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Opinion No. 01-119

Officer Discretion in Making Felony Arrests

QUESTION

May a law enforcement officer, having observed the commission of a felony, choose not to arrest or charge the offending party?

OPINION

Yes. The only instance in which a law enforcement officer is obligated to make an arrest is when the officer has probable cause to believe that a suspect has violated an order of protection.

ANALYSIS

With only one exception, the Tennessee Code is silent on the issue of whether a law enforcement officer, having observed the commission of a felony, may choose not to arrest and charge the offending party. The only instance in which a law enforcement officer's discretion in making an arrest is supplanted by statutory obligation is found at Tenn. Code Ann. §36-3-611, which mandates that a law enforcement officer arrest anyone suspected of violating an order of protection if the violator has been served with the order of protection or otherwise has acquired actual knowledge of it. Aside from policies or guidelines adopted by individual law enforcement agencies within the State, this is the only example where, by statute, an officer does not have discretion about whether to make an arrest.

This question was addressed by the Tennessee Supreme Court in *Ezell v. Cockrell*, 902 S.W.2d 394 (Tenn. 1995). There the Court concluded that Tenn. Code Ann. §40-7-103(a)(1), the statute which delineates the general authority and responsibility of police officers, is permissive, and does not impose a mandatory duty to arrest every person suspected of criminal activity. 902 S.W.2d at 403.

Consequently, it is the opinion of this office that, aside from the situation contemplated by Tenn. Code Ann. §36-3-611, involving a violation of a protection order, a law enforcement officer is not

statutorily required to make an arrest.

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