

LEGAL ISSUES FOR COURT CLERKS

August 2026

OBJECTIVES

**Requirements to
hold and keep
holding office**

**Disposal of court
records**

**Fine/fee/tax
collection issues**

PART ONE

Legal Requirements to Hold and Keep Holding Office

TO HOLD OFFICE

- ▶ Article 6, Section 13 of the Tennessee Constitution:

Clerk and Master
**appointed to
6 year term**

All other clerks must be
**elected to
4 year terms**

- ▶ Legislative qualifications under T.C.A. § 8-18-101: open to all citizens of the United States and Tennessee who are at least 18 years of age **except**:

Convicted of
offering or giving a
bribe or any other
offense declared
infamous by law

Against whom a
judgment remains
unpaid for moneys
received in an
official capacity

Defaulters to the
treasury at the time
of the election

Soldiers, sailors,
marines, or airmen
in the regular army,
navy, or air force of
the United States

Members of
congress, and
persons holding any
office of profit or
trust under the
United States



TO KEEP HOLDING

SAVE JOBS

-

BUY LOCAL



TO KEEP HOLDING – CONT.

T.C.A. § 8-48-101:

- Death
- Resignation
- Judge declaring election void
- Penitentiary
- Insanity

OFFICIAL BOND

Promise by official to county:

perform all duties

pay over all funds

keep records

turn over records, funds and property to successor

not do anything illegal or improper

Approved by the Court

Recorded in Register's office

Filed in County Clerk's office

As of 2016, counties can purchase insurance policies in place of official bonds



BOND AMOUNTS

Counties with
populations of
15,000 or more

\$100,000

Counties with
populations of less
than 15,000

\$50,000

Minimum amounts - court can require a greater sum.

Court may also require additional bond when acting as special commissioner or receiver.

Insurance option - \$400,000 per occurrence.

OUSTER

An ouster proceeding is a civil, not a criminal, action

AG, DA, county attorney or group of citizens

Actions are brought in the circuit, chancery, or criminal court of the county wherein the official holds office

T.C.A. § 8-47-103.



OUSTER

Misconduct

Neglect

Public
intoxication

Illegal
gambling

Moral
turpitude

REMOVAL FOR OFFICIAL MISCONDUCT

- ▶ Criminal convictions relating to an abuse of office may result in removal from office
 - ▶ Not “ouster” suits
- ▶ Defined in T.C.A. § 39-16-402
- ▶ Persons convicted shall be ***disqualified from holding any office for at least 10 years or possibly forever***

REMOVAL BY JUDGE/CHANCELLOR

Reasons for Removal

- Committing any misdemeanor or felony in office
- Neglect of duty or misbehavior in office
- Refusing to pay over money collected in an official capacity
- Refusing to perform any duty required by law
- Knowingly making a false entry in a case

PART TWO

Disposal of Court Records

ONE MORE STEP FOR COURT CLERKS

Court clerks need to involve a judge in the review process for destroying records of court proceedings.

Records and documents of court proceedings can only be destroyed after a judge has issued an order authorizing their destruction.

T.C.A. § 18-1-202(A)

Can destroy many records under the direction & order of judge

- 10 years after a judgment has been entered and appeal times have lapsed for all parties

Clerks must retain as permanent records:

- Pleadings; Original process and original opinion; Original rules; Appearance and execution dockets; Minute books; and Plat or plan books

Juvenile Court Exception:

- May dispose of records in delinquent and unruly juvenile court cases after a period of ten (10) years following the juvenile reaching eighteen (18) years of age.
- Prior to ordering the clerk to dispose of original documents, the court must notify the district attorney general of the proposed order and provide the district attorney general reasonable time to file a notice of opposition to the proposed order. All other records,

