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# Labor Prescribed for Workhouse Prisoners

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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 CTAS website material.

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# Labor Prescribed for Workhouse Prisoners

Reference Number: CTAS-1438

The board of workhouse commissioners shall prescribe the kind of labor at which the prisoners shall be put provided that when practicable, they shall be worked on the county roads in preference to all other kinds of labor. T.C.A. § 41-2-105.

## Convicted Prisoners-Workhouse

Reference Number: CTAS-1439

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).

Pursuant to T.C.A. § 41-2-147(a), the sheriff or workhouse superintendent having responsibility for the custody of any person sentenced to a local workhouse 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 the person to perform any of the duties set out in T.C.A. § 41-2-123 or T.C.A. § 41-2-146.

## Road Work-Workhouse

Reference Number: CTAS-1440

All prisoners sentenced to the county workhouse under the provisions of T.C.A. § 40-23-104 (Sentence to Workhouse for Felony Term) or former T.C.A. § 40-35-311 shall be worked on the county roads under the supervision of the chief administrative officer of the county highway department when, in the opinion of such chief administrative officer, a sufficient number are available to pay the county for the necessary expense incurred for keeping and caring for them. Such prisoners may be used by municipalities within the county by mutual agreement between the county sheriff or superintendent of the county workhouse and the chief executive officer of the municipality. T.C.A. § 41-2-123(a).

When any prisoner has been sentenced to imprisonment in a county workhouse for a period not to exceed 11 months and 29 days, the superintendent of the county workhouse 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 prisoners participating in this work program shall be under the supervision of the superintendent of the county workhouse or the superintendent'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).

Under state law, 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, or 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).

Under state law, 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-Workhouse

Reference Number: CTAS-1441

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

## Litter Grant Program

Reference Number: CTAS-1442

The commissioner of transportation is authorized to make grants to the several counties of the state, either through the office of sheriff or that of the county mayor or other appropriate official, for the purpose of funding programs to collect litter and trash along county, state and interstate roads and highways within the respective counties. Such grants may provide for the use of labor of prisoners sentenced to the county workhouse, and may fund expenses including, but not limited to, salaries, administration and the purchase, maintenance and operation of equipment. Not more than 10 percent of the funds awarded by a grant under T.C.A. § 41-2-123(c) shall be expended to advertise or promote a litter and trash collection program, and no part of such funds shall be used to purchase supplies, materials or equipment displaying the name or likeness of the administrator of such program or of any other individual. Local county officials and other recipients may submit applications outlining a plan for litter abatement that may include recycling programs to the Department of Transportation. All applications shall be subject to prior review and approval by the governor or designated agent. T.C.A. § 41-2-123(c).

## Work Contracts with Other Counties

Reference Number: CTAS-1443

Any county not desiring to work its workhouse prisoners may, through its county mayor and by direction of the county legislative body, contract with any other county for the custody and employment of such prisoners. The prisoners shall then be worked and guarded by the county contracting to take them, and shall be subject to any rules that may be established by the workhouse commissioners of such county. T.C.A. § 41-2-124.

## Contracts with Department of Transportation

Reference Number: CTAS-1444

The Tennessee Department of Transportation is authorized to enter into contracts with county officials charged by law to work workhouse prisoners in the construction and reconstruction of roads. The contract will allow credit to the county for the work of prisoners on state or federal roads as approved by TDOT or the appropriate federal department. T.C.A. § 41-2-125.

## Sentence Reduction Credits-Workhouse

Reference Number: CTAS-1445

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 such 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 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 workhouse the superintendent or jailer 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.*

## Good Time Credit-Workhouse

Reference Number: CTAS-1446

Each prisoner who has been sentenced to the county workhouse for any period of time 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 post-trial 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 workhouse or otherwise behaves improperly, the sheriff or superintendent of the workhouse may revoke all or any portion of such 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).

## Disciplinary Review Board-Workhouse

Reference Number: CTAS-1447

Each county is required to have a disciplinary review board composed of six impartial members, one or more of whom may be members of the workhouse staff. The members of the disciplinary review board are appointed by the sheriff or the superintendent of the workhouse, 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. The decisions of the disciplinary review board for workhouse inmates may be appealed to the sheriff or workhouse superintendent. 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-Workhouse

Reference Number: CTAS-1448

Notwithstanding any other provision of law to the contrary, except as provided in T.C.A. § 41-2-150(b), any person sentenced to the county workhouse, 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. T.C.A. § 41-2-150(a).

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

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 workhouse superintendent 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).

## Other Work Permitted-Workhouse

Reference Number: CTAS-1449

Inmates housed in a county workhouse 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-Workhouse

Reference Number: CTAS-1450

No sheriff, jailer or other person responsible for the care and custody of inmates housed in a county workhouse may employ, require or otherwise use any such inmate to perform labor that will or may result directly or indirectly in the 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 the sheriff, jailer or other person. This prohibition applies 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 workhouse may permit any inmate 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

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, upon the 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 such person's office and shall be forever barred from holding public office in this state. T.C.A. § 41-2-148(d)(1). *See In re Williams*, 987 S.W.2d 837 (Tenn. 1998).

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).

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