioner to the sheriff, as other criminal costs are paid.

BREAK ?

FEEs IN CRIMINAL CASES

FEEES IN CRIMINAL CASEES

T.C.A. § 40-25-101

Application of General Provisions as to Fees

The provisions of Title 8, Chapters 21-24 and 26 apply to this chapter, unless otherwise specifically provided.

See T.C.A. § 8-21-901. Sheriff's Fees.

FEES IN CRIMINAL CASES

T.C.A. § 40-25-102

Express Authorization Required

Officers are entitled to no other fees in criminal cases, except those expressly provided for by law, and in no case are they entitled to payment from the state or county, unless expressly allowed.

FEES IN CRIMINAL CASES

T.C.A. § 40-25-104

Costs Adjudged

The costs that may be adjudged in criminal cases include all costs incident to the arrest and safekeeping of the defendant, before and after conviction, due and incident to the prosecution and conviction, and incident to the carrying of the judgment or sentence of the court into effect.

FEES IN CRIMINAL CASES

T.C.A. § 40-25-109

Fees on Unserved Process

No fee is allowed the sheriff upon the return of any kind of criminal process or subpoena “not found,” unless the officer makes oath before the clerk that the officer has been to the residence of the person mentioned in the process, or at the place where the person last resided in that county, or that the person has not resided in the county for 12 months.

FEES IN CRIMINAL CASES

T.C.A. § 40-25-110(a)

Fees Lost by Escape of Prisoner

No sheriff, jailer or other officer charged with the custody of the prisoner is entitled to any allowance for keeping or removing the prisoner, if the prisoner escapes from the custody of the sheriff or jailer, or from the officer during removal.

FEES IN CRIMINAL CASES

T.C.A. § 40-25-110(b)

Fees Lost by Escape of Prisoner

(1) Where prisoners make their escape from jail by means of force, stratagem or other fraudulent device, and reasonable care and diligence were used by the jailer to prevent the escape, or to secure the prisoner or prisoners in jail, the jailer shall be entitled to fees as jailer.

FEES IN CRIMINAL CASES

T.C.A. § 40-25-110(b)

Fees Lost by Escape of Prisoner

(2) In all cases falling within this subsection (b), it is the duty of the judge to certify the claim for payment as in other bills of cost, and the sheriff or other officers having custody of the prisoner or prisoners shall have all the benefits of this subsection (b).

TRANSPORTING PRISONERS TO THE PENITENTIARY T.C.A. § 40-25-111(a)

The sheriff or other officer, conveying an inmate to the penitentiary, shall make out an account in writing, stating:

- The number of miles on the usual route from the place of conviction to the penitentiary;
- The number of guards necessarily employed to ensure the safe conveyance of the inmate; and
- The distance each of the guards may have traveled.

TRANSPORTING PRISONERS TO THE PENITENTIARY

T.C.A. § 40-25-111(a)

The sheriff or other officer shall make oath to the truth of the account before the warden of the penitentiary, or any judge, who shall certify the fact.

TRANSPORTING PRISONERS TO THE PENITENTIARY T.C.A. § 40-25-111(b)

Upon presentation of the account thus sworn to and certified, the director of accounts shall issue a warrant for the amount, as in other cases, if satisfied of the correctness of the account.

TRANSPORTING PRISONERS TO THE PENITENTIARY T.C.A. § 40-25-111(c)

It is the duty of the sheriff to carry to the penitentiary, at the same time, all inmates in the sheriff's custody, at that time sentenced to the penitentiary, and the sheriff shall not be entitled to charge for more than one trip.

FEES IN CRIMINAL CASES

T.C.A. § 40-25-112

Limitation on Sheriff's Fees

The sheriff and guard shall be entitled to no other compensation than that which is allowed by this code.

FEES IN CRIMINAL CASES BILL OF COSTS

40-25-113. Certification of items in bill of costs.

40-25-114. Discretion of court.

40-25-115. Certification of jury expenses in misdemeanor cases.

40-25-116. Certificate required for payment.

40-25-117. Refund of expenses collected from defendant.

40-25-118. Certification of fees for boarding juries and prisoners under indictment.

40-25-119. Contents of bill of fees.

40-25-120. Taxation of final costs to state.

FEEES IN CRIMINAL CASEES

BILL OF COSTS

40-25-136. Certification of bills of costs against state or county.

40-25-137. Audit and payment of bills of costs.

40-25-138. Warrants payable to person entitled to fees.

40-25-139. Payments to correct errors on bills of costs.

FEES IN CRIMINAL CASES

T.C.A. § 40-25-118

Certification of Fees for Boarding Juries and Prisoners Under Indictment

In all felony cases, after indictment is found, in which the state may eventually become liable, the clerk of the court shall certify at the adjournment of each term of the court, all fees of the sheriff for board of the prisoners; and also the fees for boarding the juries in cases in which there has been no final disposition.

FEES IN CRIMINAL CASES

T.C.A. § 40-25-129(a)(2)

Liability of State or County for Costs or Fees

Costs & Fees Paid in All Cases

Compensation for Boarding Prisoners

T.C.A. § 8-26-105 - Jailers' Fees

TCA § 40-25-118 - 40-25-121 – Bill of Costs

TCA § 41-4-131 - 41-4-137 – Jailer's Fees & Sheriff's Fees

FEES IN CRIMINAL CASES

T.C.A. § 40-25-129(a)(2)

Liability of State or County for Costs or Fees

Costs & Fees Paid in All Cases

Expenses of Keeping and Boarding Juries

T.C.A. §§ 40-25-115 — 40-25-121 – Bill of Costs

FEES IN CRIMINAL CASES

T.C.A. § 40-25-129(a)(2)

Liability of State or County for Costs or Fees

Costs & Fees Paid in All Cases

Mileage and legal fees for removing or conveying criminals and prisoners from one county to another, or from one jail to another.

T.C.A. § 8-21-901(a)(3)(D) - Transportation of Prisoners

FEES IN CRIMINAL CASES

T.C.A. § 40-25-129(a)(2)

Liability of State or County for Costs or Fees

Costs & Fees Paid in All Cases

Cost for boarding witness for the state confined in jail to await the trial in which the witness is to testify.

T.C.A. § 8-26-107 - Fees for witnesses committed to jail.

FEES IN CRIMINAL CASES

T.C.A. § 40-25-140(b)

Felony Cases Transferred to Federal Court

Delivery of Prisoners to Federal Courts

Sheriffs or other officers delivering prisoners from state to federal courts shall be allowed the same fees, and have the same guards and pay therefor, as is allowed for like services in state courts.

FEES IN CRIMINAL CASES

Do yourself a favor and
hire your own account.

STILL MORE FEES

POST-CONVICTION PROCEDURE

T.C.A. § 40-30-110(b)(2)

Post-Conviction Hearings

(1) If the petitioner is imprisoned, the warden shall arrange for transportation of the petitioner to and from the court upon proper orders issued by the trial judge.

(2) The sheriff of the county where the proceeding is pending shall have the authority to receive and transport the petitioner to and from the penitentiary and the court, if the court so orders or if for any reason the warden is unable to transport the petitioner. **The sheriff shall be entitled to the same costs allowed for the transportation of prisoners as is provided in criminal cases upon the presentation of the account certified by the judge and district attorney general.**

SEX OFFENDER REGISTRATION AND MONITORING T.C.A. § 40-39-204(b) & (c)

Sexual Offender and Violent Sexual Offender Administrative Fee

Each year during the month of March, violent sexual offenders are required to pay an administrative fee, not to exceed \$100.00.

Sexual offenders pay the \$100.00 administrative fee during their annual reporting period.

SEX OFFENDER REGISTRATION AND MONITORING T.C.A. § 40-39-204(b) & (c)

Sexual Offender and Violent Sexual Offender Administrative Fee

This fee is to be retained by the sheriff to be used for the purchase of equipment, to defray personnel and maintenance costs and any other expenses incurred as a result of the implementation of the “Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004.”

SEX OFFENDER REGISTRATION AND MONITORING T.C.A. § 40-39-201

40-39-201. Short title — Legislative findings.

The registering agency shall retain \$100 of the costs **for the administration of this part and the investigation of sexual offenses, including the purchase of specialized equipment for use in the investigation of sexual offenses, and must be reserved for such purposes at the end of each fiscal year**, with the remaining \$50.00 of fees to be remitted to the state treasury to be deposited into the general fund of the state.

2022 Public Chapter 931, Effective April 29, 2022.

Did not amend T.C.A. §40-39-204.



SEX OFFENDER REGISTRATION AND MONITORING T.C.A. § 40-39-204(b) & (c)

Sexual Offender and Violent Sexual Offender Administrative Fee

Offenders who reside in nursing homes and assisted living facilities, and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities, are exempt from paying the administrative cost, as otherwise provided by this part.

TRADEMARKS ON DRUGS

T.C.A. § 47-25-404

Trademarks on Drugs

It is made the duty of the sheriff of any county of this state or health officers, peace officers, inspectors, or boards of pharmacy and other officers to assist and cooperate with the prosecuting attorney in the investigation of any violation of this part, including the procurement of evidence for the support of the prosecution, which may be instituted by the prosecuting attorney, and for such services **the sheriff or other officer shall be allowed and paid the same fees for travel and sustenance as are usually allowed in other criminal proceedings.**

CHALLENGES TO STUDENT ASSIGNMENTS T.C.A. § 49-6-3203(b)(2)

Challenges to Student Assignments - Hearings

(2) The subpoenas shall be served by the sheriff or any deputy of the county to which the subpoena is directed, and the sheriff or deputy shall be entitled to the same fees for serving such the subpoenas as in the case of the service of subpoenas from a court of record of the state.

SPEEDING TICKETS

T.C.A. § 55-8-152(e)(1)

Speeding Tickets

The fees of sheriffs, deputy sheriffs and other police officers, other than salaried officers, for making arrests for violations of the speed restrictions of this chapter, shall be one dollar (\$1.00).

NOTE: includes constables who have law enforcement powers.

ABC HEARINGS - COSTS

T.C.A. § 57-5-412(a)

ABC Hearings - Costs

Costs incurred in each hearing, including witness fees, mileage expenses and all fees of sheriffs for serving any notices or subpoenas, shall be taxed as costs by the commissioner or the commissioner's authorized representative.

ABC HEARINGS - COSTS

T.C.A. § 57-5-412(a)

ABC Hearings - Costs

All costs and fees for witnesses and/or sheriffs shall be advanced or collected as provided in the case of witnesses attending upon cases in courts of record, and the service of subpoenas requiring their attendance and testimony.

DELIVERY OF SEIZED LIQUOR

T.C.A. § 57-9-115(e)

Delivery of Seized Liquor to the ABC

In the event the commission calls upon the sheriff to transport such liquors, all expenses incurred by the sheriff in the transportation of such liquors shall be borne by the commission, and **the sheriff shall be allowed the same mileage fee as for transporting prisoners, in addition to the other actual cost of transportation.**

RAILROAD CASES

T.C.A. § 65-3-118

Service of Process – Railroad Cases

The sheriff executing any process issued under this chapter and chapter 5 of this title shall receive such compensation as may be allowed by the department of transportation, not to exceed the fees prescribed by law for similar services.

