

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

June 6, 2016

Opinion No. 16-21

Transfer of Felons Housed in County Jails to the Tennessee Department of Correction

Question 1

If a county has not contracted to house felons, is that county required to house any convicted felons?

Opinion 1

No. Pursuant to Tenn. Code Ann. § 41-8-106(a), no county may be required to house convicted felons who have been sentenced to more than 1 year of continuous confinement unless the county has contracted with Tennessee Department of Correction (TDOC) for the purpose of housing certain felons.

Question 2

Upon request of a county correction facility that has not contracted to house felons, and after receiving all certified sentencing documents from the clerk of the sentencing court, is TDOC required to take physical custody of the felons within 14 days?

Opinion 2

Yes. Pursuant to Tenn. Code Ann. § 41-8-106(g)(1), TDOC must take into its custody felons from any county that has not contracted with TDOC as permitted by statute. But TDOC is not required to take actual physical custody of any of the felons until 14 days after it has received all certified sentencing documents from the clerk of the sentencing court.

ANALYSIS

Tennessee Code Annotated § 41-8-106 provides the parameters within which county jails may be required to house convicted felons. Pursuant to Tenn. Code Ann. § 41-8-106(a), unless a county chooses to contract with TDOC to house certain felons, no county may be required to house convicted felons who have been sentenced to more than 1 year of continuous confinement. *See also* Tenn. Code Ann. §§ 40-35-211(2) & 40-35-314(a); Tenn. Op. Atty. Gen. No. 90-66, 1990 WL 513029 (Tenn. A.G.) (outlining the circumstances in which a court may order a felon to serve time in a local jail or workhouse).

Accordingly, Tenn. Code Ann. § 41-8-106(g)(1) requires TDOC to take into its custody of all convicted felons from any county that has not contracted with TDOC to house certain felons as

permitted by statute. But TDOC is not required to take actual physical custody of any of the felons until 14 days after it has received all certified sentencing documents from the clerk of the sentencing court. *See also* Tenn. Op. Atty. Gen. No. 08-103, 2008 WL 2011163 (Tenn. A.G.).¹

HERBERT H. SLATERY III
Attorney General and Reporter

ANDRÉE SOPHIA BLUMSTEIN
Solicitor General

LAURA MILLER
Assistant Attorney General

Requested by:

The Honorable John Mark Windle
State Representative
24 Legislative Plaza
Nashville, Tennessee 37243

¹ An exception to the fourteen-day removal period exists in the event of an “overcrowding emergency,” as defined by Tenn. Code Ann. § 41-1-503(a), in which case the governor may require county jails to house convicted felons until the overcrowding emergency has been remediated. Tenn. Code Ann. §§ 41-1-503; 41-1-504(a)(2) & 41-1-506.