



# County Technical Assistance Service

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## Work Release

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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.

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## Work Release

**Reference Number:** CTAS-1451

All counties, except Shelby County, are authorized to permit certain prisoners to leave the workhouse or jail during reasonable and necessary hours for occupational, scholastic or medical purposes as provided in T.C.A. §§ 41-2-127 - 41-2-132.

Shelby County is required to permit certain prisoners to leave the workhouse or jail during reasonable and necessary hours for occupational, scholastic or medical purposes as provided in T.C.A. §§ 41-2-127 - 41-2-132.

## Misdemeanor Prisoners

**Reference Number:** CTAS-1452

Upon the application of the superintendent of the workhouse, the board of workhouse commissioners, if there is one, otherwise the judge of the circuit court, criminal court or general sessions court having jurisdiction in the county, may by order direct the superintendent of the workhouse to permit a prisoner serving a misdemeanor sentence to leave the workhouse during necessary and reasonable hours for the purpose of working at the prisoner's employment, conducting the prisoner's own business or other self-employed occupation including, in the case of a woman, housekeeping and attending to the needs of her family, seeking employment, attending an educational institution or securing medical treatment. T.C.A. § 41-2-128(a).

Similarly, the judge of the circuit court, criminal court or general sessions court having jurisdiction in the county where the person is imprisoned may, upon application of the sheriff, enter a like order for the same purpose for jail prisoners. The order may be rescinded or modified at any time with or without notice to the prisoner. T.C.A. § 41-2-128(a).

## Felony Prisoners

**Reference Number:** CTAS-1453

Prisoners serving a felony sentence in the county workhouse may be allowed to leave the county workhouse during necessary and reasonable hours for occupational, scholastic or medical purposes. T.C.A. § 41-2-128(b).

Any individual serving a felony sentence based on a crime against person or property who has a previous sentence defined as a felony against person or property, as defined by the laws of the state of Tennessee or any other state of the United States or by the criminal statutes of the United States, shall not be eligible to apply for release from the county workhouse for occupational, scholastic or medical purposes. T.C.A. § 41-2-128(b).

## DUI Offenders

**Reference Number:** CTAS-1454

Notwithstanding the provisions of T.C.A. § 41-2-128, T.C.A. § 55-10-403(a)(1) or T.C.A. § 55-50-504(a)(2) to the contrary, the judge may sentence persons convicted of a second violation of T.C.A. § 55-10-401 (driving under the influence of an intoxicant or drug) or T.C.A. § 55-50-504(a)(2) (driving while license cancelled, suspended or revoked), to the work release program established pursuant to T.C.A. § 41-2-128 if, prior to doing so, the following conditions have been met:

1. An investigative report is completed and considered by the judge, with such report confirming the defendant's employment and the employer's willingness to participate in the work release program, including, but not limited to, reports to monitor the defendant's attendance, performance, and response to treatment;
2. A plan acceptable to the judge is established to provide for monitoring the defendant's whereabouts while at or on the defendant's job; and

3. The defendant agrees to defray, to the best of the defendant's ability, the cost of incarceration and treatment.

T.C.A. § 41-2-128(c)(1).

No person convicted of a second violation of T.C.A. § 55-10-401 (driving under the influence of an intoxicant or drug) that results in personal injury to, or the death of, another may be sentenced to a work release program. T.C.A. § 41-2-128(c)(2).

As a condition of participation in a work release program, the defendant must agree to be screened, at least daily, for the purpose of determining whether the person has consumed alcohol or illegal drugs. T.C.A. § 41-2-128(c)(3).

A defendant permitted to participate in a work release program pursuant to T.C.A. § 41-2-128 shall not be permitted to operate a motor vehicle while participating in the program and shall at all times remain in actual incarceration as provided by law when not actually at his or her place of employment or while being transported to or from his or her place of employment. T.C.A. § 41-2-128(c)(4).

