



County Technical Assistance Service

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Inmate Labor

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Inmate Labor

Reference Number: CTAS-1390

The 13th Amendment to the Constitution provides that "[n]either slavery nor involuntary servitude, except as punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction." U.S. Const. amend. XIII, § 1.

The United States Supreme Court has observed that requiring convicted prisoners to work without pay does not violate the 13th Amendment's prohibition against involuntary servitude. *United States v. Kozminski*, 487 U.S. 931, 943-944, 108 S.Ct. 2751, 2760, 101 L.Ed.2d 788 (1988) ("Our precedents reveal that not all situations in which labor is compelled by physical coercion or force of law violate the Thirteenth Amendment. By its terms the Amendment excludes involuntary servitude imposed as legal punishment for a crime."). "When a person is duly tried, convicted, and sentenced in accordance with the law, no issue of personage or involuntary servitude arises." *Draper v. Rhay*, 315 F.2d 193, 197 (9th Cir.1963).

Pretrial Detainees

Reference Number: CTAS-1391

"Requiring a pretrial detainee to work or be placed in administrative segregation is punishment. Requiring a pretrial detainee to perform general housekeeping chores, on the other hand, is not." *Martinez v. Turner*, 977 F.2d 421, 423 (8th Cir. 1992), *cert. denied*, 507 U.S. 1009, 113 S.Ct. 1658, 123 L.Ed.2d 277 (1993). See also *Channer v. Hall*, 112 F.3d 214, 218-19 (5th Cir. 1997) (recognizing the existence of a judicially created "housekeeping-chore" exception to the prohibition against involuntary servitude). The [Rules of the Tennessee Corrections Institute, Rule 1400-1-.12\(9\)](#) state that written policy shall provide that pretrial detainees shall not be required to work, except to do personal housekeeping.

"[T]he pretrial detainee, who has yet to be adjudicated guilty of any crime, may not be subjected to any form of 'punishment.' But not every inconvenience encountered during pre-trial detention amounts to 'punishment' in the constitutional sense. To establish that a particular condition or restriction of his confinement is constitutionally impermissible 'punishment,' the pretrial detainee must show either that it was (1) imposed with an expressed intent to punish or (2) not reasonably related to a legitimate non-punitive governmental objective, in which case an intent to punish may be inferred." *Martin v. Gentile*, 849 F.2d 863, 870 (4th Cir. 1988) (citations omitted).

The Fourth Circuit Court of Appeals has held that requiring pretrial detainees to perform "general housekeeping responsibilities" does not violate the 13th Amendment. *Hause v. Vaught*, 993 F.2d 1079, 1085 (4th Cir. 1993) (requiring pretrial detainee to participate in cleaning cell block was not inherently punitive and was related to legitimate governmental objective of prison cleanliness, and was not in violation of detainee's right not to be punished prior to conviction for some crime). See also *Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999) (Inmate's status as pretrial detainee does not necessarily mean that he cannot be compelled to perform some service in the prison.).

In *Bijeol v. Nelson*, 579 F.2d 423, 424 (7th Cir. 1978), the Seventh Circuit Court of Appeals held that a pretrial detainee may constitutionally be compelled to perform simple housekeeping tasks in his or her own cell and community areas.

A pretrial detainee has no constitutional right to order from a menu or have maid service. Daily general housekeeping responsibilities are not punitive in nature and for health and safety must be routinely observed in any multiple living unit. In this case, the affidavit of a unit manager at the Metropolitan Correctional Center stated that the approximate daily time required for the assigned housekeeping chores was between 45 and 120 minutes, that the assignments were rotated weekly, and that inmates were required to clean up areas which became unusually messy prior to the regularly scheduled cleaning (in this case Bijeol was requested to clean up some cigarette butts outside the door to his room and adjacent to the television room). The arrangement seems as fair and equitable as is possible when you have groups of people living together, some of whom may tend to be neater than others.

Id. "The work must not be overly burdensome in the time or labor required. In addition, such work must not be assigned so as to preclude a pretrial detainee from effectively participating in his or her defense to pending criminal charges." *Id.* at 425.

In *Ford v. Nassau County Executive*, 41 F.Supp.2d 392 (E.D. N.Y. 1999) the district court found that requiring a pretrial detainee to work without payment as a food cart worker did not deprive the detainee of liberty without due process of law.

Ford's being required to distribute food cannot, by itself, be considered punishment. The work involved, helping to feed other inmates, is clearly the type that may be classified as serving a legitimate government purpose. Furthermore, as Ford himself testified, he was rewarded for his assistance by being given extra food. Compensation, even minimal compensation, is not in keeping with an intent to punish. Moreover, the kinds of chores Ford did, handing out food, mopping and sweeping, more closely resemble those that have been held to be allowable reasonable "house-keeping duties" than those held to be forced labor.

Id. at 397.

