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Punishment for Refusing to Work

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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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Table of Contents

Punishment for Refusing to Work 3

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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. *Skrtich 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 sadistically 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 *Skrtich*, 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*.

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