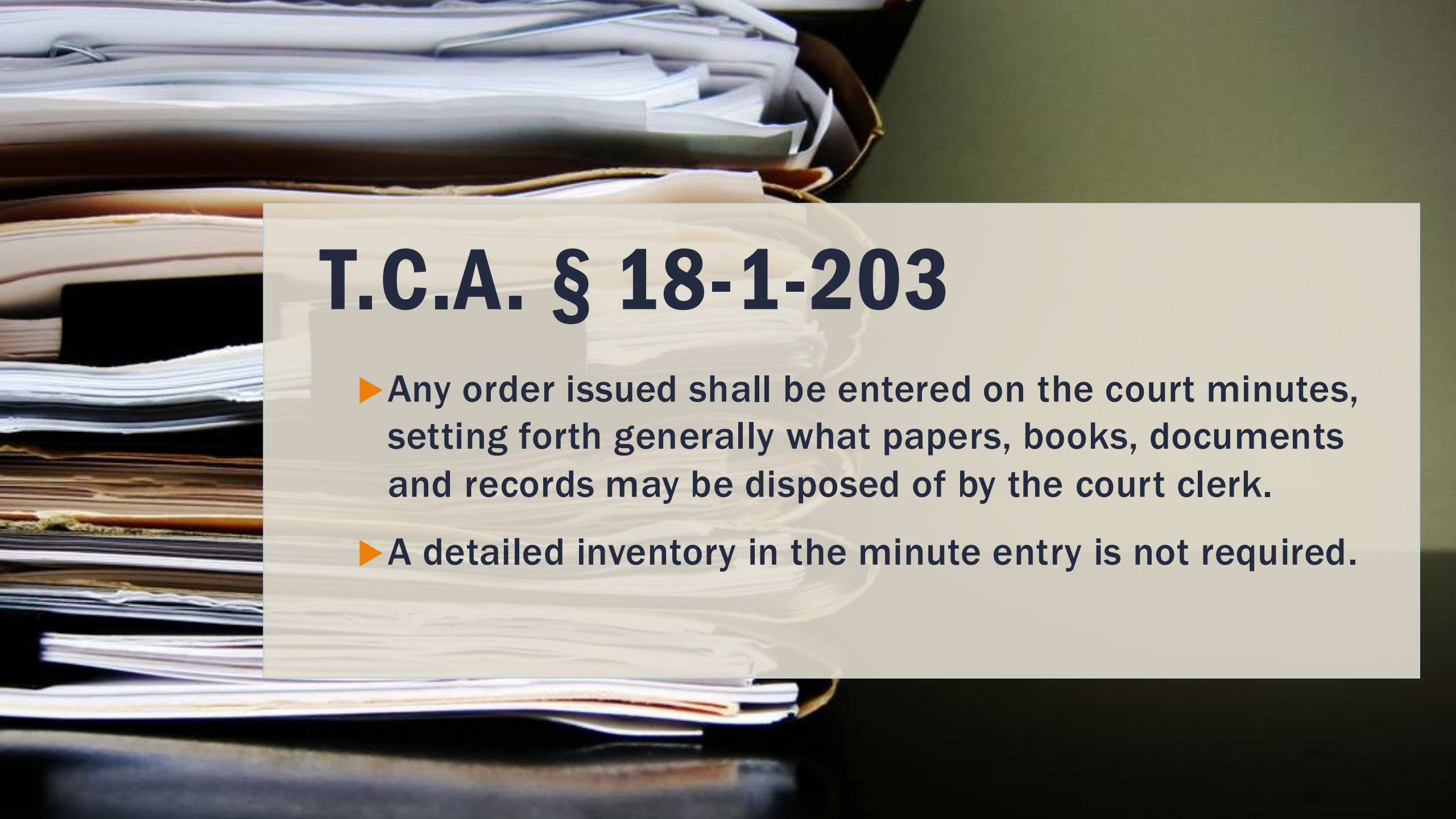
T.C.A. § 18-1-202(B)

Additionally, in civil cases, a judge may order the clerk to destroy discovery materials, briefs, cost bonds and subpoenas 3 years after the final disposition of the case.

Must notify the parties prior to destruction.

Cannot destroy if any party is a minor.