It is important to add that certain types of required labor might indicate an intent to punish and, therefore, would constitute a interference with the liberty interest under *Bell v. Wolfish*. While help with the "chores" around the detention center is a reasonable requirement of those who live there, tasks which carry with them demeaning connotations might amount to punishment-for instance, requiring a detainee to clean a toilet with a toothbrush. Alternatively, even non-demeaning tasks may be unduly strenuous for a particular detainee and, therefore, exceed what is acceptable. Although this type of case-by-case review may appear to force courts to engage in unwarranted supervision of prison institutions, in fact, it should be fairly obvious to any professional warden what are acceptable "chores" and what are not. Here, there is no evidence that Ford's chores, despite his medical status, were overly burdensome to him. Under any standard, the tasks assigned to plaintiff were reasonable, appropriate, and not punishment.

Id. at 398-399.

In addition to dismissing Ford's due process claim, the court dismissed Ford's 13th Amendment claim. "In the present case, Ford does not allege that a burdensome work schedule was imposed upon him. Instead, he asserts that while a detainee he could be called upon at any time to help distribute food. This does not smack of the kind of evil prohibited by the Thirteenth Amendment." *Id.* at 401.

In *Brooks v. George County*, 84 F.3d 157 (5th Cir. 1996), the county held Brooks as a pretrial detainee.

In March 1991, during the time period in which he was confined in the George County jail, Brooks requested and was granted trusty status. Brooks specifically asked that he be made trusty. As a trusty, Brooks was not locked down in his cell, but was, instead, allowed the freedom to roam in and out of his cell, Sheriff Howell's office, the jail and the surrounding grounds area.

While incarcerated, Brooks performed, at his own request, various services for Sheriff Howell, George County and others, including several charitable and benevolent organizations. Brooks performed these services on public property as well as private property. Brooks performed these services for two reasons: (1) he was able to secure his release from jail during the day and (2) Brooks earned extra money by working on the outside. Brooks was not compensated for those services he performed on public property, but on several occasions, was paid money or received goods in exchange for the services he rendered on private property.

Id. at 161.

The Fifth Circuit Court of Appeals held that Brooks was not subject to involuntary servitude and thus presented no claim under the 13th Amendment. The court noted that as a pretrial detainee, Brooks was entitled only to be confined until trial. The sheriff was under no obligation to allow Brooks the freedom he enjoyed.

Brooks made the request for trusty status. He desired to leave the jail and chose to work as the price for that right. Since Brooks was not being punished by being detained until trial, the choice between this confinement and work as a trusty cannot be considered coercive because the benefits he received for working were not benefits for which he was otherwise entitled. Admittedly, the choice described might have been a painful one, but it was nonetheless a choice.

Id. at 162-163. See also *Watson v. Graves*, 909 F.2d 1549, 1552-1553 (5th Cir. 1990) (Inmates who voluntarily request work have no 13th Amendment claim.).

Convicted Prisoners

Reference Number: CTAS-1392

Officials having responsibility for the custody and safekeeping of defendants may promulgate and enforce reasonable disciplinary rules and procedures requiring all able-bodied inmates to participate in work programs. Such rules and procedures may provide appropriate punishments for inmates who refuse to work, including, but not limited to, increasing the amount of time the defendant must serve in confinement or changing the conditions of the defendant's confinement, or both. Any such increase in the amount of time a defendant must serve for refusing to participate in a work program shall not exceed the sentence originally imposed by the court. T.C.A. § 40-35-317(b).

The legislature has clearly stated its intent to require able-bodied inmates to participate in work programs. Under T.C.A. § 40-35-317(b), officials in charge of county jails or workhouses may promulgate and enforce disciplinary rules requiring such work and punishing inmates refusing to work. Op. Tenn. Atty. Gen. No. 83-363 (August 15, 1983).

All those convicted of a felony whose imprisonment has been by the jury commuted to imprisonment in the county jail shall be compelled to work out the term of imprisonment at hard labor in the county workhouse in the county where convicted. T.C.A. § 40-23-105.