At the time of sentencing, the judge shall cause the sentencing order to reflect the defendant's cost of incarceration and treatment and shall affix to the order, taking into consideration the defendant's ability to pay, the time and manner in which the costs are to be paid. The court shall enter the necessary orders requiring that the costs of incarceration and treatment be paid or secured including, but not limited to, orders of probation, which include as a condition thereof the payment of costs covered by T.C.A. § 41-2-128(c)(5). T.C.A. § 41-2-128(c)(5)(A).

When a defendant alleges that he or she is unable to pay pursuant to the terms set out by the order, the defendant may petition the court for modification as to the terms of payment. When it is determined that the defendant is unable to pay the entirety of the costs covered by T.C.A. § 41-2-128(c)(5) in the time and manner imposed by the court, any costs imposed against the defendant shall be pursuant to a schedule promulgated by the chief administrative officer of the county, or such officer's designee, with the schedule to be based upon the defendant's ability to pay the same. T.C.A. § 41-2-128(c)(5)(B). In promulgating the schedule governing costs and the amount to be paid by the defendant, the chief administrative officer of the county, or such officer's designee, shall consider the defendant's ability to pay and the disbursement schedule set forth in T.C.A. § 41-2-129, and shall incorporate payments ordered herein into the schedule. T.C.A. § 41-2-128(c)(5)(C). In no event shall a person be denied access to this program or be denied discharge from incarceration as a result of that person's inability to pay. T.C.A. § 41-2-128(c)(5)(D).

A county that permits a person convicted of a second offense violation of T.C.A. § 55-10-401 to be sentenced to a work release program must maintain records sufficient to allow an annual determination of whether such participation in any way diminishes the effectiveness of T.C.A. § 55-10-402. T.C.A. § 41-2-128(c)(6).

On an annual basis, the county legislative body must conduct a public hearing to examine, monitor and evaluate the work release program operating under the authority of T.C.A. § 41-2-128(c) to ensure that all requirements of the law are being complied with and that the program is being operated in accordance with the law. As part of the public hearing, the county legislative body must discuss the program's effectiveness and compliance and hear the opinions of the public concerning the program. The county legislative body must give notice of the public hearing at least 30 days prior to the meeting. T.C.A. § 41-2-128(c)(7)(A). If the county legislative body finds through its public hearing or any other information the body may obtain that the work release program is being operated in compliance with the law, it shall so certify the program. Such certification shall be transmitted to all judges having jurisdiction over the offense of driving under the influence of an intoxicant in the county. T.C.A. § 41-2-128(c)(7)(B). If the county legislative body finds that a work release program is not being operated in compliance with the law, it shall not certify the program. Such failure of certification shall be transmitted to all judges having jurisdiction over the offense of driving under the influence of an intoxicant in the county. T.C.A. § 41-2-128(c)(7)(C).

## DUI Convicts Performing Litter Removal

**Reference Number:** CTAS-1467

After service of at least the minimum sentence day for day, the judge has the discretion to require an individual convicted of a violation of 55-10-401 to remove litter from the state highway system, public playgrounds, public parks or other appropriate locations for any prescribed period or to work in a recycling center or other appropriate location for any prescribed period of time in lieu of or in addition to any of the penalties otherwise provided in 55-10-402; provided, that any person sentenced to remove litter from

the state highway system, public playgrounds, public parks or other appropriate locations or to work in a recycling center shall be allowed to do so at a time other than the person's regular hours of employment. T.C.A. 55-10-402(d)(1).

## Wages or Salary of Employed Prisoners - Cost for Boarding

**Reference Number:** CTAS-1455

When a prisoner is employed for wages or salary, the superintendent of the workhouse collects the wages or salary or can require the prisoner to turn over the wages or salary when received. The superintendent of the workhouse must deposit the money in a trust checking account and must keep a ledger showing the status of the account of each prisoner. In the case of a jail prisoner, the sheriff shall collect the wages or salary of the prisoner or require the prisoner to turn over the wages or salary when received and shall perform the duties prescribed above. T.C.A. § 41-2-129(a).