AUTHENTICATION OF INSTRUMENTS BY WITNESSES

T.C.A. § 66-23-111

Property Cases

Any sheriff into whose hands the subpoena may come, shall execute it, without delay, on the witness or witnesses named in it, but not unless the party suing out the subpoena pay or tender to the sheriff a fee of \$1.00 for summoning each witness.

AUTHENTICATION OF INSTRUMENTS BY WITNESSES T.C.A. § 66-23-113

Sheriff's Liability for Failure to Serve Subpoena

If the sheriff fails or refuses to serve a subpoena for witnesses in such case, the sheriff shall be liable to a like action for damages, but not unless the sheriff's fees are tendered or paid.

TAXES AND LICENSES ENFORCEMENT BY DISTRESS WARRANT T.C.A. § 67-1-1202(a)

Collecting State Revenues - Execution of Distress Warrant

The sheriff, any deputy sheriff or constable into whose hands such warrant may come may execute it by distraint and sale of personal property belonging to the taxpayer. The proceedings with respect to the sale shall be the same as are provided by law for proceedings under an execution at law from a court of record. **The executing officer shall be entitled to the same fees, commissions, and necessary expenses of removing and keeping the property distrained as in the case of an execution from a court of record.**

TAXES AND LICENSES ENFORCEMENT BY DISTRESS WARRANT T.C.A. § 67-1-1202(b)

Collecting State Revenues - Execution of Distress Warrant

It is the duty of the sheriff, any deputy sheriff or constable into whose hands such distress warrant may come, to make a return on the distress warrant within 30 days from the date received. In the event any such officer fails to make the return as required by this section, **the officer and the officer's bondspersons shall be personally liable for the amount set forth in the distress warrant.**

PRIVILEGE AND EXCISE TAXES ACTION BY COMMISSIONER T.C.A. § 67-4-110(b)

Collection of Delinquent Privilege Taxes by Distress Warrant

The sheriff into whose hands such warrant may come, or the sheriff's deputy, may execute the warrant by distraint and sale of personal property belonging to such delinquent taxpayer, and the proceedings in respect to the warrant shall be the same as are provided by law for proceedings under an execution at law from a court of record; **and the executing officer shall be entitled to the same fees, commissions, and necessary expenses of removing and keeping property distrained as in case of an execution from a court of record.**

PRIVILEGE AND EXCISE TAXES ACTION BY COMMISSIONER T.C.A. § 67-4-110(c)

Collection of Delinquent Privilege Taxes by Distress Warrant

If the officer cannot find personal property to satisfy the distress warrant, the officer may levy the warrant upon any real estate in the officer's county belonging to such delinquent taxpayer; and if levied on land, the distress warrant, together with the officer's return on the distress warrant, shall be returned to the circuit court of the county in which the land lies, and the land shall be condemned and sold under the orders of the circuit court in the same manner as in case of the levy on land of an execution issued by a general sessions court.

DELINQUENT BUSINESS TAXES

T.C.A. § 67-4-215(c)(1)

Collection of Delinquent Business Taxes by Distress Warrant

The sheriff into whose hands such distress warrant may come, or the sheriff's deputy, may execute the distress warrant by distraint and sale of personal property belonging to such delinquent taxpayer, and the proceedings in respect to the distress warrant shall be the same as are provided by law for proceedings under execution at law from a court of record; and **the executing officer shall be entitled to the same fees, commissions and the necessary expense of removing and keeping property distrained as in case of an execution from a court of record.**

DELINQUENT BUSINESS TAXES

T.C.A. § 67-4-215(c)(2)

Collection of Delinquent Business Taxes by Distress Warrant

If the officer cannot find personal property to satisfy the distress warrant, the officer may levy the distress warrant upon any real estate in the officer's county belonging to such delinquent taxpayer. If levied on land, the distress warrant, together with the officer's return on the warrant, shall be returned to the circuit court of the county in which the land lies, and the land shall be condemned and sold under the orders of the circuit court, in the same manner as in case of a levy on land of an execution issued by a general sessions court. Suit or suits may be brought, if necessary.



DELINQUENT BUSINESS TAXES

T.C.A. § 67-4-215(d)

Collection of Delinquent Business Taxes by Distress Warrant

If any sheriff willfully fails, refuses or neglects to execute any distress warrant directed to the sheriff within the time provided in this part, the official bond of such sheriff shall be liable for the tax, penalty, interest, and cost due by the taxpayer, and, on complaint of any proper officer, this penalty shall be enforced by the attorney general and reporter in any manner permitted by law.

TOBACCO TAX

T.C.A. § 67-4-1017(c)

Tobacco Tax – License Proceedings

All such subpoenas shall be served by the sheriff or any deputy of the county where the subpoena is directed, and such sheriff or deputy shall be entitled to the same fees for serving such subpoenas as in the case of serving subpoenas in civil cases from any court of record.

Acts 1929 (Ex. Sess.), ch. 22, § 1; Code 1932, §§ 1234-1236; T.C.A. (orig. ed.), § 67-3118.



DELINQUENT PERSONAL PROPERTY TAXES

T.C.A. § 67-5-2003(a)

Collection by Distress Warrant

The tax books in the hands of the trustee and the delinquent lists furnished to the sheriff in any county where the taxpayer or any property liable for the taxes may be found shall have the force and effect of a judgment and execution from a court of record and shall be ample authority for the officers having such taxes for collection to distrain and sell a sufficient amount of the personal property to satisfy the delinquent taxes, interest, penalties, costs and attorneys' fees.

DELINQUENT PERSONAL PROPERTY TAXES

T.C.A. § 67-5-2003(e)

Collection by Distress Warrant

The officers shall in all cases have the personal property present when sold and shall be allowed to retain in addition to the taxes, interest, penalties, costs, and attorney's fees, all commissions, costs and necessary expenses of removing and keeping the property distrained (expenses of seizure, preservation and storage of the property).

DELINQUENT TAX COLLECTION PROCEEDINGS T.C.A. § 67-5-2410(c)(1)

Original Process in Delinquent Tax Collection Proceedings

The sheriff shall receive, as costs to be taxed against each delinquent, \$7.50 for serving all original processes and the statutory fees for all other services performed by the sheriff.

See Tn. Atty. Gen. Op. 81-161 (Mar 13, 1981) (when a specific and a general statute both deal with the same subject matter, the specific controls over the general).

BREAK ?

JAIL FEES

JAILERS' FEES

T.C.A. § 8-26-105(a)

Misdemeanant Prisoners

The county legislative body or governing body of each county has the authority to pass a resolution fixing the amount of jailers' fees which may be applied to misdemeanor prisoners. The rate fixed shall apply to such prisoners confined in the county jail or county workhouse or workhouses, but not meeting the conditions required for a state subsidy under title 41, chapter 8.

JAILER'S FEES - COSTS

TN. ATTY. GEN. OP. 98-159

(AUG 24, 1998)

As discussed in Op. Tenn. Atty. Gen. 84-290 (Oct 31, 1984) a county may establish the amount of jailers' fees for the housing of persons who are charged with or convicted of misdemeanor criminal offenses. Tenn. Code Ann. § 8-26-105(a).

Jailers' fees are costs, Tenn. Code Ann. § 40-25-104, which are taxed separate from the general bill of costs in criminal cases. Tenn. Code Ann. § 41-4-131(a).

As such, they are applicable to persons held prior to trial as well as those persons who are serving time after conviction. Tenn. Code Ann. § 40-25-104.

JAILERS' FEES - COSTS

TN. ATTY. GEN. OP. 84-307

(NOV 13, 1984)

This Office has recently opined that “jailers' fees established pursuant to § 8-26-105(a) apply to persons held prior to trial on misdemeanor charges as well as persons who are serving misdemeanor sentences in the county jail but are only assessed against persons actually convicted of criminal offenses.”

JAILERS' FEES - COSTS PRETRIAL DETAINEES

Charging fees to pretrial detainees may be unconstitutional.

See *Allen v. Leis*, 154 F.Supp.2d 1240 (S.D. Ohio, 2001) (jailer's fee and booking fee as applied to pretrial detainee).

PAYMENT OF COSTS BY DEFENDANT T.C.A. § 40-25-123

(a) A defendant convicted of a criminal offense shall pay all the costs that have accrued in the cause.

(b) Notwithstanding any law to the contrary, the presiding judge of a court of general sessions may suspend the court costs and the litigation tax as required by §§ 67-4-602 — 67-4-606, for any indigent criminal defendant, as in the presiding judge's opinion the equities of the case require.

PAYMENT OF COSTS IN CRIMINAL CASES T.C.A. § 40-25-129

Compensation for boarding prisoners,

Expenses of keeping and boarding juries,

Compensation of jurors,

Costs of transcripts in cases taken to the supreme court by appeal or writ of error as provided by law,

Mileage and legal fees for removing or conveying criminals and prisoners from one county to another or from one jail to another,.



PAYMENT OF COSTS IN CRIMINAL CASES T.C.A. § 40-25-129

Compensation and mileage of witnesses for the state duly subpoenaed and required to attend before any court, grand jury or magistrate in a county other than that of their residence and more than five miles from their residence, and

Where any witness for the state shall be confined in jail to await the trial in which the witness is to testify, shall be paid in all cases as heretofore.

PAYMENT OF COSTS WHEN STATE OR COUNTY LIABLE T.C.A. § 40-25-130

The state, or the county in which the offense was committed or is triable, according to the nature of the offense, pays the costs accrued on behalf of the state, and for which the state or county is liable under § 40-25-129, in the following cases, when:

- (1) The defendant is acquitted by a verdict of the jury upon the merits;
- (2) The prosecution is dismissed, or a nolle prosequi entered by the state;
- (3) The action has abated by the death of the defendant;

PAYMENT OF COSTS WHEN STATE OR COUNTY LIABLE T.C.A. § 40-25-130

(4) The defendant is discharged by the court or magistrate before indictment preferred or found, or after indictment and before verdict; or

(5) The defendant has been convicted, but the execution issued upon the judgment has been returned “nulla bona” or where the court hearing the case has made a finding at any evidentiary hearing that the defendant is indigent and remains indigent at the time of conviction.

FEES FOR WITNESSES COMMITTED TO JAIL T.C.A. § 8-26-107

Fees For Witnesses Committed to Jail

Jailers shall be allowed the same fees for keeping witnesses committed to jail as they are allowed by § 8-26-105 for keeping prisoners, the same to be taxed in the bill of costs and paid in the same manner as other costs in the same cases.

BOOKING FEE

T.C.A. § 40-7-122

A county legislative body may vote to impose an additional fee of not more than \$10.00 for the booking and processing of each person subject to arrest or summons.

The fee shall be collected at the same time and in the same manner as other fees are collected by a sheriff in accordance with Title 8, Chapter 21, Part 9.

The fee shall not be charged to any person determined by the court to be indigent.

INMATE CO-PAY

T.C.A. § 41-4-115(d)

Any county may, by resolution adopted by a two-thirds vote of its legislative body, establish and implement a plan authorizing the jail or workhouse administrator of the county to charge an inmate in the jail or workhouse a co-pay amount for any medical care, treatment, pharmacy services or substance abuse treatment by a licensed provider provided to the inmate by the county.

INMATE CO-PAY

T.C.A. § 41-4-115(d)

The county adopting the co-pay plan shall establish the amount the inmate is required to pay for each service provided.