"The Thirteenth Amendment permits involuntary servitude without pay as punishment after conviction of an offense, even when the prisoner is not explicitly sentenced to hard labor." *Smith v. Dretke*, 2005 WL 3420079 (5th Cir. 2005) (holding the plaintiff failed to show that the defendants violated his rights by making him hold a prison job). See also *Walton v. Texas Dept. of Criminal Justice, Institutional Div.*, 146 Fed.Appx. 717, 718 (5th Cir. 2005) ("Compelling an inmate to work without pay does not violate the Constitution even if the inmate is not specifically sentenced to hard labor. The State maintains discretion to determine whether and under what circumstances inmates will be paid for their labor."); *Ali v. Johnson*, 259 F.3d 317, 317-318 (5th Cir. 2001) (This appeal leads us to reiterate that inmates sentenced to incarceration cannot state a viable 13th Amendment claim if the prison system requires them to work.); *Vanskike v. Peters*, 974 F.2d 806, 809 (7th Cir. 1992) ("The Thirteenth Amendment excludes convicted criminals from the prohibition of involuntary servitude, so prisoners may be required to work."), *cert. denied*, 507 U.S. 928, 113 S.Ct. 1303, 122 L.Ed.2d 692 (1993); *Mikeska v. Collins*, 900 F.2d 833, 837 (5th Cir. 1990) (Forcing inmates to work without pay, and compelling them to work on private property without pay, does not violate the 13th Amendment.); *Murray v. Mississippi Department of Corrections*, 911 F.2d 1167 (5th Cir. 1990) (same); *Moss v. Arbogast*, 888 F.2d 1392, *1 (6th Cir. 1989) (Table) (There is no 13th Amendment violation of the prohibition against involuntary servitude when a prisoner is forced to work without pay.) (citation omitted); *Jones v. Brown*, 793 F.2d 1292, *2 (6th Cir. 1986) (Table) ("However, compelling prisoners to work does not violate the thirteenth amendment.") (citation omitted); *Newell v. Davis*, 563 F.2d 123, 124 (4th Cir. 1977) (There is no 13th Amendment violation of prohibition against involuntary servitude when a prisoner is forced to work without pay), *cert. denied*, 435 U.S. 907, 98 S.Ct. 1455, 55 L.Ed.2d 498 (1978); *Draper v. Rhay*, 315 F.2d 193, 197 (9th Cir.) ("When a person is duly tried, convicted and sentenced in accordance with the law, no issue of peonage or involuntary servitude arises."), *cert. denied*, 375 U.S. 915, 84 S.Ct. 214, 11 L.Ed.2d 153 (1963); *Borror v. White*, 377 F.Supp. 181, 183 (W.D. Va. 1974) (There exists no constitutional right on the part of a state prisoner to be paid for his labor.); *McLaughlin v. Royster*, 346 F.Supp. 297, 311 (E.D. Va. 1972) ("Prisoners validly convicted may be forced to perform work, whether or not compensated and whether or not related to purposes of rehabilitation, so long as it does not amount to cruel and unusual punishment."). But see *Anderson v. Morgan*, 898 F.2d 144 (Table) (4th Cir. 1990) (Forcing an inmate to perform work that inures solely to an individual's private benefit, as opposed to the public benefit, is not as plainly allowed under the 13th Amendment's exception for work imposed as punishment for crime.), citing *Matthews v. Reynolds*, 405 F.Supp. 50 (W.D. Va. 1975).

"Compelling prison inmates to work does not contravene the Thirteenth Amendment. However there are circumstances in which prison work requirements can constitute cruel and unusual punishment. [F]or prison officials knowingly to compel convicts to perform physical labor which is beyond their strength, or which constitutes a danger to their lives or health, or which is unduly painful constitutes an infliction of cruel and unusual punishment prohibited by the Eighth Amendment to the Constitution of the United States as included in the 14th Amendment." *Ray v. Mabry*, 556 F.2d 881, 882 (8th Cir. 1977) (per curiam) (citations omitted). See also *Berry v. Bunnell*, 39 F.3d 1056 (9th Cir. 1994) (The 13th Amendment does not apply where prisoners are required to work in accordance with prison rules. And the Eighth Amendment does not apply unless prisoners are compelled to perform physical labor that is beyond their strength, endangers their lives or health, or causes undue pain.); *Madewell v. Roberts*, 909 F.2d 1203,

1207 (8th Cir.1990) (“Cruel and unusual punishment encompasses (1) deliberate indifference to serious medical needs, and (2) compelled labor beyond an inmate’s physical capacity, that is, labor which is (a) beyond the inmate’s strength, (b) dangerous to his or her life or health, or (c) unduly painful.”).

Conversely, inmates have no constitutional right to work or to be paid for work. And, while work activity is preferable to idleness, the conferral of a job upon an inmate is a matter within the sound discretion of jail administrators. Finally, inmates have no constitutional right to be paid for idle time. *Kennibrew v. Russell*, 578 F.Supp. 164, 169 (E.D. Tenn. 1983), citing *Manning v. Lockhart*, 623 F.2d 536, 538 (8th Cir.1980) and *Inmates, Washington County Jail v. England*, 516 F.Supp. 132, 141 (E.D. Tenn. 1980). See also *Carter v. Tucker*, 69 Fed.Appx. 678, 680 (6th Cir. 2003) (“A prisoner has no constitutional right to prison employment or a particular prison job. Further, as the Constitution and federal law do not create a property right for inmates in a job, they likewise do not create a property right to wages for work performed by inmates.”); *Sotherland v. Myers*, 41 Fed.Appx. 752, 753 (6th Cir. 2002) (Prisoners do not have a constitutionally protected right to a prison job.); *Clegg v. Bell*, 3 Fed.Appx. 398, 399 (6th Cir. 2001) (State prisoners possess no right to a specific prison job.); *Newsom v. Norris*, 888 F.2d 371, 374 (6th Cir. 1989).

“[T]he Constitution does not create a property or liberty interest in prison employment [and] any such interest must be created by state law by ‘language of an unmistakably mandatory character.’” *Miller v. Campbell*, 108 F.Supp.2d 960, 967 (W.D. Tenn. 2000), citing *Newsom v. Norris*, 888 F.2d 371, 374 (6th Cir. 1989) (citations omitted) (quoting *Ingram v. Papalia*, 804 F.2d 595, 596-597 (10th Cir. 1986)); *Watts v. Morgan*, 572 F.Supp. 1385, 1388 (N.D. Ill. 1983). “As the Constitution and federal law do not create a property right for inmates in a job, they likewise do not create a property right to wages for work performed by inmates.” *Id.*, (citing cases). “Rather, prison administrators may assign inmates jobs and wages at their discretion.” *Id.*, (citations omitted).