Every prisoner gainfully employed is liable for the cost of the prisoner's board in the workhouse as fixed by the county board of workhouse commissioners. The superintendent of the workhouse shall charge the prisoner's account if the prisoner has one for such board. If the prisoner is gainfully self-employed the prisoner shall pay for such board, in default of which the prisoner's privilege under T.C.A. §§ 41-2-127 - 41-2-132 shall be automatically forfeited. If necessarily absent from the workhouse at a meal time, a prisoner shall at the prisoner's request be furnished with an adequate nourishing lunch to carry to work. If the workhouse food is furnished directly by the county, the superintendent of the workhouse shall account for and pay over such board payments to the county. T.C.A. § 41-2-129(b)(1) - (5).

The same provisions shall apply in the case of jail prisoners, except that the county legislative body shall have and exercise the duties and authority prescribed for the county board of workhouse commissioners in the case of workhouse prisoners, and the sheriff shall have and exercise the duties and authority prescribed for the superintendent in the case of workhouse prisoners. T.C.A. § 41-2-129(b)(6).

By order of the county board of workhouse commissioners, or county legislative body if there is no county board of workhouse commissioners, or in the case of jail prisoners, the wages or salaries of employed prisoners shall be disbursed for the following purposes in the order stated:

1. The board of the prisoner;
2. Necessary travel expenses to and from work and other incidental expenses of the prisoner;
3. Support of the prisoner's dependents, if any, the amount to be determined by the local governing body of the county workhouse or by the county legislative body in the case of jail prisoners;
4. Payment of docket costs connected with the prisoner's commitment;
5. Payment either in full or ratably of the prisoner's obligations acknowledged by the prisoner in writing or that have been reduced to judgment; and
6. After deductions are made as set forth above, \$2, if there is at least a balance of \$2 in the account, shall be deducted each month from a prisoner's trust account for any month the prisoner is gainfully employed, to be applied to the county-operated victim's assistance program, if such a program exists in the county.
7. After deductions are made in accordance with subdivisions (c)(1)-(6), four dollars (\$4.00), if there is at least a balance of four dollars (\$4.00) in the account, shall be deducted each month from a prisoner's trust account for any month the prisoner is gainfully employed, to be directly applied to satisfy any judgments, against the prisoner, for restitution in favor of the victim.

T.C.A. § 41-2-129(c).

## Alternative Work Release Procedures

**Reference Number:** CTAS-1456

As an alternative to the procedures described in T.C.A. § 41-2-129, subsections (a), (b) and (c), the sentencing court may place a prisoner on work release subject to the terms and conditions that the sheriff and the sentencing court may agree upon. T.C.A. § 41-2-129(d).

## Employment of Prisoners in Another County

**Reference Number:** CTAS-1457

The county board of workhouse commissioners, or the county legislative body if there is no county board of workhouse commissioners, may by order authorize the superintendent of the workhouse to arrange with another superintendent for employment of the prisoner in the other's county, and while so employed, to be in the other's custody but in other respects to be and continue subject to the commitment. T.C.A. § 41-2-130(a).

Likewise, the county legislative body may authorize the sheriff to arrange with the sheriff of another county, in the case of jail prisoners, for employment of any such prisoner in the other's county, to be in such sheriff's custody while so employed but in all other respects to be and continue subject to the commitment. T.C.A. § 41-2-130(b).

## Grounds for Refusal to Release Prisoner

**Reference Number:** CTAS-1458

The superintendent of a workhouse may refuse to permit a prisoner to exercise the privilege to leave the workhouse for any breach of discipline or other violation of workhouse regulations. Similarly, the sheriff may refuse to permit a prisoner to exercise the privilege to leave the jail for any breach of discipline or other violation of jail regulations. T.C.A. § 41-2-131.

## Contracts with Other Governmental Agencies

**Reference Number:** CTAS-1459

The superintendent of a workhouse is authorized, with the approval of the local governing body of the county workhouse, to jointly contract with any other governmental agency, whether federal, state, county or municipal, with regard to accepting prisoners in custody of such other governmental agency or agencies for purposes of participating in the work release program under the provisions of T.C.A. §§ 41-2-127 - 41-2-132. The sheriff is also authorized, with the approval of the county legislative body, to contract with another unit of government to accept prisoners in the custody of such government for the purpose of participating in the work release program. T.C.A. § 41-2-132.

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