Nothing in this subsection (d) shall be construed as authorizing a county to deny medical care, treatment, pharmacy services or substance abuse treatment by a licensed provider to an inmate who cannot pay the co-pay amount established by the plan.

INMATE CO-PAY

T.C.A. § 41-4-115(e)

If an inmate cannot pay the co-pay amount established by a plan adopted pursuant to subsection (d), the plan may authorize the jail or workhouse administrator to deduct the co-pay amount from the inmate's commissary account or any other account or fund established by or for the benefit of the inmate while incarcerated.

REIMBURSEMENT OF EXPENSES

T.C.A. § 41-4-115(f)

Notwithstanding any other law to the contrary, a plan established pursuant to subsection (d) may also authorize the jail or workhouse administrator to seek reimbursement for the expenses incurred in providing medical care, treatment, hospitalization or pharmacy services to an inmate incarcerated in the jail or workhouse from an insurance company, health care corporation, TennCare or other source, if the inmate is covered by an insurance policy, TennCare or subscribes to a health care corporation or other source for those expenses.

CHARGING FOR ISSUED ITEMS

T.C.A. § 41-4-142(a)

Any county may, by resolution adopted by a two-thirds vote of its legislative body, establish and implement a plan authorizing the jail or workhouse administrator of the county to charge an inmate committed to that jail or workhouse a fee, **not to exceed the actual cost**, for items issued to inmates upon each new admission to jail.

FEES FOR SPECIAL SERVICES

T.C.A. § 41-4-142(b)

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

FEES FOR SPECIAL SERVICES

T.C.A. § 41-4-142(b)

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

FEES FOR ISSUED ITEMS & SPECIAL SERVICES T.C.A. § 41-4-142(c)

A plan adopted pursuant to subsection (a) or (b) may authorize the jail or workhouse administrator to deduct the amount from the inmate's jail trust account or any other account or fund established by or for the benefit of the inmate while incarcerated.

Nothing in this section shall be construed as authorizing a county to deny necessary clothing or hygiene items or to fail to provide the services specified in subsection (b) based on the inmate's inability to pay a fee or costs.

FEDERAL PRISONERS

T.C.A. § 41-4-105

The jailer is liable for failing to receive and safely keep all persons delivered under the authority of the United States, to the like pains and penalties as for similar failures in the case of persons committed under authority of the state.

However, the marshal or person delivering a prisoner under authority of the United States is liable to the jailer for fees and the subsistence of the prisoner while so confined, which shall be the same as provided by law for prisoners committed under authority of the state.

FEDERAL PRISONERS

T.C.A. § 41-4-105

The jailer will also collect from the marshal fifty cents (50¢) a month for each prisoner, under the resolution of the first congress, and pay the same to the county trustee forthwith, to be accounted for by the trustee as other county funds.

Code 1858, §§ 5397-5399 (deriv. Acts 1801, ch. 31, §§ 1, 2); Shan., §§ 7372-7374; Code 1932, §§ 11981-11983; T.C.A. (orig. ed.), § 41-1105.

FEDERAL PRISONERS IN STATE INSTITUTIONS 18 U.S.C. § 4002

For the purpose of providing suitable quarters for the safekeeping, care, and subsistence of all persons held under authority of any enactment of Congress, the Attorney General may contract, for a period not exceeding three years, with the proper authorities of any State, Territory, or political subdivision thereof, for the imprisonment, subsistence, care, and proper employment of such persons.

FEDERAL PRISONERS IN STATE INSTITUTIONS 18 U.S.C. § 4002

The rates to be paid for the care and custody of said persons shall take into consideration the character of the quarters furnished, sanitary conditions, and quality of subsistence and may be such as will permit and encourage the proper authorities to provide reasonably decent, sanitary, and healthful quarters and subsistence for such persons.

REIMBURSEMENT FOR HOUSING STATE PRISONERS T.C.A. § 41-8-106

No county shall be required to house convicted felons sentenced to more than 1 year of continuous confinement unless the county, through the authority of its county legislative body, has chosen to contract with the department of correction for the purpose of housing certain felons. The department shall promulgate rules for requirements and procedures for contracting.

REIMBURSEMENT FOR HOUSING STATE PRISONERS T.C.A. § 41-8-106(c)(1).

Counties That Contract with the State

Under the County Correctional Incentives Act, T.C.A. § 41-8-101, et seq., counties that contract with the state are reimbursed by the state for housing state prisoners in county jails.

REIMBURSEMENT FOR HOUSING STATE PRISONERS T.C.A. § 41-8-106(c)(1).

Counties That Contract with the State

(c)(1) Counties must be reimbursed for housing convicted felons and state parolees awaiting a parole revocation hearing pursuant to the general appropriations act and according to rules and regulations for determining reasonable allowable costs as promulgated by the department, in consultation with the comptroller of the treasury. The department is authorized to include capital costs within the meaning of reasonable allowable costs. Capital costs may include, but are not limited to, debt service.

REIMBURSEMENT FOR HOUSING STATE PRISONERS T.C.A. § 41-8-106(e).

Counties That Contract with the State

(e) The subsidies paid to counties pursuant to this chapter shall be the only compensation from the state to which counties are entitled for housing state prisoners and shall be in lieu of the fees allowed in § 8-26-106 or any other section.

REIMBURSEMENT FOR HOUSING STATE PRISONERS T.C.A. § 41-8-106(g)(1)

Counties That Do Not Contract with the State

The department shall take into its custody all convicted felons from any county that had not contracted with the state as authorized by subsection (b).

The department shall not be required to take actual physical custody of any of the felons until fourteen (14) days after the department has received all certified sentencing documents from the clerk of the sentencing court.

REIMBURSEMENT FOR HOUSING STATE PRISONERS T.C.A. § 41-8-106(g)(2)

Counties That Do Not Contract with the State

The commissioner is authorized to compensate any county that has not contracted with the state as authorized by subsection (b) for that county's reasonable, allowable cost of housing felons.

The rate of compensation to these counties shall be determined by and is subject to the level of funding authorized in the appropriations bill.

JAIL COMMISSARY AUTHORITY

“Counties owe their creation to the statutes, and the statutes confer on them all the powers which they possess, prescribe all the duties they owe, and impress all the liabilities to which they are subject.”

State v. Stine, 292 S.W.2d 771, 772 (Tenn. 1956),
quoting *Burnett v. Maloney*, 37 S.W. 689, 693 (Tenn.
1896).

JAIL COMMISSARY AUTHORITY

As an arm of a political subdivision of state government, a local law enforcement agency derives its power from statutes passed by the General Assembly and may only exercise powers derived explicitly or by necessary implication from state law.

Tenn. Atty. Gen. Op. 01-139 (Sept 4, 2001), citing *State ex rel. Witcher v. Bilbrey*, 878 S.W.2d 567, 571 (Tenn. App. 1994).

JAIL COMMISSARY AUTHORITY

Tennessee statutory law imposes upon the sheriff a multitude of mandatory duties designed to promote an inmate's welfare. T.C.A. § 41-4-101, et seq.

JAIL COMMISSARY AUTHORITY

Operating a jail commissary is not a statutory duty of the sheriff or the jailer.

JAIL COMMISSARY AUTHORITY

While there are Tennessee statutes that refer to jail commissaries, under current Tennessee law, there is no express statutory authority for a sheriff's office to operate a jail commissary, regardless of whether it is operated on a for profit basis or not for profit basis.

JAIL COMMISSARY AUTHORITY

Inmates do not have a constitutional right to a commissary or commissary privileges.

Morissette v. DeTella, 1997 WL 619851, *2 (N.D. Ill. 1997) (inmates have no federal constitutional right to commissary privileges); Bensinger v. Nichols, 1994 WL 561924, *2 (E.D. Pa. 1994) (Contrary to Bensinger's beliefs, commissary and smoking privileges are not rights guaranteed by the Constitution.); Johnson v. Mulcahy, 2007 WL 2485006 (E.D. Mo. 2007) (commissary privileges are not guaranteed by federal law or the Constitution).

JAIL COMMISSARY CHARGING FEES

There is no statute specifically authorizing the sheriff to operate a jail commissary or to accept compensation or fees from inmates for providing commissary services.

Tennessee Code Annotated § 8-21-901, which lists fees a sheriff may collect, does not include such payment or compensation.

JAIL COMMISSARY CHARGING FEES

A local law enforcement agency must be given the authority through constitutional mandate or acts of the Legislature to charge a fee to defray the cost of providing a service or benefit.

Tenn. Atty. Gen. Op. 01-139 (Sept 4, 2001).

JAIL COMMISSARY CHARGING FEES

Remember the Rules

RULE 1

Pursuant to T.C.A. § 8-21-101, the sheriff is not allowed to demand or receive fees or other compensation for any service further than is expressly provided by law.

JAIL COMMISSARY CHARGING FEES

RULE 2

If any officer demands or receives any other or higher fees than are prescribed by law, such officer is liable to the party aggrieved in the penalty of \$50.00, to be recovered before any judge of the court of general sessions, and the officer also commits a Class C misdemeanor.

T.C.A. § 8-21-103.



JAIL COMMISSARY PAYING TAXES

Engaging in an unauthorized activity may result in undesired consequences.

For example, “when a county departs from its governmental activities and engages in a business enterprise for gain, which would ordinarily be taxable and which the county is not authorized to engage in, that it then becomes liable for the tax.”

State v. Hamilton County, 144 S.W.2d 749, 751 (Tenn. 1940).



JAIL COMMISSARY FEES WHERE DOES THE MONEY GO

THE GENERAL FUND

Nevertheless, as for the money actually collected, pursuant to T.C.A. § 8-24-103(a)(2), the sheriff must pay over to the county trustee, on a monthly basis, all fees, commissions, and charges collected by the sheriff's office during the month.

Unless there is a specific statute that allocates the money to a specific fund for the use of the sheriff, such as the drug fund or the fees collected for registering sex offenders, the money goes into the county general fund for the use of the county.

JAIL COMMISSARY BLIND VENDER PROGRAM

DHS' statutory priority under T.C.A. § 71-4-501 et seq. gives DHS “the exclusive right to the operation of any and all vending facilities on any public property” that DHS determines are capable of being operated by a blind vendor.

In other words, the blind vendors get the first shot.
Right of first refusal.

Tenn. Atty. Gen. Op. 06-156 (Oct 9, 2006) (Inmate Funds Accounting/Blind Vendors).



JAILER'S FEES BOOK-KEEPING

Accounts of Sheriffs and Jailers - T.C.A. § 41-4-129

Sheriffs and jailers must make written statements of account, properly proven and sworn to, for the keeping of prisoners, specifying distinctly each item and the amount due for each item.

JAILER'S FEES BOOK-KEEPING

Jailer's Fees - T.C.A. § 41-4-131

The fees of jailers shall be taxed separately from the general bills of costs of criminal cases.

All state costs shall be properly proved and sworn to before the clerk of the criminal or circuit court of the county and certified by the clerk for payment.

JAILER'S FEES BOOK-KEEPING

Sheriff's Fees - T.C.A. § 41-4-132

The accounts of sheriffs for keeping prisoners in their respective jails charged with crime, for which the state may eventually become liable, shall be certified; provided, that the sheriffs having such bills shall first make oath as to the correctness of the bills before the clerk of the circuit or criminal court, who shall affix the clerk's certificate to the bills.