In *Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999), the Third Circuit Court of Appeals found that the 13th Amendment does not preclude prison authorities from compelling a prisoner to work during the pendency of his or her appeal from a conviction. Likewise, other circuits have held that a person sentenced to serve a term of imprisonment can be required to work during the time his or her appeal is pending before a reviewing court. See *Stiltner v. Rhay*, 322 F.2d 314, 315 (9th Cir. 1963) (“There is no federally protected right of a state prisoner not to work while imprisoned after conviction, even though that conviction is being appealed.”). See also *Plaisance v. Phelps*, 845 F.2d 107, 108 (5th Cir. 1988) (“The fact that appellant is appealing does not require the district court to assume that his conviction was other than duly obtained.”); *Omasta v. Wainwright*, 696 F.2d 1304, 1305 (11th Cir. 1983) (holding that “where a prisoner is incarcerated pursuant to a presumptively valid judgment ... the Thirteenth Amendment’s prohibition against involuntary servitude is not implicated even though the conviction may be subsequently reversed”).

Pursuant to T.C.A. § 41-2-147(a), any sheriff having responsibility for the custody of any person sentenced to a local jail pursuant to the provisions of T.C.A. § 40-35-302 (misdemeanor sentence), T.C.A. § 40-35-306 (split confinement), T.C.A. § 40-35-307 (probation coupled with periodic confinement) or T.C.A. § 40-35-314 (felon confined in local jail) shall, when such person has become eligible for work-related programs pursuant to such sections, be authorized to permit that person to perform any of the duties set out in T.C.A. § 41-2-123 or T.C.A. § 41-2-146.

Trustee status for sexual offenders. In accordance with TCA 41-51-104(a and b), no person who has been convicted of an offense that will require the person to register as a sexual offender pursuant to the provisions of title 40, chapter 39, part 2, and who is being housed in a county or municipal jail or workhouse, shall be eligible for, nor shall such person be placed on, trusty status. The provisions of subsection (a) are applicable regardless of whether the person is: (1) Sentenced to the department of correction but is serving the sentence in a county or municipal jail or workhouse pursuant to contract or is sentenced to confinement in a county or municipal jail or workhouse; or (2) Sentenced to the department of correction but is being housed in a county or municipal jail or workhouse while awaiting transfer to the department.

Road Work

Reference Number: CTAS-1393

When any prisoner has been sentenced to imprisonment in a county jail for a period not to exceed 11 months and 29 days, the sheriff is authorized to permit the prisoner to work on the county roads or within

municipalities within the county on roads, parks, public property, public easements or alongside public waterways up to a maximum of 50 feet from the shoreline . T.C.A. § 41-2-123(b)(1).

It is the duty of such prisoners to pick up and collect litter, trash and other miscellaneous items that are unsightly to the public and that have accumulated on the county roads. All such prisoners participating in this work program shall be under the supervision of the county sheriff or the sheriff's representative. Prisoners used by a municipality shall be supervised by representatives of the municipality. The prisoners may be used by municipalities for such duties or manual labor as the municipality deems appropriate. T.C.A. § 41-2-123(b)(2).

Neither the state nor any municipality, county or political subdivision thereof, nor any employee or officer thereof, shall be liable to any person for the acts of any prisoner while on a work detail, while being transported to or from a work detail, while attempting an escape from a work detail, or after escape from a work detail. T.C.A. § 41-2-123(d)(1).

Neither the state nor any municipality, county, or political subdivision thereof, nor any employee or officer thereof, shall be liable to any prisoner or prisoner's family for death or injuries received while on a work detail, other than for medical treatment for the injury during the period of the prisoner's confinement. T.C.A. § 41-2-123(d)(2).

Jail Maintenance Work

Reference Number: CTAS-1394

When any prisoner has been sentenced to imprisonment in a county jail or is serving time in the county jail pursuant to an agreement with the Department of Correction, the sheriff is authorized to permit the prisoner to participate in work programs. T.C.A. § 41-2-146(a).

Jail or Workhouse Sentences of less than one year

Reference Number: CTAS-2133

In accordance with T.C.A. § 40-20-117:

(a) Whenever any person is sentenced to imprisonment in a county jail or workhouse for a period not to exceed eleven (11) months and twenty-nine (29) days, the judge of the court in which the sentence is imposed may, in the judge's discretion, include in the order of judgment suitable provisions and directions to the officer to whose custody the prisoner is committed for safekeeping as will ensure that the convicted person will be allowed to serve the sentence on nonconsecutive days, which may include, but is not limited to, weekends, between hours to be specified in the judgment, which provisions or directions may be revoked, suspended or amended from time to time by the judge of the committing court until the sentence is served or until the convicted person is lawfully released prior to the expiration of the person's sentence.

