



County Technical Assistance Service

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Commitment of Defendant to Jail

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,

The University of Tennessee
County Technical Assistance Service
226 Capitol Blvd. Suite 400
Nashville, TN. 37219
615-532-3555 phone
615-532-3699 fax
ctas@tennessee.edu
www.ctas.tennessee.edu

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Reference Number: CTAS-1346

It is the duty of the sheriff in whose custody the defendant is at the rendition of the judgment, or afterwards legally comes, to execute the judgment of imprisonment by committing the defendant, as soon as possible, to jail or to the warden of the penitentiary according to the exigency of the writ. T.C.A. § 40-23-103. With respect to a sentence of confinement to be served in the state penitentiary, the Tennessee Court of Criminal Appeals has interpreted "as soon as possible" to mean as soon as space is available at the penitentiary and that the courts should interpret "as soon as possible" in its most literal sense. *Carver v. State*, 2003 WL 21663688 (Tenn. Crim. App. 2003.).

A criminal sentence commences on the day the defendant legally comes into the custody of the sheriff for the execution of the judgment of imprisonment. *Kelly v. State*, 61 S.W.3d 341 (Tenn. Crim. App. 2000). See also *State v. Chapman*, 977 S.W.2d 122 (Tenn. Crim. App. 1997) (The sheriff is obligated to execute the judgment of imprisonment by committing the defendant and to keep a confined prisoner in his or her custody.); *Wilson v. State*, 882 S.W.2d 361, 364 (Tenn. Crim. App. 1994) (In this jurisdiction, a sentence commences "on the day on which the defendant legally comes into the custody of the sheriff for execution of the judgment of imprisonment." Furthermore, it is the duty of the sheriff "to execute the judgment of imprisonment by committing the defendant, as soon as possible, to jail.").

Sheriffs do not have the authority, as does the governor, to delay the commitment of inmates to their institutions. T.C.A. § 41-1-506(e); Op. Tenn. Atty. Gen. No. 89-65 (April 28, 1989). However, pursuant to T.C.A. § 55-10-402(f) the sheriff may delay the commitment of an individual convicted of a violation of T.C.A. § 55-10-401 (driving under the influence of an intoxicant or drug) if space is not immediately available in the jail. If, in the opinion of the sheriff, space will not be available to allow an offender convicted of a violation of T.C.A. § 55-10-401, to commence service of the sentence, the sheriff shall use alternative facilities for the incarceration of the offender. *Kelly v. State*, 61 S.W.3d 341 (Tenn. Crim. App. 2000) ("[T]he State's delay of four years in executing [petitioner's] sentence and its failure to attempt the location of alternative facilities was, if not affirmatively improper, certainly grossly negligent.").

As used in T.C.A. § 55-10-402(f), "alternative facilities" include, but are not limited to, vacant schools or office buildings or any other building or structure that would be suitable for housing DUI offenders for short periods of time on an as-needed basis and licensed through the department of mental health and substance abuse services for the state.

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