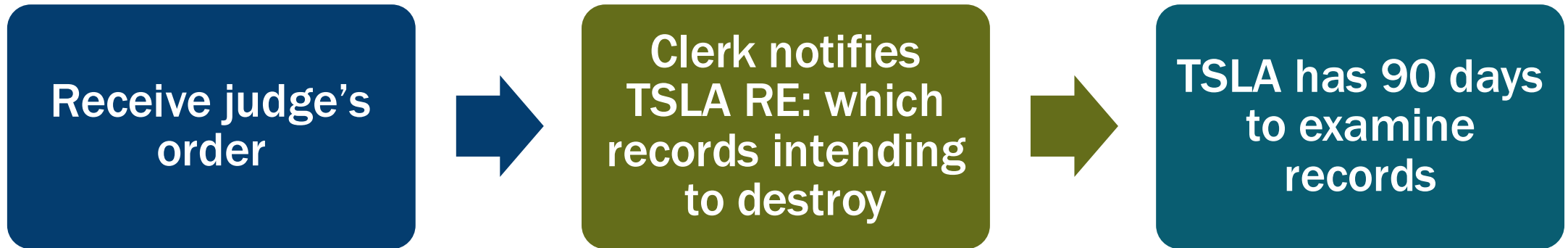




T.C.A. § 18-1-203

- ▶ Any order issued shall be entered on the court minutes, setting forth generally what papers, books, documents and records may be disposed of by the court clerk.
- ▶ A detailed inventory in the minute entry is not required.

T.C.A. § 18-1-204



PHYSICAL EVIDENCE

- Slightly more complicated process than documents
- Can dispose of sooner than documents though
- 30 days' notice to attorneys of record to come pick up
- If don't pick up, follow T.C.A. § 18-1-206



T.C.A. § 18-1-206

Must make an inventory

- Publish for 3 consecutive weeks
- Parties may object to disposal



T.C.A. § 18-1-206

Judge may order the items:

- Returned to owner;
- Preserved for historical purposes;
- Sold; or
- Destroyed.



T.C.A. § 18-1-206

Clerk turns over
order & items to
sheriff.



Sheriff delivers
items to their
owners, to a
historical
organization,
advertises and
sells/ destroys
items.



Sheriff files an
affidavit concerning
destruction with
court.

FIREARMS

Stolen?

Returned to rightful
owner

Not stolen?

Court's discretion
whether it is sold,
destroyed, or used for
legitimate law
enforcement purposes

T.C.A. § 39-17-1317 and 39-17-1318

PART THREE

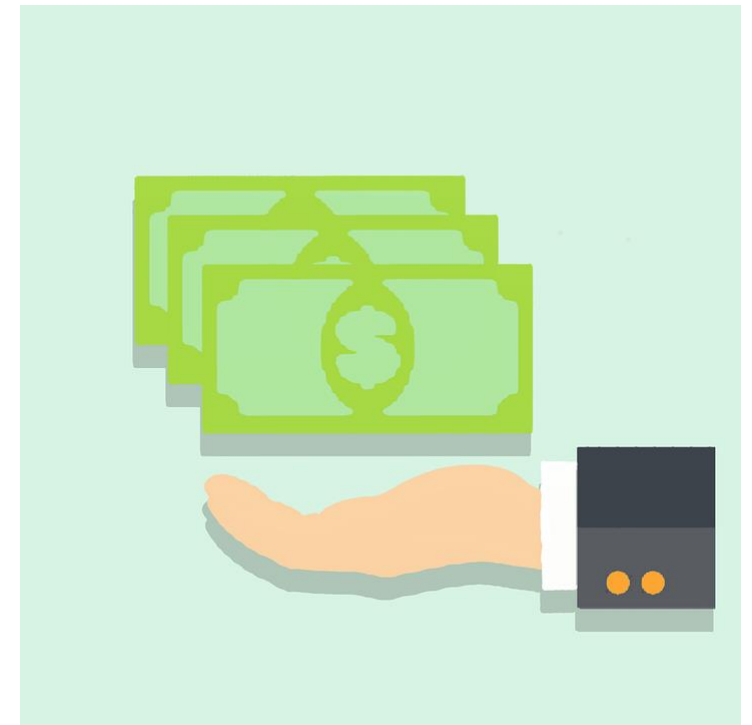
Fine, Fee, and Tax Collection Issues

DUTY TO COLLECT

Any officer who **fails to charge or collect every fee** the county may be entitled to shall be **held individually liable** to the county for the amount that should have been collected

The amount not collected shall be **charged against the officer** and **deducted from the officer's salary**

- Or collected from the officer by law



ONLY COLLECT LAWFUL AMOUNTS

T.C.A. § 8-21-101

- No officer is allowed to demand/receive fees for any service other than what is expressly provided by law.

T.C.A. § 8-21-103

- If any officer demands/receives any other or higher fees than are prescribed by law, such officer is liable to a penalty of \$50.00, to be recovered before any general sessions court judge.
- Class C misdemeanor.