JAILER'S FEES BOOK-KEEPING

Filing of Sheriff's Bills - T.C.A. § 41-4-133

The clerk of the court shall then file the bills of the sheriff, together with the affidavit of the sheriff, whose signature shall be certified in writing under seal of office as authentic by the clerk of the court on the face of the document, and then the sheriff or the clerk shall forward the bills to the proper authorities for payment.

JAILER'S FEES BOOK-KEEPING

Compliance as Prerequisite to Payment

T.C.A. § 41-4-134

The commissioner of finance and administration shall not issue warrants for any accounts of sheriffs for boarding prisoners until the bill shows on its face compliance with all of the requirements of §§ 41-4-131 — 41-4-133.

JAILER'S FEES BOOK-KEEPING

Monthly Audit of Jailer's Fees - T.C.A. § 41-4-136

The jailer's fees for county prisoners shall be referred monthly to the county mayor for inspection, who shall audit the fees and cause the clerk to issue a warrant for the amount allowed.

DUI FINES

DUI FINES

T.C.A. § 55-10-412(a)

A portion of any fine imposed upon a person for a violation of § 55-10-401, up to the maximum fine actually imposed, shall be returned to the sheriff of a county jail for the purpose of reimbursing the sheriff for the cost of incarcerating the person for each night the person is actually in custody for a violation of § 55-10-401.

DUI FINES

T.C.A. § 55-10-412(a)

This reimbursement shall be in the same amount as is provided by § 8-26-105, and shall not in any event be less than the actual cost of maintaining the person and shall be reimbursed in the manner provided by § 8-26-106.

DUI FINE USED TO PAY JAILERS FEE

However, the AG has opined that if the sheriff recovers the full cost of incarceration through a jailer's fee, the county may not seek additional reimbursement through the DUI fine.

Tn. Atty. Gen. Op. 02-095 (Sept 3, 2002) citing *Brown v. Knox County*, 39 S.W.3d 585 (Tenn.Ct.App. 2001); *Knox County v. City of Knoxville*, No. 759, 1988 WL 116456 (Tenn.Ct.App. Nov. 2, 1988). Tn. Atty. Gen. Op. 84-307 (Nov 13, 1984).

COUNTY DUI FUND

T.C.A. § 55-10-412(b)

The proceeds from the increased portion of the fines for driving under the influence of an intoxicant provided for in chapter 948 of the Public Acts of 1994, the additional fines for reckless driving, under § 55-10-205(d)(2), and the additional fines for aggravated reckless driving, under § 55-10-209(b)(2) must be collected by the respective court clerks and then deposited in a dedicated county fund.

This fund does not revert to the county general fund at the end of a fiscal year but remains for the purposes set out in this section.

COUNTY DUI FUND

T.C.A. § 55-10-412(b)

For the purposes of this section, the “increased portion of the fines for driving under the influence of an intoxicant” means:

the first \$100 collected after the initial collection of \$250 on a first offense,

the first \$100 collected after the initial collection \$500 on a second offense, and

the first \$100 collected after the initial collection of \$1,000 on a third or subsequent offense.

COUNTY DUI FUND

T.C.A. § 55-10-412(b)

The respective counties shall be authorized to expend the funds collected pursuant to subsection (b) by appropriations to any of the following:

- (1) Alcohol, drug, and mental health treatment facilities licensed by the department of mental health and substance abuse services;
- (2) Metropolitan drug commissions or other similar programs sanctioned by the governor's Drug Free Tennessee program for the purposes of chapter 948 of the Public Acts of 1994;

COUNTY DUI FUND

T.C.A. § 55-10-412(b)

(3) Organizations exempted from the payment of federal income taxes by § 501(c)(3) of the federal Internal Revenue Code (26 U.S.C. § 501(c)(3)), whose primary mission is to educate the public on the dangers of illicit drug use, alcohol abuse, or the co-occurring disorder of both alcohol and drug abuse and mental illness or to render treatment for alcohol and drug addiction, or the co-occurring disorder of both alcohol and drug abuse and mental illness;

COUNTY DUI FUND

T.C.A. § 55-10-412(b)

(4) Specialized court programs and specialized court dockets that supervise offenders who suffer from alcohol and drug abuse, or the co-occurring disorder of both alcohol and drug abuse and mental illness;

(5) Organizations that operate drug, alcohol, or co-occurring disorder treatment programs for the homeless or indigent;

COUNTY DUI FUND

T.C.A. § 55-10-412(b)

(6) Agencies or organizations for purposes of drug testing of offenders who have been placed on misdemeanor probation; and

(7) The employment of a probation officer for the purposes of supervising drug and alcohol offenders.

BREAK

FEES FOR COPYING PUBLIC RECORDS

PUBLIC RECORDS

T.C.A. § 10-7-506

(a) In all cases where any person has the right to inspect any such public records, such person shall have the right to take extracts or make copies thereof, and to make photographs or photostats of the same while such records are in the possession, custody and control of the lawful custodian thereof or such custodian's authorized deputy; provided, that the lawful custodian of such records shall have the right to adopt and enforce reasonable rules governing the making of such extracts, copies, photographs or photostats.

FEES FOR COPYING PUBLIC RECORDS



No charge to view records.



May charge actual cost for providing requested copies.



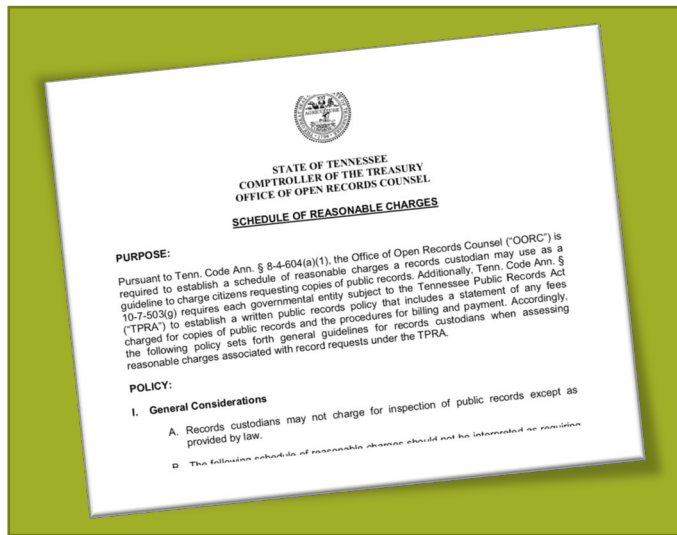
Must provide estimate of cost.



OORC has developed a schedule of reasonable charges for copies of public records.



OORC SCHEDULE OF CHARGES



- Black & white copies = 15 cents
- Color copies = 50 cents
- May charge hourly wage of employee(s) after the first hour.
- Safe harbor if follow the schedule.
- If don't follow the schedule, must document actual cost.

[Comptroller's website](#) > [Open Records Counsel Home](#) > [Policies & Guidance](#)

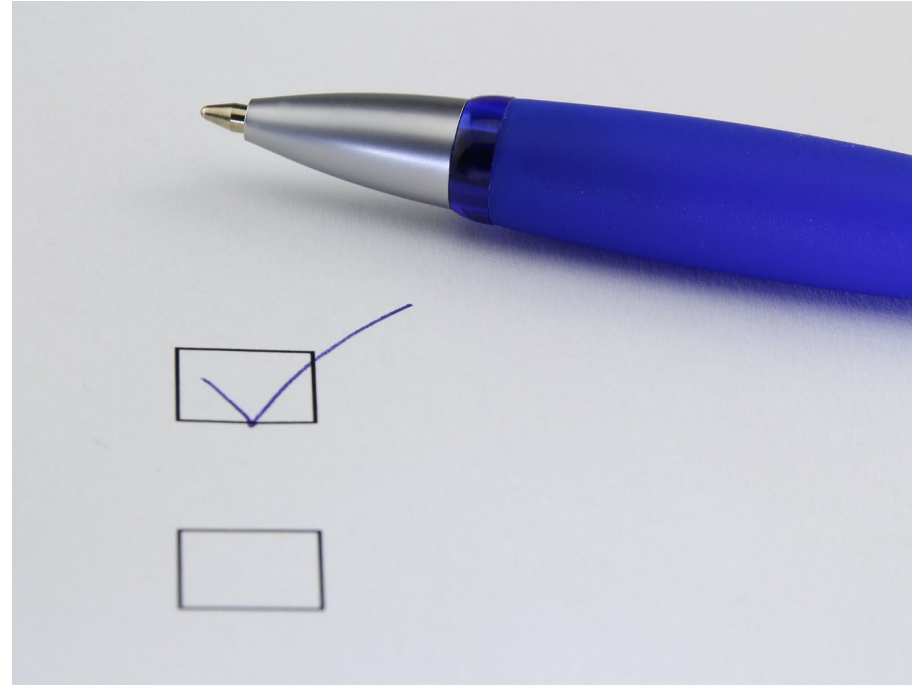
LIMITS ON RECORD REQUESTS

- Confidential records.
- Only TN citizens.
- Not required to create a document.
- Not required to compile information into a new record.
- Not required to produce a document for which you are not the custodian.



RECORDS POLICY REQUIRED

- Establish written public records policy.
- Must include:
 - Process for making requests to inspect or receive copies of public records and copy of any required request form;
 - Process for responding to requests and redaction practices;
 - Fees charged for copies of public records and procedures for billing and payment; and
 - Name or title and contact information of individual or individuals designated as public records request coordinator(s).
- OORC has published model policy.
 - CTAS has a model policy completion checklist



OFFICE OF OPEN RECORDS COUNSEL

OORC aids county officials and citizens with specific open records requests.

<https://www.comptroller.tn.gov/openrecords/>

Phone: (615) 401-7891

Fax: (615) 741-1551

Email: open.records@cot.tn.gov

OORC provides advisory opinions, training, forms and best practice guidelines for record custodians.



ADDITIONAL AUTHORIZED FEES

CREDENTIALIAED COURT INTERPRETER FINGERPRINTS & RECORDS CHECK

T.C.A. § 16-3-813(a)

Any person seeking to become a credentialed court interpreter for spoken foreign languages pursuant to any rules that may be promulgated by the supreme court shall be required to supply a fingerprint sample and submit to a criminal history records check conducted by the TBI pursuant to § 38-6-109, the federal bureau of investigation, other law enforcement agency, or any other legally authorized entity.

CREDENTIALLED COURT INTERPRETER FINGERPRINTS & RECORDS CHECK

T.C.A. § 16-3-813(a)

In addition to the fee required by § 38-6-109, the sheriff or any other law enforcement agency may assess a fee of up to **\$10.00** for costs incurred in complying with this section.

Any fees assessed in the criminal background records check process are the responsibility of the person seeking to be credentialed as a court interpreter of spoken foreign languages.

LAW ENFORCEMENT SHOOTING RANGES

T.C.A. § 38-8-116(a)

Sheriffs are allowed to open their shooting ranges for public use when such ranges are not being used by law enforcement personnel. The law enforcement agency in charge of a shooting range may establish reasonable regulations for the use of the firing range in order to promote the full use of the range without interfering with the needs of law enforcement personnel. **The law enforcement agency may also charge a reasonable fee for persons or organizations using the range and may require users to make improvements to the range.**

HANDGUN CARRY PERMIT APPLICATION FINGERPRINT FEE

T.C.A. § 39-17-1351(d)(1)

As part of the process of applying for a handgun carry permit, an applicant is required to provide two full sets of classifiable fingerprints at the time the application is filed with the Department of Safety. The applicant may have his or her fingerprints taken by the department at the time the application is submitted, or the applicant may have his/her fingerprints taken at any sheriff's office and submit the fingerprints to the department along with the application and other supporting documents.

