S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243-0488

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Opinion No. 00-162

Medical expenses arising from blood test in DUI arrest, but unrelated to the arrest.

QUESTION

1. When an emergency room physician draws blood for purposes of blood-alcohol analysis at the request of the arresting officer in a DUI case and various diagnostic tests not related to the arrest are also performed, who is responsible for the payment of expenses associated with unrequested tests?

2. If the municipality is responsible for these costs, can the General Sessions or Criminal court tax these costs to the defendant at the time of conviction?

3. If the costs are taxed against the defendant at the time of conviction, can the defendant be charged with a violation of probation for failing to pay medical expenses unrelated to his arrest but assessed as part of his judgment of conviction?

OPINION

1. The testing of a blood sample for alcohol or drug content by any person other than at the direction of the director of the Tennessee Bureau of Investigation is not authorized by statute. Thus, the municipality requesting the testing may be responsible for paying for the test.

2. The costs of testing blood for alcohol or drug content not authorized by statute cannot be assessed against a criminal defendant.

3. Costs assessed against a criminal defendant can only be collected in the manner of a civil judgment, are not part of the penalty imposed, and failure to pay costs cannot result in imprisonment.

ANALYSIS

1. The procurement and processing of blood for alcohol or drug content is governed by Tenn. Code Ann. §55-10-410. Under subsection (a) of this statute an emergency room physician, and any other

individual within the language of the statute, is authorized to perform the procurement of a sample of blood. Under subsections (b), (c), and (d) of this statute, the blood sample must be forwarded to the director's office of the Tennessee Bureau of Investigation to be examined for alcohol concentration or for the presence of narcotic or other drugs. Additionally, the only test authorized is a "chemical test designed to determine the alcoholic or drug content of the blood." Tenn. Code Ann. §55-10-405(5). Accordingly, the person procuring the sample of blood is only authorized to take the sample. More particularly, the person procuring the sample is not authorized under the statute to request or perform any tests. Testing must be done at the direction of the director of the Tennessee Bureau of Investigation.

The opinion request does not contain sufficient information to determine whether the municipality must pay for unauthorized testing. It is the opinion of this office that, if the officer requested that testing be done, the municipality employing the officer may be responsible for payment of the costs. However, if the emergency room physician performs testing without such a request, or beyond the scope of such a request, the municipality should not be responsible for the costs of such unauthorized testing.

2. A defendant convicted of a criminal offense must pay all costs accrued in the case. Tenn. Code Ann. §40-25-123. The costs of a criminal case include all costs incident to the arrest and safekeeping of the defendant, both before and after conviction, due and incident to the prosecution and conviction, and incident to carrying the judgment or sentence into effect. Tenn. Code Ann. §40-25-104. Judgment for costs may be rendered at the time of conviction, by motion at any time subsequent to the conviction. Tenn. Code Ann. §40-25-134. The costs associated with testing in a DUI case authorized by statute can be assessed against a criminal defendant. This may include the costs of testing performed by the Tennessee Bureau of Investigation that are incident to the arrest of a DUI suspect, as well as any costs associated with the drawing of the blood and its transfer to the Tennessee Bureau of Investigation for testing. Costs which are not authorized by statute, and are not otherwise incident to the arrest, detention, prosecution, conviction, and execution of judgment, cannot be assessed against a criminal defendant. Accordingly, it is the opinion of this office that any test other than blood alcohol or drug content performed in a DUI case by or at the direction of the Tennessee Bureau of Investigation as authorized by Tenn. Code Ann. §55-10-410 is not incident to the criminal case and cannot be assessed against the criminal defendant.

3. Costs assessed against a criminal defendant may be collected in the same manner as a judgment in a civil action, "but shall not be deemed part of the penalty, and no person shall be imprisoned" for failing to pay costs. *See* Tenn. Code Ann. §40-24-105(a). Thus, a criminal defendant may not have his probation revoked through a violation warrant for failing to pay costs assessed in a criminal action.

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Requested by:

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