I'M CONFUSED??

- It is the duty of the courts to decide any question arising under the law
- Officer entitled to the compensation in question must submit application
- Such decision will protect the officer acting under it

T.C.A. § 8-21-105

COLLECTION METHODS

Two Primary Statutes:

Criminal Cases
T.C.A. § 40-24-105

Civil Cases T.C.A.
§ 20-12-144

T.C.A. § 40-24-105(A)

Fine may be collected in the same manner as a judgment in a civil action.

- Garnish money/wages
- Executions on personal property or real estate

Fine may be collected by contempt proceeding by court.

- Hearing required
- Non-payment must be willful

Cost and litigation taxes may be collected in the same as a judgment in a civil action, but not by imprisonment under this subsection.

Allocation Formula:



DRIVER LICENSE REVOCATION

T.C.A. § 40-24-105(B)

Clerk must offer installment payment plan if requested or if not fully paid within one (1) year of the completion of the sentence

- Must be based on income and ability to pay

Clerk notifies department of safety of failure to pay according to payment plan

- 30 days to correct
- Fails to correct then issued restricted license

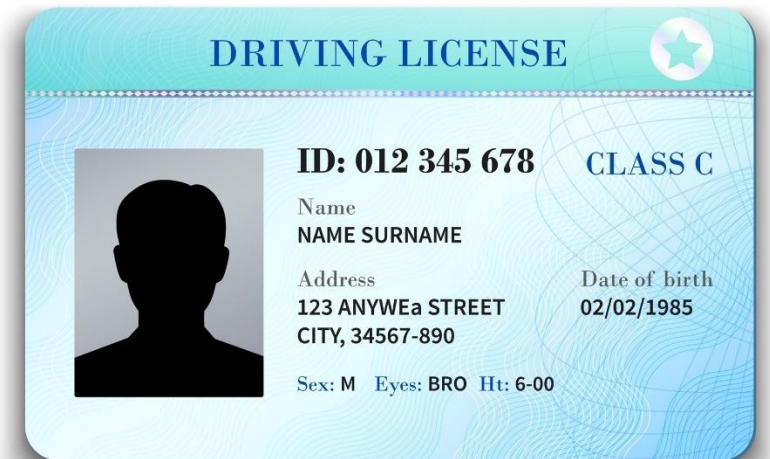
Repeat same process with restricted license

- 6 months to reapply for restricted license

Indigency exception

- Apply to court for pausing of required payment
- Court can make reappear for future evaluation of indigency

Similar process for driving offenses under TCA 55-50-502



T.C.A. § 40-24-105(c)

District attorney general, county, or municipal attorney may institute proceedings to collect the fine, costs, and litigation taxes as a civil judgment upon order of the court.

T.C.A. § 40-24-105(D)

If any fines, costs or litigation taxes are in default for at least 6 months, then the DA or clerk may retain an agent to collect or establish an in-house collection procedure.

If DA and clerk cannot agree on who collects, the presiding judge of the judicial district or a general sessions judge shall make the decision.

Clerk may retain up to 50% of collected amounts in accordance with any in-house collection procedure (shall be treated as other fees of the office).

Collection Agent

- County purchasing agent to bid
- Collection agent's fee added to amount owed
- Maximum agent fee is 40%

T.C.A. § 40-24-105(E)&(F)

Subsection (e) only relates to cities.

Subsection (f):

Any fine, costs or litigation taxes assessed against a defendant in a criminal case may be converted to a civil judgment pursuant to the Tennessee Rules of Civil Procedure when the defendant is released from their sentence.

The judgment may be enforced as a civil judgment.

T.C.A. § 40-24-105(G)

Can accept lump sum settlement of fine, costs, or litigation taxes in default for at least 5 years.

Must be approved by the court.

Settlement amount must be at least 50% of the combined outstanding balance of all fines, costs, and litigation taxes due on the case.

T.C.A. § 20-12-144

After in default for at least six months, the clerk may retain an agent to collect or establish an in-house collection procedure.

The clerk may retain up to 50% of collected amounts in accordance with any in-house collection procedure (shall be treated as other fees of the office).

Collection Agent

- Use county's normal competitive bidding procedure and clerk shall award bid with approval of the judge of the affected court
- Collection agent's fee added to amount owed
- Maximum agent fee is 40%