(b) The sheriff, warden, superintendent or other official having responsibility for the safekeeping of the convicted person in any jail or workhouse shall adopt procedures for the release of the convicted person at the times specified in the order of judgment and for receiving the person back into custody at the specified times. Willful failure of any official to comply with the directions of the court constitutes contempt of court, punishable as provided by law for contempt generally.

(c) Failure of the convicted person to surrender to the custody of the sheriff, warden, superintendent or other official responsible for the convicted person's safekeeping in the jail or workhouse within the time specified in the order of judgment constitutes grounds for the suspension or revocation of the privilege granted, in the discretion of the court. The order of judgment may specify time limits beyond which a continued absence shall be considered an escape and the offender shall then be liable to punishment for escape as provided by law; provided, that the person sentenced may elect to serve the person's sentence on consecutive days.

Sentence Reduction Credits

Reference Number: CTAS-1395

There is no right under the Constitution to earn or receive sentence credits. *Miller v. Campbell*, 108 F.Supp.2d 960, 966 (W.D. Tenn. 2000), citing *Hansard v. Barrett*, 980 F.2d 1059, 1062 (6th Cir. 1992). Neither is there any fundamental right to parole or to release from a sentence of incarceration that has itself been lawfully imposed. *Id.*, citing *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1, 7, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979).

Road work performed by a prisoner under T.C.A. § 41-2-123(b) shall be credited toward reduction of the prisoner's sentence as follows: for each one day worked on the road by the prisoner, the prisoner's sentence shall be reduced by two days. T.C.A. § 41-2-123(b)(3). Work performed by a prisoner under T.C.A. § 41-2-146 shall be credited toward reduction of the prisoner's sentence as follows: for each one day worked on such duties by the prisoner, the sentence shall be reduced by two days. T.C.A. § 41-2-146(b). See also T.C.A. § 41-2-147 (Work performed by a prisoner under T.C.A. § 41-2-147 shall be credited toward reduction of the prisoner's sentence as follows: for each one day worked on such duties by the prisoner, the sentence shall be reduced by two days.); Op. Tenn. Atty. Gen. No. 03-125 (September 29, 2003).

Any prisoner receiving sentence credits under T.C.A. § 41-2-147 is not eligible for good time credits authorized by T.C.A. § 41-2-111. T.C.A. § 41-2-147(c).

FELONY OFFENDERS. Sentence reduction credits for good institutional behavior as authorized by T.C.A. § 41-21-236 for state prisoners serving sentences in county jails shall likewise apply in accordance with the terms of T.C.A. § 41-21-236, and under the criteria, rules and regulations established by the Department of Correction, to all felony offenders serving sentences of one or more years in local jails or workhouses and to all inmates serving time in county jails or workhouses because the inmate's commitment to the Department of Correction has been delayed due to invocation of the governor's emergency overcrowding powers or through an injunction from a federal court restricting the intake of inmates into the Department of Correction. When T.C.A. § 41-21-236 is applied to such offenders, references therein to "warden" are deemed references to the superintendent or jailer, as appropriate. Such felony offenders are not eligible to receive any other sentence credits for good institutional behavior provided that in addition to the sentence reduction credits for good institutional behavior as authorized by T.C.A. § 41-21-236, such felony offenders may receive any credits for which they are eligible under Title 41, Chapter 2, for work performed or satisfactory performance of job, educational or vocational programs. T.C.A. § 41-21-236(d).

With respect to sentence reduction credits, when a state inmate is serving a sentence in a county jail the sheriff is deemed to be a warden pursuant to T.C.A. § 41-21-236(d) and is, therefore, required to keep written records on a monthly basis of the sentence reduction credits a prisoner has earned. T.C.A. § 41-21-236(a)(3). Because prisoners may become ineligible to earn sentence reduction credits (see T.C.A. § 41-21-236(b)(7)) and may also be deprived of sentence reduction credits they have already earned (see T.C.A. § 41-21-236(a)(5), (6)), these records must reflect any actions that either render a prisoner ineligible to earn sentence credits or deprive a prisoner of previously earned sentence reduction credits. *Cooley v. May*, 2001 WL 1660830, *6 (Tenn. Ct. App. 2001).

"Although no statute or rule expressly requires a sheriff housing a state prisoner to send an accounting of a prisoner's sentence reduction credits to the Department of Correction, this obligation is a necessary part of T.C.A. § 41-21-236(a)(3). It would be nonsensical to allow state prisoners to earn sentence reduction credits while they are incarcerated in a county jail but then not to require a sheriff to inform the Department of Correction – the legal custodian of the prisoner – how many sentence reduction credits the prisoner had earned or forfeited on a monthly basis." *Id.*

A defendant is given credit on his sentence by the trial court for any period of time in which the defendant was committed and held in the county jail or workhouse pending arraignment and trial, provided the time spent in jail arises out of the original offense for which the defendant was tried. Tenn. Code Ann. § 40-23-101(c). The statute provides specifically in pertinent part:

The trial court shall, at the time the sentence is imposed and the defendant is committed to jail, the workhouse or the state penitentiary for imprisonment, render the judgment of the court so as to allow the defendant credit on the sentence *for any period of time* for which the defendant was committed and held in the city jail or juvenile court

detention prior to waiver of juvenile court jurisdiction, or county jail or workhouse, pending arraignment and trial.