The sheriff may charge a fee not to exceed **\$5.00** for taking the applicant's fingerprints.

CRIMINAL BACKGROUND CHECKS FOR NURSING HOME EMPLOYEES AND STAFF

T.C.A. § 68-11-256(a)

All nursing homes, as defined in § 68-11-201, and assisted-care living facilities, as defined in § 68-11-201, shall have a criminal background check completed prior to employing any person who will be in a position that involves providing direct care to a resident or patient.

CRIMINAL BACKGROUND CHECKS FOR NURSING HOME EMPLOYEES AND STAFF

T.C.A. § 68-11-256(d)

Any costs incurred by the Tennessee bureau of investigation, professional background screening organization, **law enforcement agency**, or other legally authorized entity, in conducting the investigations of applicants may be paid by the nursing home, the assisted-care living facility, or any agency that contracts with this state requesting the investigation and information, or the individual who seeks employment or is employed. Payments of the costs to the Tennessee bureau of investigation are to be made in accordance with §§ 38-6-103 and 38-6-109. **The costs of conducting criminal background checks shall be an allowable cost under the state medicaid program, if paid for by the nursing home.**

CRIMINAL BACKGROUND CHECKS FOR EMERGENCY MEDICAL SERVICES PERSONNEL

T.C.A. § 68-140-325(a)

As a condition for employment of any licensed, certificated or authorized emergency medical services personnel, employers shall be allowed to initiate a criminal background check on any person applying for employment, or any employee that is currently employed by such employer, and such criminal background investigation shall be at the expense of the employer.

CRIMINAL BACKGROUND CHECKS FOR EMERGENCY MEDICAL SERVICES PERSONNEL

T.C.A. § 68-140-325(c)

Any cost incurred by the Tennessee bureau of investigation, federal bureau of investigation, professional background screening organization, **law enforcement agency** or other legally authorized entity, in conducting such investigations of such applicants shall be paid by such applicants. In the event that such applicants fail to pay for these incurred expenses, the responsibility for payment will fall to the employer originally requesting such criminal background checks. Payments of such cost to the Tennessee bureau of investigation are to be made in accordance with §§ 38-6-103 and 38-6-109.

PROVIDING SERVICES CHARGING FEES

Two Questions You Must Answer

(1) Is there a statute that authorizes the sheriff to provide a service?

(2) Is there a statute that authorizes the sheriff to charge a fee for providing that service?

Other Sources of Revenue

CONFISCATED WEAPONS

DISPOSITION OF PROCEEDS FROM SALE OF CONFISCATED WEAPONS

T.C.A. § 39-17-1317(b)

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

- (1) **Sold in a public sale;**
- (2) Used for legitimate law enforcement purposes, at the discretion of the court; or
- (3) Relinquished in accordance with subsection (i).

DISPOSITION OF PROCEEDS FROM SALE OF CONFISCATED WEAPONS

T.C.A. § 39-17-1317(c)(1)

(c) If the weapon was confiscated, or obtained after being abandoned and secured, after being voluntarily surrendered, or through a buyback program, by a local law enforcement agency or a judicial district drug task force and if the court orders the weapon to be sold, then:

(1) It shall be sold at a public auction not later than six (6) months from the date of the court order. The sale shall be conducted by the sheriff of the county or the chief of police of the municipality in which it was seized or obtained;

DISPOSITION OF PROCEEDS FROM SALE OF CONFISCATED WEAPONS

T.C.A. § 39-17-1317(c)(2)

(c)(2) The proceeds from the sale shall be deposited in the county or municipal general fund and allocated solely for law enforcement purposes;

DISPOSITION OF PROCEEDS FROM SALE OF CONFISCATED WEAPONS

T.C.A. § 39-17-1317(c)(3)

(3) The sale shall be advertised:

- (A) In a daily or weekly newspaper circulated within the county. The advertisement shall run for not less than three (3) editions and not less than thirty (30) days prior to the sale; or
- (B) By posting the sale on a website maintained by the state or a political subdivision of the state not less than thirty (30) days prior to the sale; and

DISPOSITION OF PROCEEDS FROM SALE OF CONFISCATED WEAPONS

T.C.A. § 39-17-1317(c)(4)

(4) If required by federal or state law, then the sale can be conducted under contract with a licensed firearm dealer, whose commission shall not exceed twenty percent (20%) of the gross sales price. However, the dealer shall not hold any elective or appointed position within the federal, state, or local government in this state during any stage of the sales contract.

DISPOSITION OF PROCEEDS FROM SALE OF CONFISCATED WEAPONS

T.C.A. § 39-17-1317(e)

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

- (1) Title to the weapon shall be placed in the law enforcement agency or judicial district drug task force retaining the weapon; and
- (2) When the weapon is no longer needed for legitimate law enforcement purposes, **it shall be sold in accordance with this section.**

DISPOSITION OF PROCEEDS FROM SALE OF CONFISCATED WEAPONS

T.C.A. § 39-17-1317(I)(1)

(I)(1) The sheriff may petition the criminal court or the court in the sheriff's county having criminal jurisdiction for permission to exchange firearms that have previously been properly titled, as specified by this section, to the sheriff's office for other firearms, ammunition, body armor, or equipment suitable for use for legitimate law enforcement purposes by the sheriff's office.

DISPOSITION OF PROCEEDS FROM SALE OF CONFISCATED WEAPONS

T.C.A. § 39-17-1317(I)(2)

(I)(2) The exchange of firearms for the specified items used for legitimate law enforcement purposes is permitted only between the sheriff's office and a licensed and qualified law enforcement firearms dealer.

DISPOSITION OF PROCEEDS FROM SALE OF CONFISCATED WEAPONS

T.C.A. § 39-17-1317(I)(3)

(I)(3) No firearm obtained by a law enforcement agency through a buyback program shall be eligible to be exchanged under this subsection (I).

History - Acts 1989, ch. 591, § 1; 1991, ch. 111, §§ 1-6; 1992, ch. 734, §§ 1-5; 2006, ch. 798, § 2; 2009, ch. 116, § 1; 2010, ch. 629, §§ 1-11; 2011, ch. 159, § 1; 2015, ch. 408, § 1; 2021, ch. 166, § 1.

THE END

New Course in Progress (not finished)

JUDICIAL FORFEITURE PROCEEDINGS

Disposition of Forfeited Property

T.C.A. § 39-11-701 et seq.

Disposition of Forfeited Property

T.C.A. § 39-11-701 *et seq.*

Disposition of Forfeited Property

- 39-11-701. Legislative intent.
- 39-11-702. Part definitions.
- 39-11-703. Criminal proceeds subject to forfeiture.
- 39-11-704. Property exempt from forfeiture.
- 39-11-705. Jurisdiction and venue.
- 39-11-706. Evidence.
- 39-11-707. Procedure for seizure of property.
- 39-11-708. Procedure for judicial forfeiture of property.
- 39-11-709. Procedure for return of property seized.
- 39-11-710. Rights of interest holders and owners.
- 39-11-711. Protection of seized property.
- 39-11-712. Sale of forfeited property.
- 39-11-713. Disposition of forfeited property.
- 39-11-714. Assistance by other agencies.
- 39-11-715. Equity powers of court.
- 39-11-716. Immunities.
- 39-11-717. Supplement to other laws -- Retroactive application.

Criminal Proceeds Subject To Forfeiture T.C.A. § 39-11-703

Criminal Proceeds Subject to Forfeiture

(a) Any property, real or personal, directly or indirectly acquired by or received in violation of any statute or as an inducement to violate any statute, or any property traceable to the proceeds from the violation, is subject to judicial forfeiture, and all right, title, and interest in any such property shall vest in the state upon commission of the act giving rise to forfeiture.

Criminal Proceeds Subject To Forfeiture T.C.A. § 39-11-703(c)(1)

LIST OF OFFENSES

Criminal Proceeds Subject to Forfeiture

(c)(1) The items enumerated in subdivision (c)(2) are subject to judicial forfeiture as provided in this part for a violation of the following offenses:

Criminal Proceeds Subject To Forfeiture

T.C.A. § 39-11-703(c)(1)(A)

(For an offense committed on or after July 1, 2022)

Violation of the Following Offenses

Kidnapping (39-13-303)

Aggravated kidnapping (39-13-304)

Especially aggravated kidnapping (39-13-305)

Aggravated rape of a child (39-13-531)

Rape of a child (39-13-522)

Aggravated rape (39-13-502)

Rape (39-13-503)

Commission of an act of terrorism (39-13-80)

Aggravated human trafficking (39-13-316)

Criminal Proceeds Subject To Forfeiture

T.C.A. § 39-11-703(c)(1)(B)

(For an offense committed on or after July 1, 2011)

Violation of the Following Offenses

Involuntary labor servitude (39-13-307)

Trafficking for forced labor or services (39-13-308)

Trafficking for commercial sex acts (39-13-309)

Criminal Proceeds Subject To Forfeiture

T.C.A. § 39-11-703(c)(1)(C)

(For an offense committed on or after July 2, 2022)

Violation of the Following Offenses

Especially aggravated rape

Especially aggravated rape of a child

Grave torture

Criminal Proceeds Subject To Forfeiture

T.C.A. § 39-11-703(c)(2)(A)

Items Subject to Judicial Forfeiture

The items subject to judicial forfeiture when used or intended to be used in connection with a violation:

- (i) Conveyances, including aircraft, motor vehicles, and other vessels;
- (ii) Books, records, telecommunication equipment, or computers;
- (iii) Money or weapons; and
- (iv) Real property;

Criminal Proceeds Subject To Forfeiture

T.C.A. § 39-11-703(c)(2)(B)

Items Subject to Judicial Forfeiture

The items subject to judicial forfeiture when used or intended to be used in connection with a violation:

Everything of value furnished, or intended to be furnished, in exchange for an act in violation of such statutes, including all proceeds traceable to the exchange, and all negotiable instruments and securities used, or intended to be used, to facilitate the violation.

Criminal Proceeds Subject To Forfeiture

T.C.A. § 39-11-703(c)(2)(C)

Items Subject to Judicial Forfeiture

The items subject to judicial forfeiture when used or intended to be used in connection with a violation:

Any property, real or personal, directly or indirectly acquired by or received in violation of such statutes, or as an inducement to violate such statutes, or any property traceable to the proceeds from the violation.

Criminal Proceeds Subject To Forfeiture

T.C.A. § 39-11-703(c)(2)(D)

Items Subject to Judicial Forfeiture

The items subject to judicial forfeiture when used or intended to be used in connection with a violation:

Any real property, including any right, title, and interest in the whole of or any part of any lot or tract of land and any property used as an instrumentality in or used in furtherance of such violation.

Procedure For Seizure of Property

T.C.A. § 39-11-707(a)

Any property subject to forfeiture under this part may be seized by the sheriff when acting pursuant to a lawful arrest or search, the execution of a search warrant, a petition to abate a nuisance, or a court order.

