



County Technical Assistance Service
INSTITUTE for PUBLIC SERVICE

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Authority to Take Bail--Appeal

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained 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 CTAS website material.

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Anne Dallas Dudley Boulevard, Suite 400
Nashville, Tennessee 37219
615.532.3555 phone
615.532.3699 fax
www.ctas.tennessee.edu

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Authority to Take Bail--Appeal

Reference Number: CTAS-2138

Under T.C.A. § 40-11-106:

(a) If bail has been set, any sheriff, any magistrate or other officer having authority to admit to bail in the county where the defendant is arrested, confined or legally surrendered may take bail in accordance with the provisions of §§ 40-11-101 -- 40-11-144 and release the defendant to appear as directed by the officer setting bail. The sheriff or peace officer shall give a numbered receipt to the defendant to mandate an accounting for the bail so taken and within a reasonable time deposit the bail with the clerk of the court having jurisdiction of the offense.

(b) (1) Under this part, it is the responsibility of the sheriff or judicial commissioner to determine the sufficiency of the surety and validity of any bond, and once a sheriff or judicial commissioner has taken bail under this subsection (b), that action shall be presumed to be valid. Once a sheriff or judicial commissioner has taken bail or refused to take bail, the jurisdiction of the court having jurisdiction of the offense shall be limited to the issue of whether the sheriff or judicial commissioner has abused discretion. A surety which meets the requirements of § 40-11-122(1) or (2) shall be deemed sufficient if it is certified by the circuit court clerk of the county where the defendant resides to the sheriff, magistrate, or other appropriate officer in the county where the defendant was arrested, confined or legally surrendered.

(2) However, any defendant, claiming that a sheriff or judicial commissioner has acted arbitrarily or capriciously, may, by motion, file an appeal to the court having jurisdiction of the offense. Upon appeal, it is the court's duty to determine whether the sheriff or judicial commissioner has acted arbitrarily or capriciously.

(3) This subsection (b) shall not be used to prevent a commercial bonding agency from posting bond for any individual when the commercial bondsman has previously been approved and authorized to make bonds and the bondsman has been so authorized by the presiding judge.

(c) Before the sheriff, magistrate or other officer admits to bail and releases a defendant who is arrested for any kidnapping offense involving a hostage or victim, the releasing authority shall make all reasonable and diligent efforts to notify the hostage or victim of the alleged offense that the defendant has been admitted to bail and is being released. If the hostage or victim is under the age of eighteen (18) or otherwise unavailable, the releasing authority shall make all reasonable and diligent efforts to notify the family, if any, of the hostage or victim that the defendant is being released.

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