(emphasis added). The provisions of this code section are mandatory. *Stubbs v. State*, 216 Tenn. 567, 393 S.W.2d 150 (1965). Pretrial jail credit must be documented by the court in the judgment order. Tenn. Code Ann. § 40-35-209(e)(1)(P). Pretrial jail credits affect release eligibility and sentence expiration in the same manner as other types of credit for time served. Tenn. Attny. Gen 11-12 (January 27, 2011)

Good Time Credit

Reference Number: CTAS-1396

Each prisoner who has been sentenced to the county jail for any period of less than one year on either a misdemeanor or a felony, and who behaves uprightly, shall have deducted from the sentence imposed by the court time equal to one-quarter of such sentence. In calculating the amount of good time credit earned, the one-quarter reduction shall apply to the entire sentence, including pretrial and posttrial confinement. Fractions of a day's credit for good time of one-half or more shall be considered a full day's credit. If any prisoner violates the rules and regulations of the jail or otherwise behaves improperly, the sheriff may revoke all or any portion of the prisoner's good time credit provided that the prisoner is given a hearing in accordance with due process before a disciplinary review board and is found to have violated the rules and regulations of the institution. T.C.A. § 41-2-111(b).

Any prisoner receiving sentence credits under T.C.A. § 41-2-147 is not eligible for good time credits authorized by T.C.A. § 41-2-111. T.C.A. § 41-2-147(c).

Disciplinary Review Board

Reference Number: CTAS-1397

Each county is required to have a disciplinary review board that shall be composed of six impartial members, one or more of whom may be members of the jail staff. Members of the disciplinary review board are appointed by the sheriff or the jail administrator, subject to approval by the county legislative body. Members serve for a period of two years, except that appointments made to fill unexpired terms are for the period of such unexpired terms. No less than one and no more than three of the members of the disciplinary review board are required to transact the business authorized by law. Members of the board, while acting in good faith, shall not be subject to civil liability relative to the performance of duties delegated to the board by law. T.C.A. § 41-2-111(c).

The prisoner shall be given notice of the disciplinary hearing and shall have the right to call witnesses in the prisoner's behalf. Decisions of the disciplinary review board may be appealed to the sheriff. T.C.A. § 41-2-111(d).

Except in Shelby County, the county legislative body is authorized to establish the rate of compensation for members of the disciplinary review board. T.C.A. § 41-2-111(c)(5).

Punishment for Refusing to Work

Reference Number: CTAS-1398

Except as provided in T.C.A. § 41-2-150(b), any person sentenced to the county jail for either a felony or misdemeanor conviction in counties with programs whereby prisoners work either for pay or sentence reduction or both shall be required to participate in such work programs during the period of incarceration. Any prisoner who refuses to participate in such programs when work is available shall have any sentence reduction credits received pursuant to the provisions of T.C.A. § 41-2-123 or T.C.A. § 41-2-146 reduced by two days of credit for each one day of refusal to work. Any prisoner who refuses to participate in such work programs who has not received any sentence reduction credits pursuant to such sections may be denied good time credit in accordance with the provisions of T.C.A. § 41-2-111(b), and may also be denied any other privileges given to inmates in good standing for refusing to work. T.C.A. § 41-2-150(a).

The only exceptions to the requirements of T.C.A. § 41-2-150(a) are for those who, in the opinion of the sheriff, would present a security risk or a danger to the public if allowed to leave the confines of the jail

and for those who, in the opinion of a licensed physician or licensed medical professional, should not perform such labor for medical reasons. T.C.A. § 41-2-150(b).

“The Eighth Amendment requires prison officials to provide humane conditions of confinement. A prison official may be liable for denying an inmate humane conditions of confinement only if he or she ‘knows of and disregards an excessive risk to inmate health or safety.’ There is no dispute that forcing an inmate to work beyond his physical abilities could pose a serious risk to an inmate’s health or safety.” *Moore v. Moore*, 111 Fed.Appx. 436, 438 (8th Cir. 2004) (holding that assigning prison inmate, who suffered from advanced osteoarthritis in his back, to work detail that included cleaning prison yard and clearing ice and snow from walkways did not amount to cruel and unusual punishment in violation of his Eighth Amendment rights, where inmate was subject to certain work restrictions and he worked within the restrictions while on the work detail). *Cf. Williams v. Norris*, 148 F.3d 983, 987 (8th Cir. 1998) (finding sufficient evidence that prison officials violated the Eighth Amendment by forcing an inmate to work in excess of his medical restrictions).

Pursuant to T.C.A. § 41-2-120(a), any prisoner refusing to work or becoming disorderly may be confined in solitary confinement or subjected to such other punishment, not inconsistent with humanity, as may be deemed necessary by the sheriff for the control of the prisoners, including reducing sentence credits pursuant to the procedure established in T.C.A. § 41-2-111. Such prisoners refusing to work, or while in solitary confinement, shall receive no credit for the time so spent. T.C.A. § 41-2-120(b).