Procedure For Seizure of Property

T.C.A. § 39-11-707(a)

When property is seized under this part, it may be removed by the sheriff to a place to secure the property, it may be preserved as evidence, it may be padlocked as ordered by a court of record, it may be secured by depositing in an interest bearing account as approved by a court of record or it may be secured as otherwise authorized by law regarding the maintenance, storage, or disposition of seized property.

Sale of Forfeited Property

T.C.A. § 39-11-712(a)

Whenever a judgment of forfeiture is rendered under this part, the court may authorize the attorney general to sell the property at public auction, subject to the orders and approval of the court.

The court, in lieu of such sale, may order that the property be sold by any person having an interest in the real property whose interest has not been forfeited. The proceeds of the sale shall be subject to the orders of the court.

Disposition of Forfeited Property

T.C.A. § 39-11-713(a)

All property ordered forfeited shall be sold at public auction. The proceeds from all property forfeited and sold at public auction shall be disposed of by the court as directed by this part.

If the property seized and ordered forfeited was taken from the lawful owner through theft or fraud, then the property shall be returned to the lawful owner, or restitution provided, as the court determines.

Disposition of Forfeited Property

T.C.A. § 39-11-713(a)

If the defendant owes restitution, the proceeds shall first be directly applied to satisfy any judgments against the defendant for restitution in favor of the victim.

The attorney general shall then be compensated for all expenses incident to the litigation, as approved by the court. Any such costs for appeals shall be provided for by the trial court upon conclusion of the litigation.

Disposition of Forfeited Property

T.C.A. § 39-11-713(a)

The attorney general shall then direct that any public agency be reimbursed for out-of-pocket expenses resulting from the investigation, seizure, and storage of the forfeited property.

Disposition of Forfeited Property

T.C.A. § 39-11-713(b)(1)

The court shall then award the remainder of the funds as follows:

- (1) In the event that the investigating and seizing agency is a state agency, the funds shall be distributed to the state general fund;

Disposition of Forfeited Property

T.C.A. § 39-11-713(b)(3)

(3) In the event that the investigating and seizing agency is the sheriff's office, then the funds shall be distributed to the county, when, upon ratification of this part by the county governing body by resolution, the county has authorized the receipt of the distributed funds and has designated how the funds are to be distributed, **which shall be designated for law enforcement**, the court shall make the award and distribution consistent with the resolution by the county governing body.

Disposition of Forfeited Property

T.C.A. § 39-11-713(b)(3)

When more than one local public agency participated in the investigation and seizure of forfeited property as certified by the attorney general, then the court shall order a distribution according to the participation of each local public agency. Accounting procedures for the financial administration of such funds shall be in keeping with those prescribed by the comptroller of the treasury.

Disposition of Forfeited Property

T.C.A. § 39-11-713(c)

For purposes of this section, a local public agency includes any county or municipal law enforcement agency or commission, any judicial district drug task force established under state law, the district attorney general, or any local department or agency of local government authorized by the attorney general to participate in the investigation.

Disposition of Forfeited Property

T.C.A. § 39-11-713(d)

Funds awarded under this section may not be used to supplement salaries of any public employee or law enforcement officer. Funds awarded under this section may not supplant other local or state funds.

Human Trafficking

T.C.A. § 39-13-312(a)

Manner in Which Proceeds From Forfeitures Are Distributed and Used

Chapter 11, part 7 of this title shall govern the procedure by which property subject to forfeiture pursuant to § 39-11-703(c) is forfeited, and this section shall govern the manner in which proceeds from forfeitures are distributed and used.

Human Trafficking

T.C.A. § 39-13-312(b)

Notwithstanding § 39-11-713, the proceeds from all forfeitures made pursuant to § 39-11-703(c) shall first be applied to the reasonable expenses of the forfeiture proceeding, including the expenses of the district attorney general, and the costs of seizing and maintaining custody of the forfeited property.

Human Trafficking

T.C.A. § 39-13-312(b)

Parties seeking repayment for forfeiture-related expenses shall file a request detailing the expenses incurred in the forfeiture procedure with the judge of the court in which the forfeiture occurred.

Human Trafficking

T.C.A. § 39-13-312(b)

The judge shall, if such judge is satisfied that the expenses claimed were both incurred and reasonable, direct the clerk to pay such expenses from the proceeds prior to transmitting them to the state general fund.

Human Trafficking

T.C.A. § 39-13-312(c)

The clerk of the court where the forfeiture occurs shall transmit forty percent (40%) of the proceeds from all forfeitures made pursuant to § 39-11-703(c) as follows:

(1) Twenty percent (20%) to the law enforcement agency conducting the investigation that resulted in the forfeiture for use in training and equipment for the enforcement of the human trafficking laws; and

Human Trafficking

T.C.A. § 39-13-312(c)

(2) Twenty percent (20%) to the district attorneys general conference for education, expenses, expert services, training or the enhancement of resources for the prosecution of and asset forfeiture in human trafficking cases.

Human Trafficking

T.C.A. § 39-13-312(d) & (e)

The clerk of the court where the forfeiture occurs shall retain five percent (5%) of the proceeds from all forfeitures made pursuant to § 39-11-703(c).

The clerk shall transmit the remainder of the proceeds to the state general fund

Sexual Offenses
Robbery Offenses
Burglary Offenses
Felony Theft Offenses
T.C.A. § 40-33-101 et seq.

Title 40 – Criminal Procedure

Chapter 33 – Forfeitures

Part 1 - Forfeiture of Conveyances

Part 1 - Forfeiture of Conveyances

- 40-33-101. Conveyances subject to forfeiture.
- 40-33-102. Seizure authorized.
- 40-33-103. Commencement of action for determination of forfeiture.
- 40-33-104. Replevin prohibited — Duty of seizing authority.
- 40-33-105. Removal of forfeited conveyance.
- 40-33-106. Jurisdiction over disposition of conveyance.
- 40-33-107. Procedure for determination of forfeiture.
- 40-33-108. Claim of interest in conveyance subject to forfeiture — Possession — Bond.
- 40-33-109. Claim not filed — Disposition of conveyance.
- 40-33-110. Disposition of forfeited conveyance or proceeds of sale of forfeited conveyance.
- 40-33-111. Lien for fees of attorney for accused.

CONVEYANCES SUBJECT TO FORFEITURE

T.C.A. § 40-33-101 *et seq.*

1. Sexual Offenses
2. Robbery Offenses
3. Burglary, Aggravated Burglary, or Especially Aggravated Burglary Offenses
4. Felony Theft Offenses

CONVEYANCES SUBJECT TO FORFEITURE

T.C.A. § 40-33-101(a)

Except as provided in subsection (b), **where there is a final judgment of conviction**, in the discretion of the court, conveyances, including vehicles, aircraft or vessels, are subject to forfeiture if used in the commission of:

- (1) Any offense under title 39, chapter 13, part 5 (sexual offenses);
- (2) Any robbery offense under title 39, chapter 13, part 4;
- (3) A burglary, aggravated burglary, or especially aggravated burglary offense under title 39, chapter 14, part 4; or
- (4) A felony theft offense under title 39, chapter 14, part 1.

CONVEYANCES SUBJECT TO FORFEITURE

T.C.A. § 40-33-102

Seizure Authorized

A conveyance subject to forfeiture under this part may be seized by a sheriff or deputy sheriff upon process issued by any circuit or criminal court having jurisdiction over the property.

Seizure without process may be made if the seizure is incident to an arrest or a search under a search warrant.

CONVEYANCES SUBJECT TO FORFEITURE T.C.A. § 40-33-105

Removal of Forfeited Conveyance

Once a conveyance is forfeited under this part, the sheriff shall remove it for disposition in accordance with law.

CONVEYANCES SUBJECT TO FORFEITURE T.C.A. § 40-33-106

Jurisdiction Over Disposition of Conveyance

In any county having more than one circuit court, or both a circuit court and a criminal court, the court in the county having jurisdiction of the indictment and trial of all matters relating to the offenses for which forfeiture of a conveyance may be imposed shall have exclusive jurisdiction over the disposition of the conveyances.

CONVEYANCES SUBJECT TO FORFEITURE T.C.A. § 40-33-107(4)

Forfeiture Procedure - Hearing

The state or local governing body shall be represented at the hearing by the district attorney general or the county attorney for the county wherein the seizure occurred.

CONVEYANCES SUBJECT TO FORFEITURE T.C.A. § 40-33-107(5)

Forfeiture Procedure - Costs

If the ruling of the court is adverse to the claimant, the clerk of the court shall proceed to direct the county sheriff to sell or dispose of the conveyance in accordance with subdivision (2).

The expenses of storage, transportation, etc., shall be adjudged as part of the cost of the proceeding in the manner as the court shall fix.

CONVEYANCES SUBJECT TO FORFEITURE T.C.A. § 40-33-107(2)

Disposition of Conveyance **PUBLIC SALE**

All conveyances seized under this part shall be sold at public sale by the county sheriff at the direction of the court having jurisdiction over the property in the manner provided by law for judicial sales in civil cases.

CONVEYANCES SUBJECT TO FORFEITURE T.C.A. § 40-33-107(2)

Alternate Disposition

Any vehicle seized by the sheriff's office and forfeited under this part, may, at the direction of the court having jurisdiction over the property, be retained by the sheriff's office and used for purposes of law enforcement.

Any liens that are filed against the vehicle must be satisfied by the law enforcement agency retaining the vehicle.

CONVEYANCES SUBJECT TO FORFEITURE T.C.A. § 40-33-107(2)

Proceeds of Sale

Subject to § 40-33-110, the proceeds that inure to the county under this part shall be earmarked and used exclusively by the sheriff's office for law enforcement purposes.

CONVEYANCES SUBJECT TO FORFEITURE T.C.A. § 40-33-110

Disposition of Forfeited Conveyance Proceeds of Sale of Forfeited Conveyance

Disposition of a forfeited conveyance or proceeds of goods seized under this part shall inure to the benefit of the county in which the goods were seized for enforcement of this part if the goods were seized by county law enforcement officers.

CONVEYANCES SUBJECT TO FORFEITURE T.C.A. § 40-33-110

Disposition of Forfeited Conveyance Proceeds of Sale of Forfeited Conveyance

The forfeited conveyance or the funds derived from the confiscated goods shall go to the law enforcement agency that seized the conveyance and shall be used exclusively for law enforcement purposes by the county.

If the law enforcement agency retains a forfeited conveyance, any liens that are filed against the forfeited conveyance shall be satisfied by the law enforcement agency that retains the conveyance.

Forfeiture Procedures Generally

T.C.A. 40-33-201 et seq.

Forfeiture Procedures Generally

T.C.A. § 40-33-201 *et seq.*

- 40-33-201. Application.
- 40-33-202. Part definitions.
- 40-33-203. Seizure.
- 40-33-204. Forfeiture warrant.
- 40-33-205. Security interests.
- 40-33-206. Claims.
- 40-33-207. Hearing date.
- 40-33-208. Bonding procedure.
- 40-33-209. Hearing officer.
- 40-33-210. Hearing.
- 40-33-211. Property disposition.
- 40-33-212. Settlement agreements.
- 40-33-213. Appeals — Venue.
- 40-33-214. Rules.
- 40-33-215. Cause of action against seizing authority in cases of bad faith.
- 40-33-216. Annual seizure report by department.
- 40-33-217. Attorney's fees.

