



County Technical Assistance Service

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Disposition of Confiscated Weapons

Dear Reader:

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.

Sincerely,

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Disposition of Confiscated Weapons

Reference Number: CTAS-1254

It is the duty of the sheriff and the sheriff's deputies to confiscate any weapon that is possessed, used or sold in violation of the law. With few exceptions, such confiscated weapon shall be declared to be contraband by a court of record exercising criminal jurisdiction. The sheriff may petition the court for permission to dispose of the weapon in accordance with T.C.A. § 39-17-1317. Any weapon declared contraband shall be sold in a public sale or used for legitimate law enforcement purposes, at the discretion of the court, by written order. T.C.A. § 39-17-1317(b).

If the court orders the weapon to be sold it must be sold at a public auction not later than six months from the date of the court order. The sale must be conducted by the sheriff of the county in which it was seized. The sale must be advertised in a daily or weekly newspaper circulated within the county. The advertisement must run for not fewer than three editions and not less than 30 days prior to the sale. The proceeds from the sale go into the county general fund and are to be allocated solely for law enforcement purposes. If required by federal or state law, the sale can be conducted under contract with a licensed firearm dealer, whose commission may not exceed 20 percent of the gross sales price. Such dealer cannot hold an elective or appointed job with the federal, state, county or city government in this state during any stage of the sales contract. T.C.A. § 39-17-1317(c).

If the weapon is sold, the sheriff shall file an affidavit, as follows, with the court issuing the sale order:

- (1) The affidavit shall be filed within thirty days after the sale;
- (2) The affidavit shall identify the weapon, including any serial number, and shall state the time, date and circumstances of the sale; and
- (3) If the weapon has been sold, the affidavit shall list the name and address of the purchaser and the price paid for the weapon.

T.C.A. § 39-17-1317(f).

If the court orders the weapon to be retained and used for legitimate law enforcement purposes, title to the weapon shall be placed in the law enforcement agency retaining the weapon and when the weapon is no longer needed for legitimate law enforcement purposes, it shall be sold in accordance with law. T.C.A. § 39-17-1317(e).

No confiscated weapon shall be sold or retained for law enforcement use in the following circumstances:

- (1) A weapon that may be evidence in an official proceeding shall be retained or otherwise preserved in accordance with the rules or practices regulating the preservation of evidence. The weapon shall be sold or retained for legitimate law enforcement purposes not less than sixty days nor more than one hundred eighty days after the last legal proceeding involving the weapon; or
- (2) Any weapon that has been stolen or borrowed from its owner, and the owner was not involved in the offense for which the weapon was confiscated, shall be returned to the owner if permitted by law.

T.C.A. § 39-17-1317(g).

If the sheriff certifies to the court that a weapon is inoperable or unsafe, the court shall order the weapon destroyed or recycled. T.C.A. § 39-17-1317(i).

The sheriff may petition the criminal court or the court in the sheriff's county having criminal jurisdiction for permission to exchange firearms that have previously been properly titled to the sheriff's office for other firearms, ammunition or body armor suitable for use by the sheriff's office. This exchange of firearms for these specified items used for legitimate law enforcement purposes is permitted only between the sheriff's office and a licensed and qualified law enforcement firearms dealer. T.C.A. § 39-17-1317(l).

If any firearm confiscated and adjudicated as contraband pursuant to Title 39, Chapter 17, Part 13, or any other provision of law could be sold at public auction or retained by the sheriff's office for law enforcement purposes as provided in T.C.A. § 39-17-1317, but for the fact that the serial number of the firearm has been defaced or destroyed, the sheriff of the county in which the firearm was confiscated may send the firearm to the director of the Tennessee Bureau of Investigation who shall assign the firearm a

new serial number, permanently affix the number to the firearm, record the number in the bureau's computer system, and send the firearm back to the sheriff for disposition in accordance with law. T.C.A. § 39-17-1318(a). If any firearm assigned a new serial number by the TBI is later sold at public auction, 10 percent of the proceeds of the sale must be returned to the general fund of the state to defray the costs incurred by the bureau in the new serial number. T.C.A. § 39-17-1318(b).

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