In *Hope v. Pelzer*, 240 F.3d 975 (2001), the United States Court of Appeals for the Eleventh Circuit held that “the policy and practice of cuffing an inmate to a hitching post or similar stationary object for a period of time that surpasses that necessary to quell a threat or restore order is a violation of the Eighth Amendment.” *Id.* at 980-981. And in *Hope v. Pelzer*, 536 U.S. 730, 737, 122 S.Ct. 2508, 2514, 153 L.Ed.2d 666 (2002), the United States Supreme Court agreed. “In 1995, Alabama was the only State that followed the practice of chaining inmates to one another in work squads. It was also the only State that handcuffed prisoners to ‘hitching posts’ if they either refused to work or otherwise disrupted work squads.” *Id.* at 733, 122 S.Ct. at 2512. The Supreme Court stated:

As the facts are alleged by Hope, the Eighth Amendment violation is obvious. Any safety concerns had long since abated by the time petitioner was handcuffed to the hitching post because Hope had already been subdued, handcuffed, placed in leg irons, and transported back to the prison. He was separated from his work squad and not given the opportunity to return to work. Despite the clear lack of an emergency situation, the respondents knowingly subjected him to a substantial risk of physical harm, to unnecessary pain caused by the handcuffs and the restricted position of confinement for a 7-hour period, to unnecessary exposure to the heat of the sun, to prolonged thirst and taunting, and to a deprivation of bathroom breaks that created a risk of particular discomfort and humiliation. The use of the hitching post under these circumstances violated the “basic concept underlying the Eighth Amendment[, which] is nothing less than the dignity of man. This punitive treatment amounts to gratuitous infliction of “wanton and unnecessary” pain that our precedent clearly prohibits.

Id. at 738, 122 S.Ct. at 2514-2515. *See also Gates v. Collier*, 501 F.2d 1291, 1306 (5th Cir. 1974) (holding the practice of handcuffing inmates to a fence and to cells for long periods of time and forcing inmates to stand, sit or lie on crates, or stumps, or otherwise maintain awkward positions for prolonged periods violates the Eighth Amendment and offends contemporary concepts of decency, human dignity, and precepts of civilization); *Ort v. White*, 813 F.2d 318, 325 (11th Cir. 1987) (holding that an officer’s temporary denials of drinking water to an inmate who repeatedly refused to do his share of the work assigned to a farm squad “should not be viewed as punishment in the strict sense, but instead as necessary coercive measures undertaken to obtain compliance with a reasonable prison rule, *i.e.*, the requirement that all inmates perform their assigned farm squad duties”); *Murray v. Unknown Evert*, 84 Fed.Appx. 553 (6th Cir. 2003) (The mere fact that state prisoner was placed in detention, with nothing more, was insufficient to state an Eighth Amendment claim under § 1983; he did not allege that his detention was more severe than the typical conditions of segregation or that he was deprived of the minimum civilized measures of life’s necessities.).

“It is not constitutionally permissible for officers to administer a beating as punishment for a prisoner’s past misconduct,” nor may government officials use gratuitous force against a prisoner who has been already subdued or incapacitated. *Skritch v. Thornton*, 280 F.3d 1295, 1300-1303 (11th Cir. 2002).

Under the Eighth Amendment, force is deemed legitimate in a custodial setting as long as it is applied “in a good faith effort to maintain or restore discipline [and not] maliciously and sadistically to cause harm.” To determine if an application of force was applied maliciously and sadis-

tically to cause harm, a variety of factors are considered including: "the need for the application of force, the relationship between that need and the amount of force used, the threat reasonably perceived by the responsible officials, and any efforts made to temper the severity of a forceful response." From consideration of such factors, "inferences may be drawn as to whether the use of force could plausibly have been thought necessary, or instead evinced such wantonness with respect to the unjustified infliction of harm as is tantamount to a knowing willingness that it occur." Moreover, an officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force can be held personally liable for his nonfeasance.

Id.

In *Skrnich*, officers were called to Skrtich's cell to perform a "cell extraction" because he had refused to vacate his cell so it could be searched. Skrtich was on "close management status" due to his history of disciplinary problems. Skrtich's prison records set out his disciplinary problems, which included a conviction for aggravated assault with a deadly weapon for repeatedly stabbing a prison guard. Skrtich had been subject to several cell extractions in the past. The officers arrived at Skrtich's cell wearing riot gear. The officers entered Skrtich's cell and used an electronic shield to shock Skrtich, knocking him to the floor. Once on the floor, the officers kicked him repeatedly in the back, ribs and side, and one of the officers struck him with his fists. Three times, after falling, Skrtich was lifted onto his knees and the beating continued each time. Two officers watched and did nothing to stop the beating. At some point, one of those officers verbally threatened Skrtich and actively participated in the assault by knocking Skrtich to the ground several times after the other officers picked him up, and by slamming his head into the wall. *Id.* at 1299-1300. As a result of his injuries, Skrtich had to be airlifted by helicopter to a hospital. The kind of injuries Skrtich suffered included multiple rib fractures, back injuries, lacerations to the scalp, and abdominal injuries requiring nine days of hospitalization and several months of rehabilitation. *Id.* at 1302.