Forfeiture Procedures Generally

Application

T.C.A. § 40-33-201

All personal property, including conveyances, subject to forfeiture under

§ 39-14-307	Arson
§ 47-25-1105	Personal Rights Protection Act of 1984
§ 53-11-451	Narcotic Drugs and Drug Control (Drugs - Title 39, Chapter 17, Part 4)
§ 55-16-104	Unclaimed or Abandoned Vehicles
§ 55-50-504(g)	Driving while license cancelled, suspended or revoked
§ 55-10-414	Driving under the influence
§ 57-3-411	Intoxicating Liquors
§ 57-5-409	Contraband Beer
§ 57-9-201	Unstamped Beverages
§ 67-4-1020	Contraband Tobacco Products
§ 70-6-202	Hunting and Fishing (Violation of §§ 70-4-116 - 70-4-118)

shall be seized and forfeited in accordance with the procedure set out in this part.

Forfeiture Procedures Generally

Property Disposition

T.C.A. § 40-33-211(a)

All the seizures, confiscations and sales made by county law enforcement personnel pursuant to:

§ 39-14-307	Arson
§ 47-25-1105	Personal Rights Protection Act of 1984
§ 53-11-451	Narcotic Drugs and Drug Control (Drugs - Title 39, Chapter 17, Part 4)
§ 55-10-414	Driving under the influence
§ 57-3-411	Intoxicating Liquors
§ 57-5-409	Contraband Beer
§ 57-9-201	Unstamped Beverages
§ 67-4-1020	Contraband Tobacco Products
§ 70-6-202	Hunting and Fishing (Violation of §§ 70-4-116 - 70-4-118)

shall be paid to the county trustee and shall be used exclusively for the benefit of the seizing county for law enforcement or drug education purposes.

Forfeiture Procedures Generally

Rules

T.C.A. § 40-33-214

Any applicable agency authorized to conduct forfeiture hearings pursuant to

§ 39-14-307	Arson
§ 47-25-1105	Personal Rights Protection Act of 1984
§ 53-11-451	Narcotic Drugs and Drug Control (Drugs - Title 39, Chapter 17, Part 4)
§ 55-10-414	Driving under the influence
§ 55-50-504(g)	Driving while license cancelled, suspended or revoked
§ 57-3-411	Intoxicating Liquors
§ 57-5-409	Contraband Beer
§ 57-9-201	Unstamped Beverages
§ 67-4-1020	Contraband Tobacco Products
§ 70-6-202	Hunting and Fishing (Violation of §§ 70-4-116 - 70-4-118)

may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to supplement and administer this part. However, no such rules shall be inconsistent with this part.

Arson Cases

T.C.A. § 39-14-301 *et seq.*

Arson Cases

T.C.A. § 39-14-307

Forfeiture

All vehicles or property used by the sole owner in the commission of an offense under § 39-14-301, § 39-14-302, § 39-14-303 or § 39-14-304, and anything of value received as compensation for the commission of the offense are subject to forfeiture.

Arson Cases

FORFEITURE PROCEDURE

40-33-201. Application

All personal property, including conveyances, subject to forfeiture under **§ 39-14-307**, § 47-25-1105, § 53-11-451, § 55-16-104, § 55-50-504(g), § 55-10-414, § 57-3-411, § 57-5-409, § 57-9-201, § 67-4-1020, or § 70-6-202, shall be seized and forfeited in accordance with the procedure set out in this part.

Arson Cases

PROPERTY DISPOSITION

T.C.A. § 40-33-211

All the seizures, confiscations and sales made by county law enforcement personnel shall be paid to the county trustee and shall be used exclusively for the benefit of the seizing county for law enforcement or drug education purposes.

Administrative Asset Forfeiture Procedure

Rules of the Tennessee Department of Safety and Homeland Security

Rules of Procedure for Asset Forfeiture Hearings

1340-02-02-.01 SCOPE AND CONSTRUCTION.

(1)

Pursuant to T.C.A. § 4-5-219, T.C.A. § 40-33-214, and T.C.A. § 53-11-201(j), the Tennessee Department of Safety hereby adopts these Rules to be used in the administration and conduct of contested cases concerning property seized pursuant to the Tennessee Drug Control Act; T.C.A. § 53-11-201, et seq.; T.C.A. § 55-10-414; T.C.A. § 55-50-504, T.C.A. § 55-50-506, T.C.A. § 55-5-108, and any other statute pursuant to which the department holds asset forfeiture hearings. These Rules apply instead of the Uniform Rules, Chapter 1360-4-1-.01 thru .20, and any successor or additional rules thereto.

Rules of the Tennessee Department of Safety and Homeland Security

Administrative Asset Forfeiture Hearings

§ 53-11-201	Tennessee Drug Control Act
§ 55-10-414	Driving Under the Influence
§ 55-50-504	Driving While License Cancelled, Suspended or Revoked
§ 55-50-506	Driving While in Possession of Methamphetamine
§ 55-5-108	Violations of Title and Registration Law

DRUG CASES

Title 53 Food, Drugs And Cosmetics Chapter 11 Narcotic Drugs and Drug Control

Part 1 [Reserved]

Part 2 Confiscation

Part 3 Regulations and Registration

Part 4 Criminal Penalties and Enforcement

Drug Cases

T.C.A. § 53-11-201(k)

Forfeiture Proceeding

If a law enforcement agency seizes a motor vehicle as the result of a violation of the drug control law, the agency may elect whether to go forward with the forfeiture proceeding through either an administrative agency or through a court having civil jurisdiction in the county where the seizure occurred.

DRUG CASES

Confiscation / Seizure PROCEDURE

T.C.A. § 53-11-201. Procedure in confiscation.

THE RULES OF PROCEDURE
FOR ASSET FORFEITURE HEARINGS

1340-02-02-.05 DUTIES OF THE SEIZING AGENCY

Drug Cases

T.C.A. § 53-11-451(a)

Goods Subject to Forfeiture

- (1) All controlled substances or controlled substance analogues that have been manufactured, distributed, dispensed or acquired in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4;
- (2) All raw materials, products and equipment of any kind that are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance or controlled substance analogue in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4;
- (3) All property that is used, or intended for use, as a container for property described in subdivision (a)(1) or (a)(2);
- (4) All conveyances, including aircraft, vehicles or vessels that are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale or receipt of property described in subdivision (a)(1) or (a)(2),

Drug Cases

T.C.A. § 53-11-451(a)

Goods Subject to Forfeiture

(5) All books, records, and research products and materials, including formulas, microfilm, tapes and data that are used, or intended for use, in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4;

(6)

(A) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance or controlled substance analogue in violation of the Tennessee Drug Control Act of 1989, compiled in part 3 of this chapter, this part and title 39, chapter 17, part 4, all proceeds traceable to the exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act;

(B) No property shall be forfeited under subdivision (a)(6)(A), to the extent of the interest of an owner, by reason of any act or omission established by the owner to have been committed or omitted without the owner's knowledge or consent; and

(7) All drug paraphernalia as defined by § 39-17-402.

Drug Cases

T.C.A. § 53-11-451(b)

Authority to Seize

Property subject to forfeiture may be seized by the sheriff or deputy sheriff upon process issued by any circuit or criminal court having jurisdiction over the property. Seizure without process may be made if:

- (1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;
- (2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon part 3 of this chapter and this part, or title 39, chapter 17, part 4;

Drug Cases

T.C.A. § 53-11-451(b)

Authority to Seize

(3) The sheriff or deputy sheriff has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The sheriff or deputy sheriff has probable cause to believe that the property was used or is intended to be used in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4.

Drug Cases

T.C.A. § 53-11-451(d)

Detained Property

Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the sheriff subject only to the orders and decrees of the circuit or criminal court.

Drug Cases

T.C.A. § 53-11-451(d)(1) & (2)

Detained Property

When property is seized under part 3 of this chapter and this part, or title 39, chapter 17, part 4, the sheriff may:

- (1) Place the property under seal;
- (2) Remove the property to a place designated by the sheriff;

Drug Cases

T.C.A. § 53-11-451(d)(3)

Detained Property

(3) Take custody of the property and remove it to an appropriate location for disposition in accordance with law; or

Drug Cases

T.C.A. § 53-11-451(d)(4)

Detained Property - Disposition

(4) (A) Regardless of any other method of disposition of property, the sheriff may, **with permission of the court and under such terms and conditions as are approved by the court**, use of the property taken or detained, in the drug enforcement program of the county in which the goods are seized, or, **with approval of the court** having jurisdiction over the property, sell the property and utilize the proceeds for the drug enforcement program of the county in which the property was seized, or both.

Drug Cases

T.C.A. § 53-11-451(e)

Disposition of Property

When property is forfeited under part 3 of this chapter and this part, or Title 39, Chapter 17, Part 4, the sheriff shall remove it for disposition in accordance with law.

Drug Cases

T.C.A. § 53-11-201(b)(1)

Disposition of Property

All property seized and forfeited under this chapter shall be sold at public sale by the sheriff when the seized and forfeited property has been released by the commissioner of safety as now authorized by law.

DRUG CASES

Title 39 Criminal Offenses

Chapter 17 Offenses Against Public
Health, Safety and Welfare

Part 4 Drugs

Drug Cases

FINES & FORFEITURES

T.C.A. § 39-17-420(a)(1)

Special Revenue Fund

Except as provided in subdivision (a)(2) and in subsection (d), all fines and forfeitures of appearance bonds received because of a violation of any provision of Title 39, Chapter 17, Part 4, that are specifically set forth therein, that resulted from an arrest made by the sheriff's office and the proceeds of all goods seized by the sheriff and forfeited under the provisions of T.C.A. § 53-11-451 and disposed of by the sheriff shall be paid to the county trustee and shall be accounted for in a special revenue fund.

See also T.C.A. § 40-33-211(a)(1)



Drug Cases

ALLOCATION OF PROCEEDS

T.C.A. § 39-17-428(c)(1)

Fifty percent of the fine collected pursuant to T.C.A. § 39-17-428(b) is allocated to the special revenue fund. The remaining 50 percent is paid to the county general fund.

Drug Cases

ALLOCATION OF PROCEEDS

T.C.A. § 39-17-428(c)(1)

Notwithstanding T.C.A. § 39-17-420(a)(1) or any other law to the contrary, a portion of any fine collected pursuant to T.C.A. § 39-17-428(b) may be expended to fund programs and services for infants and children who are afflicted by HIV or AIDS.

Drug Cases

FINES & FORFEITURES

T.C.A. § 39-17-420(a)(1)

All financial activities related to funds received under Title 39, Chapter 17, Part 4, must be accounted for in the special revenue fund.

See also T.C.A. § 53-11-415(a).

Drug Cases

FINES & FORFEITURES

T.C.A. § 39-17-420(a)(1)

Moneys in the special revenue fund may be used only for the following purposes:

- (A) Local drug enforcement program;
- (B) Local drug education program;
- (C) Local drug treatment program; and
- (D) Nonrecurring general law enforcement expenditures.

Drug Cases

USE OF PROCEEDS

T.C.A. § 40-33-211(b)

NOTE

Funds derived from seizures, confiscations and sales shall not be used to supplement the salaries of any public employee or law enforcement officer.

