S T A T E O F T E N N E S S E E
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Opinion No. 08-103

Transfer of Felons Housed in the County Jails to the TDOC

QUESTION

Is there a time limit within which the department of correction (TDOC) is required to take custody of felons sentenced to the department from the local jail?

OPINION

Yes, as a general rule the TDOC is directed by statute to take into physical custody felons sentenced to more than one (1) year of continuous confinement within fourteen (14) days after the department has received all certified sentencing documents from the clerk of the sentencing court unless the county has contracted with or expressed an intent to contract with the state to house certain prisoners.

ANALYSIS

The County Correctional Incentives Act of 1981 provides financial incentives to counties to house additional nondangerous felony offenders locally. Tenn. Code Ann. §41-8-101 *et.seq*. The purpose of the Act is to mutually benefit state and county governments by helping alleviate overcrowding and reducing high operation costs in state correctional facilities; and assisting counties in upgrading local correctional facilities and programs. Tenn. Code Ann. §§ 41-8- 101 & 102. The Act provides that no county is required to house convicted felons sentenced to more than one (1) year of continuous confinement unless the county chooses to contract with the TDOC to house certain felons. Tenn. Code Ann. § 41-8-106(a); *see also* Tenn. Code Ann. §§40-35-104(b) & 40-35-314(a). The department is directed to take actual physical custody of felons sentenced to the department[1] from any county which has not contracted with or passed a resolution which expresses an intent to contract with the state to house certain convicted felons within fourteen (14) days after the department receives all certified sentencing documents from the clerk of the sentencing court. Tenn. Code Ann. §41-8-106(g)(1); *see also* Tenn. Code Ann. §40-35-104(b). The commissioner

[1]Tenn. Code Ann. §§40-35-104(b), 40-35-211(2) & 40-35-314(a) outline which felons are sentenced to the department of correction and which are sentenced to the local jail or workhouse. *See* Tenn. Op. Atty. Gen. No. 90-66, 1990 WL 513029 (Tenn. A.G.).

of correction is also authorized to compensate any county which has not contracted with the state for that county's reasonable, allowable cost of housing felons. Tenn. Code Ann. §41-8-106(g)(2).

Under certain specified circumstances the governor can declare that an overcrowding emergency exists in state correctional facilities. Tenn. Code Ann. §41-1-503. Upon declaring that an overcrowding emergency exists, the governor may direct the commissioner of correction to notify all state judges and sheriffs that the commitment to the department of felons who have been on bail prior to their convictions shall be stayed or otherwise delayed until up to sixty (60) days after the in-house population of the appropriate correctional facilities has been reduced to ninety percent (90%) of the relevant designated capacity. Tenn. Code Ann. §41-1-504(a)(2) & 506. It is the understanding of this Office that the governor has not invoked his authority to delay commitment to the department.

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