The court found that in "the absence of any evidence that any force, much less the force alleged here, was necessary to maintain order or restore discipline, it is clear that Skrtich's Eighth Amendment rights were violated." *Id.*

Other Work Permitted for Inmates

Reference Number: CTAS-1399

Inmates housed in a county jail may voluntarily perform any labor on behalf of a charitable organization or a nonprofit corporation or a governmental entity. T.C.A. § 41-3-106(b)(2). See also T.C.A. § 41-2-148(b)(2); Op. Tenn. Atty. Gen. No. 03-075 (June 18, 2003).

Inmate Labor for Private Purposes Prohibited

Reference Number: CTAS-1400

No sheriff, jailer or other person responsible for the care and custody of inmates housed in a county jail may employ, require or otherwise use any such inmate housed therein to perform labor that will or may result directly or indirectly in such sheriff's, jailer's or other person's personal gain, profit or benefit or in gain, profit or benefit to a business partially or wholly owned by such sheriff, jailer or other person. This prohibition shall apply regardless of whether the inmate is or is not compensated for any such labor. T.C.A. § 41-2-148(a). See also Op. Tenn. Atty. Gen. No. 03-075 (June 18, 2003).

No sheriff, jailer or other person responsible for the care and custody of inmates housed in a county jail may permit any such inmate housed therein to perform any labor for the gain, profit or benefit of a private citizen, or for-profit corporation, partnership or other business unless such labor is part of a court-approved work release program or unless the work release program operates under a commission established pursuant to T.C.A. § 41-2-134. T.C.A. § 41-2-148(b)(1). See also Op. Tenn. Atty. Gen. No. 03-125 (September 29, 2003).

Penalties for Violating Inmate Labor for Private Purposes

Reference Number: CTAS-1401

Any sheriff, jailer or other person responsible for the custody of an inmate housed in a local facility who violates the provisions of T.C.A. § 41-2-148 regarding inmate labor for private purposes, upon such person's first such conviction therefor, commits a misdemeanor and shall be punished by a fine equal to the value of the services received from the inmate or inmates and imprisonment for not less than 30 days nor more than 11 months and 29 days. Upon a second or subsequent conviction for a violation of T.C.A. § 41-2-148, such sheriff, jailer or other person is guilty of a felony and shall be punished by a fine of not less than the value of the services received from the inmate or inmates nor more than \$5,000 and imprisonment for not less than one nor more than five years. If the person violating T.C.A. § 41-2-148 for the second or subsequent time is a public official, in addition to the punishment set out above such person shall immediately forfeit his office and shall be forever barred from holding public office in this state. T.C.A. § 41-2-148(d)(1).

Any private citizen, corporation, partnership or other business knowingly and willfully using inmate labor in violation of T.C.A. § 41-2-148(b) commits a Class A misdemeanor and, upon conviction, shall be punished by a fine of \$1,000 and by imprisonment for not more than 11 months and 29 days. Each day inmate labor is used in violation of T.C.A. § 41-2-148(b) constitutes a separate offense. T.C.A. § 41-2-148(d)(2).

In the case of *In re Williams*, 987 S.W.2d 837 (Tenn. 1998), the Tennessee Supreme Court heard the appeal of Judge Billy Wayne Williams from the Court of the Judiciary's judgment recommending that he be removed from the office of general sessions court judge of Lauderdale County. Judge Williams had, among other things, used an inmate from the county jail to help build a house for his son.

"Judge Williams asserted that he was unaware that the practice of using prison labor for personal work was illegal. He believed that he had committed no impropriety because other county officials had also used prison labor as an 'informal work release program.' Although several other witnesses testified that private individuals in Lauderdale County had a long standing practice of using inmate labor for personal work, it was undisputed that Lauderdale County did not have a formal, approved work release program." *Id.* at 838-839.

Noting that the use of an inmate for a private purpose is a criminal offense, the court found that neither assertion constituted a defense to the disciplinary charges and held that the judge's use of an inmate from the county jail to help build a house for his son violated several canons of the Code of Judicial Conduct. *Id.* at 841-842. The Supreme Court affirmed the Court of the Judiciary's recommendation that Judge Williams be removed from office. *Id.* at 844.

Forcing an inmate to perform work that inures solely to an individual's private benefit, as opposed to the public benefit, is not as plainly allowed under the 13th Amendment's exception for work imposed as punishment for crime. *Anderson v. Morgan*, 898 F.2d 144 (Table) (4th Cir. 1990), *citing Matthews v. Reynolds*, 405 F.Supp. 50 (W.D. Va. 1975).

In *Jordan v. State ex rel. Williams*, 397 S.W.2d 383 (Tenn. 1965), a county commissioner was ousted for utilizing for his own benefit equipment and supplies of the Shelby County Penal Farm and labor of its inmates.

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