All purchases made from the proceeds shall be made in accordance with existing purchasing statutes, including private acts, which establish purchasing provisions or requirements for the county or municipality.

Drug Cases

ACCOUNTABILITY

T.C.A. § 39-17-429(a)

The sheriff shall be accountable to the county legislative body for the proper disposition of the proceeds of goods seized and forfeited under T.C.A. § 53-11-451, and for the fines imposed by T.C.A. § 39-17-428.

Drug Cases

ACCOUNTABILITY

T.C.A. § 39-17-429(b)

An annual audited report of these funds must be submitted by the sheriff to the county legislative body.

In years when the Office of the Comptroller of the Treasury conducts an audit, it shall satisfy this requirement. If no audit is conducted by the comptroller, then an audit must be performed by a certified public accountant in order to satisfy this requirement.

Disposition of Vehicle Used in the Commission of DUI Offense

DUI Offenses

Seizure & Forfeiture of Vehicles

T.C.A. § 55-10-414(a)

The vehicle used in the commission of a person's second or subsequent conviction of § 55-10-401, or the second or subsequent conviction of any combination of § 55-10-401, and a statute in any other state prohibiting driving under the influence of an intoxicant, is subject to seizure and forfeiture in accordance with the procedure established in Title 40, Chapter 33, Part 2.

The department of safety is designated as the applicable agency, as defined by T.C.A. § 40-33-202, for all forfeitures authorized by this section.



DUI Offenses

Seizure & Forfeiture of Vehicles

T.C.A. § 55-10-414(b) & (d)

(b) In order for subsection (a) to be applicable to a vehicle, the conviction making the vehicle subject to seizure and forfeiture must occur in Tennessee and at least one of the previous convictions must have occurred within five years of the current conviction.

(d) Only POST-certified or state-commissioned law enforcement officers will be authorized to seize these vehicles under this section.

DUI Offenses

Seizure & Forfeiture of Vehicles

40-33-201. Application

All personal property, including conveyances, subject to forfeiture under § 39-14-307, § 47-25-1105, § 53-11-451, § 55-16-104, § 55-50-504(g), **§ 55-10-414**, § 57-3-411, § 57-5-409, § 57-9-201, § 67-4-1020, or § 70-6-202, shall be seized and forfeited in accordance with the procedure set out in this part.

DUI Offenses Seizure & Forfeiture of Vehicles T.C.A. § 40-33-210(d) & (g)

Property Disposition

(d) If it is determined that the state has carried the burden of proof with regard to all parties claiming an interest in the property, and the ruling of the administrative law judge is adverse to the claimant or claimants, the property shall be sold or disposed of as provided in § 40-33-211.

(g) The expenses of storage, transportation and other similar costs shall be adjudged as part of the cost of the proceeding in such manner as the administrative law judge shall determine.

DUI Offenses Seizure & Forfeiture of Vehicles T.C.A. § 53-11-201(b)(2)(C)

Property Disposition

Any vehicle seized by the sheriff's office and forfeited under Title 40, Chapter 33, Part 2, may be used in the local drug enforcement program for a period not to exceed five (5) years.

See T.C.A. § 40-33-211(e).

DUI Offenses Seizure & Forfeiture of Vehicles

Property Disposition

Vehicles not used in the local drug enforcement program must be sold.

DUI Offenses Seizure & Forfeiture of Vehicles T.C.A. § 40-33-211(f)

Property Disposition

The revenue derived from the sale of vehicles forfeited under the authority of T.C.A. § 55-10-414 shall be distributed as follows:

DUI Offenses

Seizure & Forfeiture of Vehicles

T.C.A. § 40-33-211(f)(1)

The revenue shall be retained by the sheriff's office and shall be used during each fiscal year to compensate the sheriff's office for reasonable and direct expenses involved in the confiscation, towing, storage, and sale of the forfeited vehicles.

DUI Offenses Seizure & Forfeiture of Vehicles T.C.A. § 40-33-211(f)(1)

All expenses claimed by the sheriff's office shall be subject to audit and review by the comptroller of the treasury for the purpose of determining that expenses claimed by the sheriff are direct and reasonable.

DUI Offenses Seizure & Forfeiture of Vehicles T.C.A. § 40-33-211(f)(2)

Any remaining revenue shall be transmitted to the department of mental health and substance abuse services no later than June 30 of each fiscal year.

Disposition of Vehicle Used by Person Driving On Revoked License

Driving While License Cancelled, Suspended Or Revoked Seizure & Forfeiture of Vehicles T.C.A. § 55-50-504(g)(1)

The vehicle used in the commission of a person's violation of T.C.A. § 55-50-504, when the original suspension or revocation was made for a violation of T.C.A. § 55-10-401, or a statute in another state prohibiting driving under the influence of an intoxicant, is subject to seizure and forfeiture in accordance with the procedure established in Title 40, Chapter 33, Part 2.

The department is designated as the applicable agency, as defined by T.C.A. § 40-33-202, for all forfeitures authorized by this subsection (g).

Driving While License Cancelled, Suspended Or Revoked Seizure & Forfeiture of Vehicles T.C.A. § 55-50-504(g)(2)

For purposes of clarifying this subsection (g) and consistent with the overall remedial purpose of the asset forfeiture procedure, a vehicle is subject to seizure and forfeiture upon the arrest or citation of a person for driving while the person's driving privileges are cancelled, suspended or revoked. A conviction for the criminal offense of driving while the person's driving privileges are cancelled, suspended or revoked is not required.

Driving While License Cancelled, Suspended Or Revoked Seizure & Forfeiture of Vehicles

40-33-201. Application

All personal property, including conveyances, subject to forfeiture under § 39-14-307, § 47-25-1105, § 53-11-451, § 55-16-104, **§ 55-50-504(g)**, § 55-10-414, § 57-3-411, § 57-5-409, § 57-9-201, § 67-4-1020, or § 70-6-202, shall be seized and forfeited in accordance with the procedure set out in this part.

Driving While License Cancelled, Suspended Or Revoked

T.C.A. § 40-33-210(d) & (g)

Property Disposition

(d) If it is determined that the state has carried the burden of proof with regard to all parties claiming an interest in the property, and the ruling of the administrative law judge is adverse to the claimant or claimants, the property shall be sold or disposed of as provided in § 40-33-211.

(g) The expenses of storage, transportation and other similar costs shall be adjudged as part of the cost of the proceeding in such manner as the administrative law judge shall determine.

Driving While License Cancelled, Suspended Or Revoked

T.C.A. § 53-11-201(b)(2)(C)

Property Disposition

Any vehicle seized by the sheriff's office and forfeited under Title 40, Chapter 33, Part 2, may be used in the local drug enforcement program for a period not to exceed five (5) years.

See T.C.A. § 40-33-211(e).

Driving While License Cancelled, Suspended Or Revoked

Property Disposition

Vehicles not used in the local drug enforcement program must be sold.

Driving While License Cancelled, Suspended Or Revoked T.C.A. § 40-33-211(c)

Property Disposition

The revenue derived from the sale of vehicles forfeited under the authority of T.C.A. § 55-50-504(g) shall be distributed as follows:

Driving While License Cancelled, Suspended Or Revoked

T.C.A. § 40-33-211(c)(1)

The revenue shall be retained by the sheriff's office and shall be used during each fiscal year to compensate the sheriff's office for reasonable and direct expenses involved in the confiscation, towing, storage, and sale of the forfeited vehicles.

Driving While License Cancelled, Suspended Or Revoked

T.C.A. § 40-33-211(c)(1)

All expenses claimed by the sheriff's office shall be subject to audit and review by the comptroller of the treasury for the purpose of determining that expenses claimed by the sheriff are direct and reasonable.

Driving While License Cancelled, Suspended Or Revoked

T.C.A. § 40-33-211(c)(2)

Any remaining revenue shall be transmitted to the department of mental health and substance abuse services no later than June 30 of each fiscal year.

Unclaimed or Abandoned Vehicles

T.C.A. § 55-16-101 *et seq.*

UNCLAIMED OR ABANDONED VEHICLES

T.C.A. § 55-16-104 (a) & (b)

Authority To Take Possession

The sheriff may take into custody any motor vehicle found abandoned, immobile, unattended, or used in curbstoning on public or private property; provided, that any motor vehicle used in curbstoning on residential property may not be taken into custody unless the sheriff provides notice on the motor vehicle at least 48 hours prior to the seizure.

The sheriff may employ his own personnel, equipment, and facilities or hire persons, equipment, and facilities for the purpose of removing, preserving, and storing motor vehicles that have been abandoned, immobile, unattended, or used in curbstoning.

UNCLAIMED OR ABANDONED VEHICLES

T.C.A. § 55-16-104 (c)

Curbstoning

Any motor vehicle used in curbstoning is subject to seizure and forfeiture in the same manner as is provided by law for seizure and forfeiture of other items under Title 40, Chapter 33.

You must follow the judicial forfeiture laws.

UNCLAIMED OR ABANDONED VEHICLES

T.C.A. § 55-16-106

Auction

If an abandoned, immobile, or unattended motor vehicle has not been reclaimed as provided for in § 55-16-105, the sheriff shall sell the vehicle at a public auction.

The purchaser of the motor vehicle takes title to the motor vehicle free and clear of all liens and claims of ownership, shall receive a sales receipt from the sheriff, and, upon presentation of the sales receipt, the Department of Revenue will issue a certificate of title to the purchaser.

UNCLAIMED OR ABANDONED VEHICLES

T.C.A. § 40-33-211(i)

Distribution of Revenue

The revenue derived from the sale of motor vehicles forfeited under the authority of § 55-16-104 shall be distributed as follows:

- (1) Seventy-five percent (75%) of the revenue shall be retained by the entity responsible for the seizure;
- (2) Ten percent (10%) of the revenue shall be transferred to the state and placed in the general fund; and
- (3) Fifteen percent (15%) of the revenue shall be transferred to the department of commerce and insurance, division of consumer affairs, for consumer education.

UNCLAIMED OR ABANDONED VEHICLES

T.C.A. § 55-16-106(d)

Proceeds of the Sale

The proceeds of the sale of an abandoned, immobile, or unattended motor vehicle shall be used for payment of the expenses of the auction, the costs of towing, preserving and storing the abandoned, immobile, or unattended motor vehicle, and all notice and publication costs incurred pursuant to § 55-16-105.

UNCLAIMED OR ABANDONED VEHICLES

T.C.A. § 55-16-106(e)(1)

Proceeds of the Sale

Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lienholder for 45 days, and then shall be deposited in a special fund that shall remain available for the payment of auction, towing, preserving, storage and all notice and publication costs that result from placing other abandoned, immobile, or unattended vehicles in custody, whenever the proceeds from a sale of other abandoned, immobile, or unattended motor vehicles are insufficient to meet these expenses and costs.

UNCLAIMED OR ABANDONED VEHICLES

T.C.A. § 55-16-106(e)(2)

Proceeds of the Sale

Whenever the chief fiscal officer of the county finds that moneys in the special fund are in excess of reserves likely to be needed for the purposes thereof, the chief fiscal officer may transfer the excess to the general fund, but in this event, claims against the special fund, if the special fund is temporarily exhausted, shall be met from the general fund to the limit of any transfers previously made thereto pursuant to this section.

THE END