



# County Technical Assistance Service

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## Fingerprinting

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The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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## Fingerprinting

**Reference Number:** CTAS-1351

It is the duty of the sheriff to take or cause to be taken two full sets of fingerprints of each person arrested whether by warrant or *capias* for an offense that results in such person's incarceration in a jail facility or the person's posting of a bond to avoid incarceration. Two full sets of fingerprints must be sent to the Tennessee Bureau of Investigation. Upon receipt of the fingerprints, the Tennessee Bureau of Investigation is required to retain one set of the fingerprints as provided in T.C.A. § 38-6-103 and send one set of the fingerprints to the Federal Bureau of Investigation. T.C.A. § 8-8-201(a)(35)(A). See *also* T.C.A. § 38-3-122(a) (duty of arresting officer to take fingerprints). Notwithstanding the provisions of T.C.A. § 8-8-201(a)(35) (duty of sheriff) or T.C.A. § 38-3-122 (duty of arresting officer) to the contrary, it is the duty of the law enforcement agency responsible for maintaining the arrested person's booking records to take the two full sets of fingerprints as required by such sections. T.C.A. § 8-4-115(a)(2).

A person who is issued a citation pursuant to T.C.A. § 40-7-118 or T.C.A. § 40-7-120 shall not, for purposes of T.C.A. § 8-8-201(a)(35), be considered to have been arrested, and the agency issuing the citation shall not be required to take the fingerprints of such person. T.C.A. § 8-8-201(a)(35)(B). See *also* T.C.A. § 38-3-122(b).

Where individuals are arrested multiple times for a violation of T.C.A. § 39-17-310, the offense of public intoxication, the arresting officer shall note on the arrest report that fingerprints are on file for this individual pursuant to T.C.A. § 38-3-122(a). T.C.A. § 8-4-115(a)(3).

Compliance with these standardized booking procedures shall be the basis for the comptroller of the treasury determining compliance with the fingerprinting requirements of T.C.A. §§ 8-8-201(a)(35) and 38-3-122. The Tennessee Corrections Institute and the Tennessee Law Enforcement Training Academy are required to train correctional personnel in municipal, county and metropolitan jurisdictions in the application of these standardized booking procedures. T.C.A. § 8-4-115(a)(4).

### Audit by Comptroller

The comptroller of the treasury is required to audit or cause to be audited on an annual basis the sheriff's office to determine whether or not the sheriff's office is in compliance with the requirements of T.C.A. § 8-4-115, including but not limited to two full sets of classifiable fingerprints taken at arrest and maintenance by the arresting agency of at least an 85 percent retention rate by the Tennessee Bureau of Investigation of such fingerprints. If the comptroller of the treasury determines that a particular sheriff's office is not in compliance with T.C.A. §§ 8-8-201(a)(35), 38-3-122 and 8-4-115, the comptroller is required to notify the sheriff and the POST Commission of such noncompliance within 30 days of the determination. T.C.A. § 8-4-115(c)(1).

### Show Cause Hearing

The sheriff shall show cause to the POST Commission within 30 days of notification why the sheriff should not be found to be in noncompliance with the requirements of T.C.A. §§ 8-8-201(a)(35) and 38-3-122. If the sheriff does not respond or show good cause within 30 days, the POST Commission is required to decertify the sheriff and impound the salary supplement provided for the sheriff in T.C.A. § 38-8-111. The POST Commission is then required to notify the comptroller of the treasury and both the sheriff and county commission of such action. T.C.A. § 8-4-115(c)(2).

The burden shall be on the sheriff to demonstrate compliance to the POST Commission, and if the sheriff is found to be in compliance with the provisions of T.C.A. § 8-4-115 within 60 days after decertification, the POST Commission is required to rescind the decertification order and cause any salary supplement impounded to be returned to the sheriff except for one-twelfth of the annual supplement. T.C.A. § 8-4-115(c)(3).

### Removal from Office

In addition to any ouster proceeding under the provisions of Title 8, Chapter 47, the sheriff may be removed from office in accordance with the provisions of T.C.A. § 8-4-115. The comptroller of the treasury is required to forward a copy of reports of noncompliance with the provisions of T.C.A. § 8-4-115 by the sheriff to the district attorney general having jurisdiction and to the attorney general and reporter. The district attorney general and the attorney general and reporter must each review the report and determine if there is sufficient cause for further investigation. If further investigation indicates willful misfeasance,

malfeasance or nonfeasance by the sheriff, the district attorney general shall proceed pursuant to Title 8, Chapter 47, to remove the sheriff from office. T.C.A. § 8-4-115(d). At least annually the comptroller of the treasury's office is required to send to each county mayor and sheriff a notice advising them of the provisions of T.C.A. § 8-4-115, including the penalty for noncompliance with T.C.A. §§ 8-8-201(a)(35), 38-3-122 and 38-8-111(g). T.C.A. § 8-4-115(d).

#### Purchase of Fingerprint System

Prior to purchasing an electronic fingerprint imaging system, the sheriff must obtain certification from the Tennessee Bureau of Investigation that the equipment is compatible with the Tennessee Bureau of Investigation's system and the Federal Bureau of Investigation's integrated automated fingerprint identification system. T.C.A. § 8-4-115(e).

#### Funding

The county legislative body is required by law to appropriate funds for the sheriff's office, including funds for personnel and supplies that are sufficient to comply with the provisions of T.C.A. § 8-4-115. T.C.A. § 8-4-115(b).

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

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

Subject to the approval of the General Assembly, a portion of the funds derived from the additional privilege tax levied on all criminal cases instituted in this state as provided for in T.C.A. § 67-4-602(g) may be appropriated to the Tennessee Bureau of Investigation for the purchase, installation, maintenance, and line charges of electronic fingerprint imaging systems. T.C.A. § 8-4-115(f).

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